

## New Zealand National Integrity System Assessment - 2018 update

Transparency International New Zealand  
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## DEDICATION



*Jeremy Pope*

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

## PREFACE TO THE 2018 UPDATE

### Taking integrity more seriously in New Zealand

This update of the Transparency International New Zealand 2013 National Integrity System assessment has been produced to selectively incorporate material on recent developments in New Zealand's integrity system as well as to incorporate minor amendments.

Since the 2013 NIS report was published, there have been some welcome measures to strengthen transparency and accountability in some areas in New Zealand. First was the government's initially positive response to the 2013 report itself, notably inclusion, of a commitment to "respond to the National Integrity Assessment recommendations" in New Zealand's Action Plan 2014-2016 for the international Open Government Partnership. Extensive interactions had taken place with officials across government during the collection of evidence for the 2013 assessment. The initial response from the government therefore raised hopes of serious engagement and some real action to strengthen our integrity system. The second welcome development was the cross-party support for the passage of the Organised Crime and Anti-corruption legislation followed by the ratification of UNCAC in 2015, albeit after an extremely long delay since New Zealand signed the Treaty in 2003.

However, progress in many areas has been extremely disappointing. On a number of issues passivity and a lack of urgency continue as the risks to integrity escalate and the ranking of the New Zealand Public Service falls, after a drop in score from 91 to 87 on Transparency International's corruption perceptions index. The fall in ranking may reflect increased publication of information about corruption by the Serious Fraud office, thus providing more information for those surveyed in the course of compiling the index. Despite the fall in ranking, public sector officials have become more active in corruption prevention and have now formally responded to around half of the 60 recommendations in the 2013 NIS report, five years on and the elected government is clearer about its international commitment to prevent corruption. There is, however, further evidence of serious accumulating threats to the integrity of our media, civil society institutions, and business sector, with insufficient understanding of what it means to be a corruption-intolerant culture.

In December 2015 the Chief Ombudsman found that, although the Official Information Act 1982 – an important element in our constitutional arrangements – was generally achieving its purposes, there were key areas where there were increasing risks and vulnerabilities in the way the Act was being administered. And this year there is further hard evidence that New Zealand's lax company and trust registration, with a lack of transparency of beneficial ownership, is being exploited by overseas interests setting up shell companies and opaque trusts with the potential for corrupt and illegal activities.

These developments are not isolated or temporary: they illustrate some of the fundamental systemic risks to our integrity systems identified in the NIS, namely from the dominance of the executive branch of government, and from the increasing international integration of our economy.

***The core message of the 2013 NIS assessment therefore remains: that it is beyond time for serious and urgent action to protect and extend integrity in New Zealand. This is the most effective way to prevent corruption and the human behaviours that lead to it. The 2018 update demonstrates where this message has begun to penetrate in the public sector, but unless the tone at the top improves for business and community organisations, our country is vulnerable to overseas corruption and will continue to miss out on the resources necessary to preserve the trusted society of which we have been proud.***

**Suzanne Snively**

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## PREFACE TO 2013 NATIONAL INTEGRITY SYSTEM ASSESSMENT

### Taking integrity more seriously in New Zealand

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

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

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

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

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## EXECUTIVE SUMMARY OF THE 2018 UPDATE

The main aim of the 2018 update is to identify and assess changes in New Zealand’s National Integrity System (NIS) between the publication of the 2013 NIS assessment and 31 December 2018. This executive summary covers only the new material, and should be read alongside the 2013 executive summary for a better understanding of the structure of the report.

A key conclusion from the 2013 assessment was that although New Zealand’s NIS was fundamentally sound, it faced increasing challenges. Areas of concern, weakness, and risk existed such as the relative dominance of the political executive, shortfalls in transparency in many pillars, and inadequate efforts to build proactive strategies to enhance and protect integrity in New Zealand. The pillar that raised issues of most concern was the political parties pillar. The core message of the report, therefore, was that it was beyond time to take the protection and promotion of integrity in New Zealand more seriously.

Overall, this 2018 update confirms the findings of the 2013 NIS assessment. There have been promising developments in the past five years, with pockets of greater focus on strengthening integrity systems. On the other hand, progress has been slow in many areas and close to non-existent in some, especially for political party funding, civil society and business.

Some of the recommendations made in the 2013 assessment have been implemented in whole or in part, and a table showing the detail of implementation is in Chapter 6.

Positive developments as at 31 December 2018 include:

- The UN Convention against Corruption (UNCAC) has been ratified
- New Zealand joined the Open Government Partnership (OGP) in 2013 and has developed three National Action Plans
- A suite of anti-corruption and organised crime legislation was passed in 2015 and mostly implemented in 2016
- There is some more transparency in the beneficial ownership of trusts. Transparency in the beneficial ownership of companies and other legal entities is a work in progress
- A review of the Protected Disclosures Act 2000 is under way.
- Strong modern formal processes are now in place for public procurement, and compliance appears to be high.
- A national anti-corruption programme has been developed by the Ministry of Justice, the Serious Fraud Office (SFO) and other government agencies
- The effectiveness of the Ombudsman has been enhanced by an increase in resources to build capacity

On a less positive note:

- There has been little progress towards more transparency in Parliament and its administration
- The problem of political party funding has not been addressed and has grown more acute
- There is slow progress in raising awareness of corruption risks or taking action to address them in the business sector and in civil society.

- In most areas of policy formation, opportunities for public consultation could be better designed. It appears that government agencies are giving insufficient priority and funding to the development of expertise in, and technology capacity and other resources required for, public consultation that empowers people to speak up.
- The Treaty of Waitangi is still not formally recognised as New Zealand's founding document or formally incorporated into New Zealand law.

In view of the findings of this update, a further six recommendations have been made. Full details can be found in Chapter 6, but a short summary follows:

**Recommendation 1:**

The outstanding recommendations from the 2013 NIS now be implemented with high priority given to Parliamentary transparency, integrity and accountability: transparency in the statutory board appointment process; and transparency in the finances of political parties.

**Recommendation 2:**

A comprehensive national anti-corruption strategy be drawn up and implemented.

**Recommendation 3:**

The government to fully implement the third National Action Plan (NAP3) for the OGP.

**Recommendation 4:**

The public sector to take the opportunity offered by the reviews of the State Sector Act and the Protected Disclosures Act to implement in full the relevant recommendations of the 2013 NIS assessment.

**Recommendation 5:**

Media organisations to recognise the benefits to them and to society that flow from operating in a high integrity society and to play their part in strengthening integrity systems.

**Recommendation 6:**

Civil society (non-government organisations and other associations) and the business sector also need to recognise the benefits to them and to society that flow from operating in a high integrity society and to play their part in strengthening integrity systems.

## EXECUTIVE SUMMARY OF THE 2013 NATIONAL INTEGRITY SYSTEM ASSESSMENT

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

### Transparency matters

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

### The National Integrity System

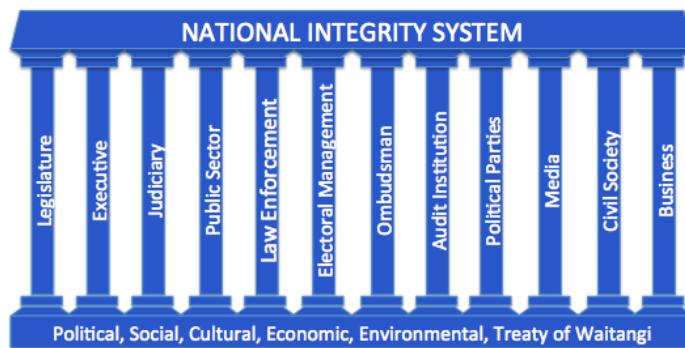
**This National Integrity System (NIS) assessment report takes stock of the integrity with which entrusted authority is exercised in New Zealand.** The framework on which the report is based was developed by the Transparency International Secretariat and has evolved as it has been applied by TI national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

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

**The assessment identifies systemic interactions, interdependencies, and common themes and concerns.** The wide scope of an NIS assessment facilitates such identification, which is difficult, if not impossible, to achieve in standard sector- or institution-specific analyses of transparency

and accountability. Further, it is designed to consider the individual pillars and their interactions (positive and negative), thus providing a basis for understanding the systemic effectiveness of the combined impact of the pillars of the NIS.

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



### **Overall conclusions of the 2013 report**

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

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

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

The four key strengths from the interactions between pillars are:

- **the effectiveness of the judiciary as a check on executive action**
- **the effectiveness of the Office of the Auditor-General in supporting parliamentary oversight of public finances**

- the effectiveness of the Ombudsman as a restraint on the exercise of administrative power and in enforcing citizens' rights of access to information under the Official Information Act 1982
- when cases of corruption or unethical behaviour by those in power are exposed, the media, political parties, the Auditor-General, law enforcement agencies, and the judiciary usually pursue these cases vigorously.

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

Four main weaknesses are apparent in the interactions between pillars:

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

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

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

**Key strengths** include:

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

**Key weaknesses** include:

- a degree of economic inequality that strains social cohesion and, international experience suggests, may create some risk of increased corruption

- only 37 per cent of respondents to a recent Serious Fraud Office survey thought the country was “largely free” of serious fraud and corruption
- 44 per cent of respondents in the New Zealand Survey of Values 2005 thought the country was run by a few big interests looking after themselves rather than for the benefit of all people
- only 55 per cent of those surveyed by the Human Rights Commission considered the Treaty of Waitangi to be New Zealand’s founding document, and only 25 per cent rated the Crown–Māori relationship as healthy.

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

## Six broad themes across the NIS

**Analysis of the 12 pillars and 6 societal foundations of the New Zealand NIS identified key broad cross-cutting themes (that is, themes that cut generally across the whole of the NIS).** These themes helped to frame the recommendations.

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

## Recommendations

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

- 1 Ministry of Justice to lead the development of a comprehensive national anti-corruption strategy in partnership with civil society and the business community, combined with rapid ratification of the UN Convention against Corruption (UNCAC), as a matter of urgency.
- 2 The Government should initiate a cross-government programme of wide public consultation to develop an ambitious New Zealand Action Plan for the international Open Government Partnership.

- 3 Strengthen the transparency, integrity and accountability systems, of Parliament, the political executive (Cabinet) and local government.
- 4 Strengthen the role of the permanent public sector with respect to public procurement, integrity and accountability systems, and public policy processes.
- 5 Support, reinforce and extend the roles of the Electoral Commission, the judiciary, and the Ombudsman in maintaining integrity systems.
- 6 The business community, the media, and non-government organisations to take on a much more proactive role in strengthening integrity systems and addressing the risks of corruption. These should be seen as essential features of good governance.
- 7 Public sector agencies to conduct further assessments and research in priority areas to better understand how to further strengthen integrity systems.



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## CHAPTER 1: INTRODUCTION

### Introducing the 2018 update

Five years after Transparency International New Zealand (TINZ) published its 2013 NIS assessment, much has changed both within New Zealand and internationally. Perceptions of integrity are increasingly affected by our global interconnectedness, by notions such as “fake news” and “alternative facts”, and by access to floods of information of varying standards of accuracy.

It is fair to say that there is an increased awareness of integrity issues and increased attention to the importance of combating bribery, corruption, and other threats to New Zealand’s reputation as a society with high integrity. This update aims to identify both the progress that has been made and the areas where work needs to be done.

This update is not a new assessment. The framework and methodology of the 2013 assessment remain the same. It has not been extended to sectors that were not covered by the original and there has been no addition of new themes. Scores remain unchanged, though in cases where developments since 2013 might mean that a different score is warranted, there may be comment on this in the text. The scoring system is further explained in the 2013 Introduction below and in the introduction to Chapter 5.

The update has involved the addition of material on developments between completion of the 2013 report and 31 December 2018, especially where such material reflects on implementation or rejection of the recommendations made in the 2013 report. Where more recent statistical data is available, it has been added to the report.

At the beginning of each Foundation (Chapter 2) and Pillar (Chapter 5) report is a paragraph explaining the extent of the update to that individual section. More information about the process of updating pillar reports can be found in the introduction to Chapter 5.

The supplementary papers to the 2013 NIS assessment (available on [www.transparency.org/nis](http://www.transparency.org/nis)) have not been updated, though sections in the main report covering procurement, the environment and local government include some new references.

## What a national integrity system is

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

A positive answer will mean that institutions are also 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 and the 2018 update. 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 and the 2018 update, two of the TI Secretariat (TI-S) pillars (Law Enforcement, pillar 5, and Anti-corruption Agency, pillar 9) are combined into one pillar.

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

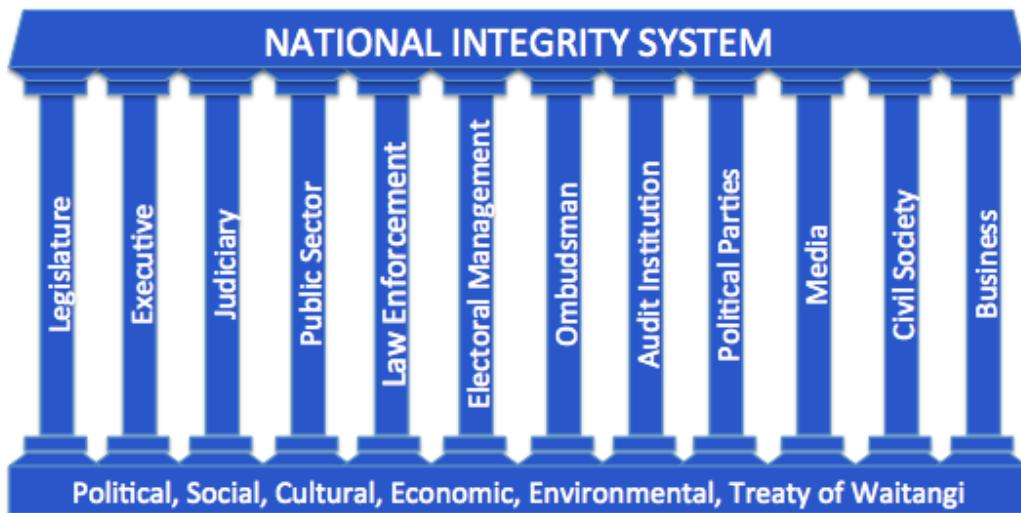
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<sup>1</sup> Jeremy Pope, *Confronting Corruption: The elements of a national integrity system*, TI Source Book (Berlin: Transparency International, 2000).

<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.

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 along with the two foundations of particular significance for New Zealand that have been added to the standard TI-S framework. The first additional foundation is the **Treaty of Waitangi**. The Treaty is unique to New Zealand and is 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 the transparency and accountability of environmental governance. A supplementary paper expands on this material<sup>4</sup>

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

<sup>4</sup> See [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)

is a test of a country's NIS, and the 2013 assessment considered some of the issues that had surfaced and that related to local government in particular. Accordingly, local government is discussed in the public sector pillar report.

The TI-S core methodology, which focuses on corruption, was also augmented by a wider and more in-depth analysis of selected issues. Some of this analysis is to be found in this report and some in the supplementary and additional papers that accompany this report.

- The public sector pillar report was 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> It was extensively updated in 2018.
- Fiscal transparency, including legislative oversight and direct public engagement, was assessed against the international Open Budget Index and International Monetary Fund standards.<sup>7</sup>
- Environmental governance was assessed against the standards set out in the Aarhus Convention.<sup>8</sup>
- The business pillar included 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, which also discusses how this role is covered in New Zealand.

## 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.

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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).

First, transparency means accessibility for 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 (OIA).

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 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. It 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.

## 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.

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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.

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 scores for each indicator within a pillar are aggregated to provide an overall score on a scale of 1-100 for the pillar. The introduction to Chapter 5 describes the scoring process in more detail.

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 TI 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 political party financing, lobbying that is veiled in secrecy; legislatures that are not living up to ethical standards, limited access to official information in practice; public procurement remaining an area of high corruption risk; and a severe lack of protection for whistle blowers. These results are compared very briefly to the findings of this New Zealand NIS in Chapter 6.

The limited nature of the 2018 update means that there has been no attempt to update the scoring of the individual pillars, though in a few cases there is comment in the text where a change to the 2013 score might be warranted as a result of recent developments.

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

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. In 2013 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 included some specific new initiatives in the field of research. The 2018 update relied almost exclusively on desk research.

There were many policy announcements and other developments while the 2013 report was being written. There was limited coverage of events that occurred after 30 June 2013 and for most purposes, events that occurred after 30 September 2013 were not taken into account, although a few important developments after that date were noted. Similarly, the 2018 update has limited coverage of events that occurred after 31 October and none of events after 31 December 2018.

## 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) and 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 answers 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.

## Target audiences for this report

There is more than one audience for an NIS report. The key audience is all New Zealanders, who own 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 has retained overall oversight and responsibility for the 2013 NIS and this 2018 update. In 2013, 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 for 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 9.

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 (OAG). 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, co-directors and, ultimately, the TINZ Board. Further details of project governance, management, and finances are in Appendix 5a.

As far as possible, the 2018 update has been compiled by the authors responsible for the 2013 assessment. Liz Brown, the 2013 research team manager, co-ordinated the research and edited the individual contributions. Suzanne Snively, Chair of TINZ, who was one of the two co-directors responsible for the 2013 NIS and TINZ CEO Julie Haggie, were also responsible for the 2018 update. Given the limited nature of the 2018 update, it was not considered necessary to commission extensive external reviews, but the draft document was very thoroughly reviewed by one external reviewer, Keitha Booth, BA, DipNZLS. Dipls(VUW), and was also submitted to the TINZ Board for review.

## Developments since the 2003 New Zealand NIS assessment

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 had been implemented in full, implemented in part, or not implemented.

The 2013 assessment found that in approximately one-third of the areas where specific recommendations were made in the 2003 report, the authorities had subsequently taken action and the recommendations were no longer relevant. With respect to a further one-fifth of the 2003 recommendations, action by the authorities had only partially addressed the

recommendation and more remained to be done. Somewhat less than one half of the recommendations had not been implemented at all.

Note that TINZ does not claim that 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 the 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 on anonymous donations to political parties (concerns remain in this area), and a general allowance for members of Parliament (MPs) determined by an independent authority.
- In the public sector, more than half of the recommendations have been implemented, including strengthening governance of Crown entities, instituting surveys of public servants on issues of integrity, and introducing a requirement for local government authorities to have a code of conduct.

Key recommendations from the 2003 NIS where action has not been taken as at 31 December 2018 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.

It is rather disappointing that although progress had been made in several other areas, no substantial action had been taken on these 2003 recommendations by the time of the 2018 update.

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 2013 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 assessment recommendations as at 31 December 2018**

	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 MPs	OIA extended to cover Parliamentary Service
		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	Increase public access to court information	
	Judicial Code of Conduct introduced		
<b>Public service</b>	Governance of Crown entities strengthened	Survey of politicians' (not implemented) and public servants' (implemented) understanding of standards of integrity in public service	Post-public service period of restraint on employment for senior officials
	State Services Commission (SSC) mandate for ethics management extended to cover Crown entities	Centralised mechanisms to monitor departments' adherence to integrity in procurement	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
	SSC more active in conducting ethics promotion across wider state sector		

	<b>Fully implemented</b>	<b>Partially implemented</b>	<b>Not implemented</b>
<b>Public expenditure and audit</b>	Tax expenditures reported to Parliament		Executive to respond to findings and reports of the Auditor-General
	Publication of overall tax policy strategy		
<b>Regulations</b>			A new Regulatory Responsibility Act <sup>2</sup>
			Independent Regulatory Task Force considered <sup>3</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		Review minimum governance requirements for entities receiving Treaty of Waitangi settlements
	Accountability for social service delivery by Māori entities		Public education on the Treaty of Waitangi

	<b>Fully implemented</b>	<b>Partially implemented</b>	<b>Not implemented</b>
<b>General</b>			Concerted campaign to publicise Crimes Act Amendment relating to payment of bribes offshore
		By 2018 increased funding for the Ombudsman had enabled more educational activity  From 2016 to 2018 the State Services Commission and the Ombudsman marginally improved government agencies' practice in responding to routine OIA requests as a result of its Open Government Partnership (OGP) commitments	
		In December 2018 the government announced an OGP commitment to introduce a School Leavers Kit as a first step towards civics education in schools	
			SIS archives opened earlier
<b>Future reform</b>		As part of the first National Action Plan under the OGP, the government responded to the 2013 recommendations.	Set up a task force on the NIS
		Several departments were consulted.	Ministers request departments to comment on NIS recommendations
<b>Further studies</b>	TINZ to do a separate study of transparency and accountability of business sector – carried out in 2013 NIS		

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.
3. See Appendix 10 for the government response to the 2013 NIS assessment.

## Developments between 2013 and 2018

Since 2013 there has been an increased awareness of integrity issues and increased attention to the importance of combating bribery, corruption, and other threats to New Zealand's reputation as a society with high integrity. This growing awareness has resulted in some important moves to strengthen New Zealand's integrity systems. These moves include, in particular the ratification of UNCAC, the decision to join the OGP, and the creation of National Action Plans as required by the OGP.

### *Combating bribery, corruption and other integrity threats*

Media activity around the Panama Papers research (released by the media in 2016) engaged the public about the real size of the problem of proceeds from corruption flowing into countries with loose processes for recording beneficial ownership.

Progress in addressing identified corruption issues was initially slow but the pace has recently increased. For example, a national anti-corruption work programme has been drawn up and work has begun although the programme was only made public early in 2019.<sup>13</sup> Some action has been taken to bring more transparency to foreign-owned trusts, although consultation about increased information requirements for the beneficial owners of some legal entities is still ongoing. A review of the Protected Disclosures Act is at last under way.

There has been an increase in Serious Fraud Office (SFO) activity including an increased willingness to prosecute. Convictions, including substantial fines and jail sentences, in the Auckland Transport case, were the subject of extensive publicity and legal analysis.

While there is increased awareness of integrity issues in the business sector, and robust policies in place for implementing anti-money laundering legislation, there needs to be greater recognition by business leaders of the importance of structures and processes that support integrity and greater adoption of recognised tools that help strengthen their integrity systems.

### *Strengthening transparency and integrity practices*

Since 2018, officials working on the OGP National Action Plan (NAP) commitments have been actively supported by Cabinet and there has been increased collaboration between government agencies. This increased effort has led to greater originality, greater ambition and a greater number of NAP commitments. There are three times the number of commitments in NAP 3 compared with the high-level, first Action Plan. This offers much greater potential for more civil society and community participation.

Although there is clearly an increased willingness to consult, in most areas of policy formation, opportunities for public consultation could be better designed. The aim should be to reach the highest level on the spectrum of the International Association for Public Participation (IAP2) scale.<sup>14</sup> From the available evidence, it appears that government agencies are giving insufficient priority and funding to the development of expertise in, and technology for, public consultation. The debate over a new flag was an expensive lesson in consultation that was not based on a

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<sup>13</sup> See <https://www.justice.govt.nz/assets/Documents/Publications/cab-an-anti-corruption-work-programme-for-new-zealand.pdf>

<sup>14</sup> See [https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum\\_8.5x11\\_Print.pdf](https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum_8.5x11_Print.pdf)

good understanding of the public at which it was directed and resulted in an outcome that probably reflected public disenchantment with the process.

In 2017 the State Services Commission established an Integrity, Ethics and Standards Group, led by a Deputy Commissioner Integrity, Ethics and Standards. This supports the role of the State Services Commissioner in setting standards of integrity and conduct across most of the State Services. The group provides advice to support public services to “act with the highest levels of integrity and to build New Zealanders’ trust in public services and. It has also provided visible leadership on integrity issues including OIA practice.<sup>15</sup>

Watchdog agencies such as the OAG and the Ombudsman remain strong, and in particular the increase of resources for the Ombudsman has the potential to greatly increase effectiveness. However there appears to be a reluctance to apply the same standards of integrity and transparency to Parliament as apply in other sectors. The 2018 decision to publish summaries of ministerial diaries is welcome, but there is still no code of conduct for MPs, the OIA has not been extended to the administration of Parliament, and, the funding of political parties needs urgent attention.

The Treaty of Waitangi is still not formally recognised as New Zealand’s founding document or formally incorporated into New Zealand law. Settlements of historic injustices have continued to occur but there has been no obvious progress towards integration of the Treaty in many areas of government and public life.

The work on this update has identified one major omission in the 2013 NIS assessment. Although TINZ recognised the importance of environmental governance and in 2013 added it to the standard template for an NIS assessment, the 2013 NIS assessment did not consider the threats to integrity posed by climate change. There is no doubt that perceptions have changed and that the magnitude of the risks has become more apparent since 2013, but it is an issue that has the potential to affect every aspect of our national integrity. The limited resources available for this 2018 update mean that it has not been possible to address the issue as it should be addressed, across every pillar of the system. Some limited material will be found in Chapter 2 (socio-environmental foundations), and it will feature prominently when a full NIS assessment is carried out in 2023.

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<sup>15</sup> <https://www.ssc.govt.nz/integrity-ethics-and-standards>

## 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, first 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.

Throughout the 19th century and much of the 20th century immigrants came mostly from Europe, but there has been a Chinese presence since the gold rush of the later 19th century and more recent immigration from other Asian nations. The Māori population of New Zealand is about 15 per cent of the total population of slightly less than 5 million people, Pasifika peoples make up about 7.5 per cent and Asian peoples 12 per cent.

A sound national integrity system can flourish only in a society that provides a firm and supportive base for its institutions. The political, cultural, social 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 their benefits. For these reasons, TINZ includes the Treaty and the environment as part of the foundations that ground New Zealand's institutions.

In updating this section of the 2013 NIS assessment, it was recognised that the foundations of a society are slow to change and that most of the 2013 conclusions remain valid. There is an introductory paragraph at the beginning of each section explaining the extent of the update, but in most cases there has been little more than the inclusion of more recent data.

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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.

## Political-institutional foundations

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

Score: 4

*In updating this section of Chapter 2, some more recent data has been included along with comment on a rise in voter turnout and on what may be an increase in trust in political institutions.*

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 Fragile States Index 2018 ranked New Zealand 169 out of 178 countries – that is, the ninth 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", 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 2017 Democracy Index ranked New Zealand fourth 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 99 percent. Freedom House classifies New Zealand as a "full democracy" and awards it top ratings for "civil liberties" and "political rights".<sup>19</sup>

Elections are free and fair. The system of proportional representation has resulted in coalition governments. There is a high level of confidence in election administration, and although voter turnout has been falling, it rose somewhat in the 2017 general election. Overall, New Zealanders widely support democratic institutions.<sup>20</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 2011 general election, 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 (for 2017) were for "political participation" (8.89 out of

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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> See [http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy\\_Index\\_2017.pdf&mode=wp&campaignid=DemocracyIndex2017](http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy_Index_2017.pdf&mode=wp&campaignid=DemocracyIndex2017)

<sup>19</sup> Freedom House, *Freedom in the World 2018*, 2018 <https://freedomhouse.org/report/freedom-world-2018-table-country-scores>

<sup>20</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)

10) and “political culture” (8.13 out of 10).<sup>21</sup> There was, however an upturn in the 2017 general election when there was a 79.8 per cent turnout, the highest since 2005, also an increase in the Māori vote and in numbers of youth enrolling to vote.

The reputation of politicians in New Zealand has been tarnished by a lack of confidence that political power is exercised with full integrity. 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> A more recent and rather differently worded survey, however, found an increase in trust in government.<sup>23</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>24</sup>

It is often felt that the political executive dominates the legislative branch of government<sup>25</sup> – a concern that has lessened since New Zealand moved to a mixed-member proportional representation (MMP) electoral system in 1996, thus strengthening 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>26</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-tauwi levels (see the glossary of Māori words and phrases), although politicians occasionally express different views and popular endorsement varies.<sup>27</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, the political and civil rights of citizens are supported by the rule of law. Despite this, in 2018 there remain risks to the political and institutional support of the NIS which are posed by a declining faith in politicians and in institutions such as political parties.

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<sup>21</sup> The scores for 2011 and 2017 were identical

<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) (link broken 2018)

<sup>23</sup> See <https://www.victoria.ac.nz/igps/commentaries/1626066-survey-shows-more-trust-in-government>

<sup>24</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)

<sup>25</sup> See the legislature pillar report (pillar 1 in Chapter 5).

<sup>26</sup> See the media pillar report (pillar 11 in Chapter 5).

<sup>27</sup> Levine, 2012.

## 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

*Some data in this section has been updated*

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 2013 book claims that the country has one of the fastest-growing rates of inequality in the Western world.<sup>28</sup> Tensions also manifest themselves in issues of ethnicity and in debates and concern about immigration levels, notably about increased immigration in recent decades from non-traditional sources.<sup>29</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 two in the 2018 Global Peace Index.<sup>30</sup> Certainly, by world standards, New Zealand is not characterised by deep social divisions and conflicts.

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 – was about 20 per cent in 2013,<sup>31</sup> which is little changed since 2003 and slightly low compared with similar countries. The slight decline has since continued.<sup>32</sup>

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.<sup>33</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>34</sup>

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<sup>28</sup> Max Rashbrooke, ed., *Inequality: A New Zealand crisis* (Wellington: Bridget Williams Books, 2013).

<sup>29</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>30</sup> See <http://visionofhumanity.org/app/uploads/2018/06/Global-Peace-Index-2018-2.pdf>

<sup>31</sup> See [http://archive.stats.govt.nz/browse\\_for\\_stats/income-and-work/employment\\_and\\_unemployment/improving-labour-market-statistics/union-membership-employmt-agmt.aspx](http://archive.stats.govt.nz/browse_for_stats/income-and-work/employment_and_unemployment/improving-labour-market-statistics/union-membership-employmt-agmt.aspx)

<sup>32</sup> See [https://www.victoria.ac.nz/\\_data/assets/pdf\\_file/0006/1235562/New-Zealand-Union-Membership-Survey-report-2016FINAL.pdf](https://www.victoria.ac.nz/_data/assets/pdf_file/0006/1235562/New-Zealand-Union-Membership-Survey-report-2016FINAL.pdf)

<sup>33</sup> Bruce Jesson, *Only Their Purpose is Mad: The money men take over New Zealand* (Palmerston North: Dunmore Press, 1999), p. 205.

<sup>34</sup> The Māori Party and the Mana Party (neither now (2018) represented in Parliament). There were also the Mana Motuhake and Mana Māori parties, both now dissolved.

New Zealand also remains the site of one of the best organised and most deeply rooted environmental movements found anywhere in the world. In the recent past New Zealand civil society has produced successive waves of organisation by women, anti-nuclear and peace movement activity, lesbian and gay rights activism, 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>35</sup> Also, due to the scarcity of private funding, some organisations in the sector rely heavily on state resources.<sup>36</sup>

A stable, moderate, and partly socially rooted political 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>37</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 so because the internal democratic governance of parties is underdeveloped.<sup>38</sup>

## Socio-economic foundations

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

Score: 4

*Some data in this section has been updated, and emerging or changing trends noted.*

New Zealand has an international reputation as a country that has a high standard of living,<sup>39</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>40</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.

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<sup>35</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) (link broken 2018)

<sup>36</sup> See the civil society pillar report (pillar 12 in Chapter 5).

<sup>37</sup> See the political parties pillar report (pillar 10 in Chapter 5).

<sup>38</sup> See the political parties pillar report (pillar 10 in Chapter 5).

<sup>39</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>40</sup> UMR Research with Transparency International, *Experiences of Corruption in Export Markets*, 2012.

Data referred to by the government in 2018 about the number of homeless and the 290,000 children in poverty<sup>41</sup> supports the view that these foundations are still fragile.<sup>42</sup>

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>43</sup> By 2018, these numbers had changed only marginally. Product and supply distribution channels are narrow and short, mainly focused on the domestic economy, with only a few sectors (dairy, meat, forestry, international education, wine, importers of consumer goods, 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>44</sup> and despite notable quality research and products, New Zealand has had limited commercial success in this area. 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>45</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>46</sup>

International Monetary Fund worldwide comparisons show that in 2012 New Zealand ranked 32 with per capita income of US\$29,730.<sup>47</sup> In support of the score of 4 for the NIS, there has been some progress since then with GDP per capita measuring US\$38,502 in 2017. An OECD report published 13 May 2013<sup>48</sup> reported that New Zealand experienced the second highest decline in market income of any OECD country between 2007 and 2010 with the second lowest average

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<sup>41</sup> Childrens Commissioner 2017 Child Poverty Monitor, December 2017.  
[https://www.childpoverty.org.nz/sites/default/files/CPM%202017%20Media%20release\\_v2.pdf](https://www.childpoverty.org.nz/sites/default/files/CPM%202017%20Media%20release_v2.pdf)

<sup>42</sup> A Stocktake of New Zealand's Housing, February 2018, Johnson A, Howden-Chapman P, Eaqub S.  
<https://www.beehive.govt.nz/sites/default/files/2018-02/A%20Stocktake%20Of%20New%20Zealand%27s%20Housing.pdf>

<sup>43</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>44</sup> Discussion with Gary Hawke, Emeritus Professor Victoria University of Wellington, 9 August 2013.

<sup>45</sup> R. Christie and H. Anderson, "Raising our innovation game: Why business leadership matters", Institute of Directors conference, April 2013.

<sup>46</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).

<sup>47</sup> International Monetary Fund, *World Outlook Database*, April 2012.

<sup>48</sup> OECD, *Crisis squeezes Income and Puts Pressure on Inequality and Poverty*, 13 May 2013.

wage rates in the OECD, just above Iceland.<sup>49</sup> There has been progress since then with New Zealand's average wages moving up above those in countries hit by the global financial crisis such as Spain and Greece while remaining considerably below average wages in near neighbour, Australia.<sup>50</sup>

In 2013, research reviewed by Max Rashbrooke was the basis for his conclusion that New Zealand then had the widest income gap since detailed records began in the early 1980s.<sup>51</sup> The number of people who are poor had doubled, with 270,000 children living below the poverty line<sup>52</sup> (290,000 by 2017)<sup>53</sup> and many families living in hardship.<sup>54</sup> "Economic analysis ... has failed to grasp the threat posed by widening disparities within society."<sup>55</sup> Accompanying inequality has been growth in diversity, with a greater range of living circumstances and standards. Fewer people can afford to buy their own homes, and the houses they rent are more likely to be in poorer condition than owner-occupied housing.<sup>56</sup> The OECD's analysis of income inequality shows Australia and New Zealand in the group of countries with moderate income inequality, though the OECD's published data for New Zealand is sketchy and out of date.<sup>57</sup>

It appeared from information that was available that the increase in income inequality in New Zealand largely occurred between 1985 and the early 2000s.<sup>58</sup> The balance of evidence collected in 2012/13 suggested that inequality may have stabilised, but was much higher than before 1985. Between 2013 and 2018, the gap may be widening again.<sup>59</sup> There is evidence that a higher level of inequality can lead to increased 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>60</sup>

Former Minister of Finance and later New Zealand Post Chairman and Treaty Settlements Negotiator Michael Cullen notes: "We used to argue that building a stronger and more equal

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<sup>49</sup> Ibid, Table 1.

<sup>50</sup> OECD, Average wage rates (Chart) 2016

<sup>51</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>52</sup> Interview of Gary Hawke with author, August 2013.

<sup>53</sup> Chidrens Commissioner 2017 Child Poverty Monitor, December 2017.

[https://www.childpoverty.org.nz/sites/default/files/CPM%202017%20Media%20release\\_v2.pdf](https://www.childpoverty.org.nz/sites/default/files/CPM%202017%20Media%20release_v2.pdf)

<sup>54</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>55</sup> Ganesh Nana, BERL, 2013.

<sup>56</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>57</sup> See OECD Income Inequality, 2016 (Chart)

<sup>58</sup> OECD, 2011, Divided We Stand: Why Inequality Keeps Rising (Country Note: New Zealand)

<sup>59</sup> See [http://archive.stats.govt.nz/browse\\_for\\_stats/snapshots-of-nz/nz-progress-indicators/Home/Social/income-inequality.aspx](http://archive.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-progress-indicators/Home/Social/income-inequality.aspx)

<sup>60</sup> You Jong-Sung and Sanjeev Khagram (2005) A Comparative Study of Inequality and Corruption, *American Sociological Review*, 70: 136-157.

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>61</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.

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>62</sup>

Treasury's policy advice increasingly enables individual circumstances to be addressed. As well as its traditional focus on macroeconomic and fiscal conditions, its analysis is increasingly based on its living standards research.<sup>63</sup>

Through Callaghan Innovation<sup>64</sup> and other initiatives, the country is targeting innovation that leads to product development. New Zealand Trade and Enterprise aims for an increase in firms producing high value exports in sectors where New Zealand has a comparative and competitive advantage, thus 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>65</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>66</sup>

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<sup>61</sup> Interview of Michael Cullen with author, 24 October 2013.

<sup>62</sup> Interview with Gary Hawke, August 2013 where he wondered whether 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>63</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>64</sup> A new Crown entity established in 2013 to accelerate commercialisation of innovation by firms in New Zealand.

<sup>65</sup> Merchandise trade figures from Statistics New Zealand.

<sup>66</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

## Socio-cultural foundations

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

Score: 4

*There has been minor updating of data and comment in this section*

New Zealand's cultural identity is predominately a bicultural one, although recent immigration particularly from the Pacific Islands and increasingly 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 implies 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 weaker than it was three decades ago, values surveys continue to suggest it remains one of the core hallmarks of New Zealand's culture. Policy advisors and academics at the September 2018 Wellbeing Conference specified how the application of the living standards framework for the government's 2019 Budget was a method of driving society towards increased equality.<sup>67</sup>

A comparison of 1998, 2005 and later values surveys suggests that the ethics, norms, and values of New Zealanders continue to broadly support an effective NIS.<sup>68</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 a 2018 survey from a different source.<sup>69</sup> 41% of respondents trusted the public service while only 8% distrusted it.
- 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.

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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."

<sup>67</sup> September 2018, Wellbeing Conference, Wellington

<sup>68</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". [http://www.massey.ac.nz/massey/about-massey/news/article.cfm?mnarticle\\_uid=6F4C970D-96BF-57FE-A438-DF40328793C0](http://www.massey.ac.nz/massey/about-massey/news/article.cfm?mnarticle_uid=6F4C970D-96BF-57FE-A438-DF40328793C0)

<sup>69</sup> <https://www.colmarbrunton.co.nz/opinion-does-our-public-sector-measure-up/>

In 2005, just over half the respondents (52 per cent) considered that most people could be trusted.<sup>70</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. 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>71 72</sup>

Quarterly generosity data from October 2009 to December 2010<sup>73</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>74</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

*This is an area where change has been greater than in other “foundation” sections over the years since 2013. In particular, the challenge of climate change has become much more widely recognised and there is greater public awareness of environmental governance and management. Data has been updated, and further comment included. The deeper analysis that this topic probably now warrants is outside the scope of this update.*

More than in any other “foundation” of New Zealand society, there have been major changes since 2013 in the relationship and attitudes of New Zealanders to the environment. The threat posed by climate change has become much more apparent as has the conflict between private interests, in sectors such as farming and mineral extraction, and the urgent need both to limit the effects of climate change by reducing the emission of “greenhouse gases” and to prepare for the inevitable environmental changes.

Since 2013 there has been substantial evidence to show that the quality of New Zealand’s environment is deteriorating. In 2016 the Parliamentary Commissioner for the Environment (PCE) commented on Environment Aotearoa 2015 – the first national state of the environment report produced by the Secretary for the Environment and the Government Statistician. The PCE’s conclusions<sup>75</sup> from this report were that:

- Air quality is generally good in most places most of the time.

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<sup>70</sup> There was no equivalent question in the 1998 and subsequent surveys.

<sup>71</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>72</sup> In the 2016 World Giving index, Australia had dropped out of the top ten countries, but New Zealand was in fourth place

<sup>73</sup> <https://www.dia.govt.nz/Decommissioned-websites---Office-of-the-Community-and-Voluntary-Sector-website>

<sup>74</sup> Charities Aid Foundation, 2010: 1.

<sup>75</sup> The state of New Zealand’s environment: Commentary by the Parliamentary Commissioner for the Environment on Environment Aotearoa 2015, June 2016

- Water quality is very good in undeveloped parts of the country, but is poor in many catchments. Much of this is a consequence of historic bush clearance on unstable soils and increasingly intensive farming. Lakes and estuaries are particularly vulnerable.
- Our native plants and animals are in serious trouble with most of our iconic bird species in decline.
- When it comes to the state of our ocean, we simply do not know very much.
- Climate change is by far the most worrying environmental issue. Already, global temperatures are increasing, the surface waters of the ocean are acidifying, and the level of the sea is rising.

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 be, 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>76</sup> but the New Zealand public expects compliance.<sup>77</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 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.

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<sup>76</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 <http://www.h2whoa.co.nz/assets/DCSA-2012-web.pdf>), forest products (Ministry for Primary Industries and New Zealand Forestry Industry, *The Legality of New Zealand's Forest Products*, 2013. <https://www.mpi.govt.nz/dmsdocument/13819/send>), 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). <https://www.mfe.govt.nz/sites/default/files/study-into-the-use-of-prosecutions-under-the-RMA.pdf>.

<sup>77</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)

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) have been under question, but some action has now (2018) been taken on the latter.<sup>78</sup>

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>79</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>80</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 conservation and improvement and (shorter-term) increased economic activity are not widely accepted, one example being the impact of agriculture on water quality.<sup>81</sup> The 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>82</sup>

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<sup>78</sup> See [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10807590](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10807590)

<sup>79</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>80</sup> Robert Joseph quoted in Henderson, 2011: 12.

<sup>81</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 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”.<http://blog.forestandbird.org.nz/mokihinui-not-for-sale/>, irrigation schemes (Forest & Bird, “Save our Mackenzie country”. <https://www.forestandbird.org.nz/resources/ground-zero-mackenzie-basin> [new link April 2019]), 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>82</sup> Rose et al. 2005.

The degradation of our “natural capital” has been identified in reports from the Ministry for the Environment and the Department of Conservation to the Incoming Minister in 2017, and from the Treasury in 2018.<sup>83</sup> A Treasury discussion paper in 2018 shows a change in policy consideration around environmental governance and resilience. In this paper the Treasury identifies four overarching trends that impact on risks for New Zealand’s Living Standards Capital. The first of these is climate change and environmental degradation. The Treasury paper states that “The decentralised and siloed nature of much of New Zealand’s risk management means that insufficient attention is paid to the interconnectedness and cascading nature of risk factors. A more proactive, coordinated and evidence-based approach to risk management and resilience building is required to maintain societal resilience and sustainability in the face of the complex risks we are facing domestically and globally.”<sup>84</sup>

Murray Petrie also makes a case that the quality of New Zealand’s environment is deteriorating and that this poses serious risks to the quality of New Zealand’s economic sustainability and to wider living standards. He says that the cause is largely due to policy weaknesses and flaws in the systems of governance of environmental management.<sup>85</sup> He makes a case for significantly enhanced environment reporting, and a package of new requirements focusing on environmental policy goals and targets, accountability to Parliament and the electorate. Changes are proposed to the Environmental Reporting Act 2015, together with mechanisms to more effectively integrate environmental stewardship into the formulation of government strategies, policymaking and the Budget cycle, including a new chapter in the annual Fiscal Strategy Report on fiscal policy and the environment.

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. In 2013, the Land and Water Forum,<sup>86</sup> was seen as a potentially positive development that 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. However, several groups have since left the Forum and it no longer represents a broad spectrum of interests. It was noted in 2013 that the success or otherwise of this inclusive approach would depend on the extent to which the government was prepared to accept and implement the recommendations when at the same time there had been recent instances of the government removing opportunities for public participation and local accountability.<sup>87</sup>

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<sup>83</sup> See <https://treasury.govt.nz/publications/dp/start-conversation-value-new-zealands-natural-capital-html>

<sup>84</sup> Warren, K, Frielings M (Treasury NZ) “Resilience and Future Wellbeing” Occasional paper, July 2018

<sup>85</sup> Petrie, M, ‘Reversing the Degradation of New Zealand’s Environment through Greater Government Transparency and Accountability, *Policy Quarterly* – Vol 14, Issue 2, May 2018

<sup>86</sup> See [www.landandwater.org.nz](http://www.landandwater.org.nz)

<sup>87</sup> For example, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 and the issue of land for new housing in Auckland.

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, and to protect and enhance the environment.

## Te Tiriti o Waitangi (The 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?**

*This section has been reviewed, but no updating was considered necessary*

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>88</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>89</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>90</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

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<sup>88</sup> *Hoani te Heu Heu v Aotea District Maori Land Board* [1941] AC 308

<sup>89</sup> Cabinet Office, *Cabinet Manual 2017* (Wellington: Department of the Prime Minister and Cabinet, 2008), para. 7.65.). <https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual>

<sup>90</sup> *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 (CA).

consequences of a Court of Appeal decision<sup>91</sup> that opened the door to recognition of Māori rights in areas of New Zealand's foreshore and seabed.<sup>92</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.

Since the 1970s, steps have been taken to address Māori grievances. These include 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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<sup>91</sup> *Attorney-General v Ngati Apa* [2003] 3 NZLR 643.

<sup>92</sup> Foreshore and Seabed Act 2004.

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## CHAPTER 3: CORRUPTION PROFILE

New Zealand is consistently ranked highly by Transparency International's Corruption Perceptions Index and is currently ranked second with a score of 87.<sup>93</sup> This does not mean New Zealand has no corruption, and although it remains close to the top of the Corruption Perceptions Index, its score has dropped from 91 over the past five years. 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>94</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.<sup>95</sup>

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>96</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>97</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>98</sup>
- In 2017 a senior manager at Rodney District Council and Auckland Transport was sentenced to five years and six months' imprisonment for corruption and bribery offences relating to more than \$1m of bribes paid between 2005 and 2013.<sup>99</sup>

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<sup>93</sup> See <https://www.transparency.org/cpi2018>

<sup>94</sup> Transparency International New Zealand, *Global Corruption Barometer 2010: New Zealand results*, 2011. <https://www.transparency.org.nz/Global-Corruption-Barometer/>. 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>95</sup> 2018 note. The more recent Global Corruption Barometer surveys have not included New Zealand

<sup>96</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>97</sup> These cases can be found in Peter & Peters, *Anti-Corruption Legislation in 54 Jurisdictions Worldwide* (London: Encompass Print, 2012).

<sup>98</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). Link broken 2018, alternative <http://www.stuff.co.nz/national/politics/2720621/Jail-time-looming-for-Taito-Phillip-Field>

<sup>99</sup> See <https://www.sfo.govt.nz/men-guilty-of-corruption-and-bribery-will-spend-time-in-jail>

- Also in 2017, two persons were convicted and sentenced to home detention for receiving kickbacks amounting to \$245,000.<sup>100</sup>

The years preceding the 2013 NIS report saw some 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>101</sup> A more recent (2017) high profile case is that of Joanne Harrison, a senior manager at the Ministry of Transport, sentenced to three years and seven months for fraudulent activities totalling approximately \$726,000.<sup>102</sup> There have also been major cases in the private sector.<sup>103</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. 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>104</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. In 2013, examples included 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 1800 metric tons of frozen meat from the United States, Brazil, Australia, and New Zealand and detained crew members.<sup>105</sup> Awareness of corruption has gradually increased since the

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<sup>100</sup> <https://annualreport2018.sfo.govt.nz/assets/SFO-Annual-Report-2018.pdf> at p 9

<sup>101</sup> PwC, *Public Sector Fraud Awareness Survey: Findings*, 2011 <https://oag.govt.nz/2011/public-sector-fraud/fraud-awareness-survey/docs/fraud-survey-findings.pdf>

<sup>102</sup> See [www.sfo.govt.nz/jailed-for-betrayal-of-colleagues-and-taxpayers](http://www.sfo.govt.nz/jailed-for-betrayal-of-colleagues-and-taxpayers)

<sup>103</sup> See [https://www.sfo.govt.nz/cases](http://www.sfo.govt.nz/cases)

<sup>104</sup> UMR Research, *A Qualitative Research Study* (Transparency International New Zealand, 2012), p. 6.

<sup>105</sup> Rob O'Neill, “Threats to NZ’s meat exports”, *Stuff*, 8 July 2012 [www.stuff.co.nz/business/world/7240221/Threats-to-NZs-meat-exports](http://www.stuff.co.nz/business/world/7240221/Threats-to-NZs-meat-exports)

implementation of the United Kingdom Bribery Act 2010, which extends extraterritorial jurisdiction to New Zealand businesses that have operations in the United Kingdom.<sup>106</sup>

Corruption risks for New Zealanders engaged in international trade occur in two 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.

**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 and attenuated transparency, and loosens the control of the principal over the operational process of completing project work.

The 2012 Deloitte corruption survey<sup>107</sup> collated responses from around 200 New Zealand entities.<sup>108</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, the 2013 NIS assessment noted that corruption was 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.

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<sup>106</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). 2013 link lost, alternative is: <https://www.cw-uk.org/single-post/2017/03/27/UK%20%99s-fight-against-corruption-hinges-on-SFO%20%99s-future-verdict-of-the-OECD%20%99s-Phase-4-foreign-bribery-report>

<sup>107</sup> An updated survey in 2017 returned very similar results. See <https://www2.deloitte.com/nz/en/pages/risk/articles/2017-bribery-and-corruption-survey.html>

<sup>108</sup> Deloitte, *Deloitte Bribery and Corruption Survey 2012 Australia and New Zealand: A storm on the horizon?* (Sydney: Deloitte, 2012).

- Risks in post-earthquake Christchurch. There was concern in 2013 with the commencement of the Christchurch post-earthquake rebuild.<sup>109</sup> NZ\$40 billion was projected for rebuilding Christchurch and, with typical insurance fraud rates of 5–10 per cent of claim value,<sup>110</sup> the potential for loss to fraud and corruption was seen as significant. However, although there have been several reports of the investigation of allegations of corruption connected with the Christchurch rebuild,<sup>111</sup> these risks largely failed to materialise.

The 2013 assessment found that 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>112</sup> However, the publication of the Panama papers in 2016<sup>113</sup> did much to engage the public about the real size of the problem of proceeds from corruption flowing into countries with loose processes for recording beneficial ownership.

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<sup>109</sup> Serious Fraud Office, “Serious Fraud Office focus on Christchurch”, press release, 21 March 2013  
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<sup>110</sup> New Zealand Insurance Council’s most recent survey of the level of insurance fraud: (2013 link broken, alternative is: <https://www.icnz.org.nz/industry-leadership/fraud/>

<sup>111</sup> See, for example, <https://www.radionz.co.nz/news/national/301820/firm-behind-christchurch-rebuild-under-scrutiny> and <https://www.newshub.co.nz/home/new-zealand/2017/02/cera-corruption-trust-in-public-servants-is-on-the-line-lawyer.html>

<sup>112</sup> Department of Internal Affairs – Charities, “Terrorism and money laundering”  
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## CHAPTER 4: ANTI-CORRUPTION ACTIVITIES

In 2013, New Zealand had no over-arching anti-corruption strategy, and the government had directed work to 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>114</sup> This policy would 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. Since 2013 an anti-corruption programme has been developed<sup>115</sup> that meets some of these objectives.

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, and has since been updated and extended.<sup>116</sup>

New Zealand was assessed by the Financial Action Task Force in 2009 with a follow-up assessment in October 2013.<sup>117</sup> On the basis of the 2013 report, the FATF recommended that New Zealand be removed from the regular follow-up process, and that appears to have occurred as the 2013 report was adopted in October 2013 and there has been no subsequent reporting. 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. Some changes have since been made, and consultation is under way on further changes.

The 2013 NIS assessment found that across the sectors in New Zealand, there appeared to have been a mentality that New Zealand should expend as little effort as is possible in fighting corruption, perhaps because it was not seen generally as a real risk. This lack of urgency is evidenced by New Zealand's delay in ratifying UNCAC, finally ratified in 2015. One explanation of the delay was that the convention requirement for independence in the bodies charged with corruption prevention and the enforcement of anti-corruption legislation was not a priority in New Zealand. However, strong safeguards in New Zealand policy and practice were in evidence

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<sup>114</sup> Ministry of Justice, "A national anti-corruption strategy". June 2013  
<https://www.justice.govt.nz/assets/Documents/Publications/New-Zealands-response-to-Organised-Crime.pdf>

<sup>115</sup> <sup>115</sup> Serious Fraud Office *Annual Report 2018* 2018

<sup>116</sup> See Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Amendment Act 2017.

<sup>117</sup> Financial Action Task Force, "New Zealand" [www.fatf-gafi.org/countries/n-r/newzealand](http://www.fatf-gafi.org/countries/n-r/newzealand)

in 2013, and by 2018 there appeared to be greater awareness of the risks of corruption and increased activity aimed at detection and prevention.

- The public sector, which strives for the highest standards of integrity, is backed by the OAG, 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>118</sup> They report that most clients (even non-listed companies) are generally proactive about countering fraud and maintaining 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>119</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. There are, however, deficiencies in the current legislation, and the Protected Disclosures Act 2000 is under review, with consultation opening in October 2018.<sup>120</sup>
- 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 SFO commissioned TINZ to adapt the Transparency International UK chapter's online anti-bribery training model for use in New Zealand and it is now available free of charge.<sup>121</sup>

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>122</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). Both have recently been updated (see below under “Recent Developments”). Of particular relevance to corruption:

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<sup>118</sup> PwC, *The 2011 Global Economic Crime Survey results for New Zealand: Fraud, fraudsters and cybercrime*, 2011 [https://www.pwc.pt/pt/deals/images/2011\\_global\\_economic\\_crime\\_survey.pdf](https://www.pwc.pt/pt/deals/images/2011_global_economic_crime_survey.pdf), and 2018 survey <https://www.pwc.co.nz/insights-and-publications/2018-publications/pwcs-2018-economic-crime-and-fraud-survey.html>

<sup>119</sup> See above (Chapter 3)

<sup>120</sup> See <http://www.ssc.govt.nz/consultation-protected-disclosures-act-reform-opens>

<sup>121</sup> See <https://www.sfo.govt.nz/anti-corruption-training>

<sup>122</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)

- The Crimes Act makes it an offence to accept or obtain a bribe for acts committed or omitted in an official capacity.<sup>123</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>124</sup> but the definitions in the Secret Commissions Act are imprecise, and the language is outdated because the Act is more than 100 years old. For this reason, it is difficult to prosecute successfully. In addition, until 2015, the maximum penalties under this Act were low. They were increased in 2015 to be consistent with the penalties in the Crimes Act.

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 (the police) enforces this Act.
- The Search and Surveillance Act 2012 provides for wide-ranging powers to obtain evidence.
- The State Sector Act 1988 gives the State Services Commissioner independent powers to inquire into and to investigate concerns about wrongdoing, including bribery and corruption, in the state services and to report on these.
- The Ombudsmen Act 1975 provides for the Ombudsmen to investigate complaints of improper behaviour in the public sector.
- The Protected Disclosures Act 2000 (currently (2018) under review) affords some protection to whistle-blowers in the public and private sectors.
- The Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which 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>125</sup> The Act is designed to make the movement of illicit cash more difficult and requires reporting entities<sup>126</sup> to conduct a programme of

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<sup>123</sup> Crimes Act 1961, sections 99–106.

<sup>124</sup> See the examples in Chapter 3.

<sup>125</sup> Anti-Money Laundering and Countering Financing of Terrorism Act 2009, section 3(1)(a) and (b).

<sup>126</sup> Primarily financial institutions, including entities that carry out relevant financial business.

customer due diligence against money laundering.<sup>127</sup> The second phase of anti-money laundering reforms has been expedited.

- The Commerce Act 1986 counters bid rigging.
- The Local Authorities (Members' Interests) Act 1968 regulates for conflicts of interest in local authorities.
- The Crown Entities Act governs conflicts of interest in Crown entities.
- 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 became a signatory to international conventions.

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.

In 2013 the government released a list of planned legislative amendments to bring New Zealand into full compliance with the convention,<sup>128</sup> and they have since been implemented.

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>129</sup> In March 2016 there was a follow-up to the phase 3 report on New Zealand's implementation of the requirements.<sup>130</sup>

New Zealand signed UNCAC in 2003 after it was adopted by the UN General Assembly, and in 2015 it ratified the Convention. This Convention 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.

The Sustainable Development Goals (SDGs) are a collection of global goals set by the United Nations General Assembly in 2015. Although the goals are not legally binding, countries are expected to report voluntarily on implementation, and New Zealand has elected to report in 2019.

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<sup>127</sup> Updated and extended by the Anti-Money Laundering and Countering Financing of Terrorism Act 2017

<sup>128</sup> See [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>129</sup> OECD, "Bribery in international business". [www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption)

<sup>130</sup> See <http://www.oecd.org/daf/anti-bribery/New-Zealand-Phase-3-Written-Follow-Up-Report-ENG.pdf>

The goals include SDG 16, which is “to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective accountable and inclusive institutions at all levels”<sup>131</sup>. The targets under this goal include aims for:

- reduction in corruption, bribery and illicit financial flows
- the development of effective, accountable and transparent institutions,
- improved citizen satisfaction with their experience of public services,
- responsive, inclusive, participatory and representative decision-making;
- diversity in positions in public institutions,
- public access to information and fundamental freedoms,
- non-discriminatory laws and policies.

Other multilateral influences are the Financial Action Task Force and the 1997 Asia-Pacific Group on Money Laundering.<sup>132</sup>

### **Recent developments**

On 18 June 2013, the government announced the adoption of recommendations in respect of detecting and preventing organised crime.<sup>133</sup> These include items that have subsequently been included in the organised crime and anti-corruption legislation passed by Parliament as a number of separate Acts in November 2015:

- Companies can now be held vicariously liable for the acts of their employees (Crimes Act section 105C(2A)). Where an employee, acting within the scope of his or her authority as an employee of the company, bribes a foreign public official and does so with the intent to benefit the body corporate or corporation sole, the company can be held vicariously liable for the offence. Under the Crimes Act, an “employee” is broadly defined and includes an agent, director, or officer of the company. If a company can show that it has taken “reasonable steps” to prevent the commission of the offence, it may have a defence (section 105C(2B)). The onus is on the company, however, to raise and establish this defence.
- The penalty for bribing a foreign public official has increased. Under the Crimes Act, courts can impose both a fine (not exceeding either \$5 million or three times the value of that commercial gain (if any)) and/or a term of imprisonment (of up to seven years) where a person is found to have bribed a foreign public official (sections 105C(2D) and (2E)).
- The penalty for offences under the Secret Commissions Act (i.e. for domestic corruption in the private sector) has also increased (section 13). A person who commits an offence against the Act is also liable to imprisonment of up to seven years.

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<sup>131</sup> See <https://sustainabledevelopment.un.org/sdg16>

<sup>132</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)

<sup>133</sup> Collins, 2013.

- The previous exception for bribery of foreign public officials where the act was lawful in the country of the foreign official has been repealed (former section 105E, now replaced).
- Facilitation payments, or “grease” payments, are still legal under the *Crimes Act* (see section 105C(3)) – despite opposition from civil society (including from TINZ). That means that a small payment to a foreign public official that is paid to ensure or expedite performance of a “routine government action” is not considered a bribe under New Zealand law. This exception under the *Crimes Act* has, however, been narrowed.

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>134</sup>

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.<sup>135</sup> 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 (some of which have been implemented in subsequent legislation) 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.

Reporting in 2016<sup>136</sup>, the Law Commission recommended that the Extradition Act 1999 and the Mutual Assistance in Criminal Matters Act 1992 should be repealed and replaced by more modern, simplified legislation. The government accepted the main recommendation and directed the Ministry of Justice to undertake further analysis of the Commission’s more detailed recommendations.

New Zealand contributed to the London Anti-corruption Summit in 2016, during which participants committed to establishing the International Anti-Corruption Co-ordination Centre of which NZ is a participant.<sup>137</sup>

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<sup>134</sup> OECD, “Bribery in international business”. [www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption)

<sup>135</sup> The SFO investigated two cases of allegations of foreign bribery in 2013/4, and four in 2014/5. In 2017 there was a report of a successful prosecution for receiving secret commissions from Middle Eastern clients.

<sup>136</sup> See <https://www.lawcom.govt.nz/our-projects/extradition-and-mutual-assistance-criminal-matters>

<sup>137</sup> See <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2018-June-6-7/Presentations/IACCC.pdf>

In 2018 the government announced an anti-corruption work programme. Its strategic objectives are:

- understand New Zealand's corruption landscape and vulnerabilities
- enhance New Zealand's capability to prevent corruption
- proactively detect, disrupt and enforce law against corrupt conduct
- reform New Zealand's corruption offence framework.<sup>138</sup>

Awareness of corruption in sport, which was only beginning to emerge as an issue in 2013, has become more widespread and is being addressed by SportNZ in a review currently (2018) under way.<sup>139</sup>

New Zealand will be chairing the APEC Anti-Corruption and Transparency Working Group in 2021 when New Zealand hosts APEC.

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<sup>138</sup> Serious Fraud Office *Annual Report 2018* 2018

<sup>139</sup> See <https://sportnz.org.nz/assets/Sport-Integrity-Review/Sport-Integrity-Review-Discussion-Document-30-October-2018.pdf>

## CHAPTER 5: NATIONAL INTEGRITY SYSTEM – PILLAR REPORTS

### Introduction

In this chapter, each individual pillar has been assessed using a set of indicators that measure the pillar's:

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

The indicator questions are taken directly from the standard template supplied by TI-S.<sup>140</sup>

An additional section in each pillar report assesses matters related to the Treaty of Waitangi, using a question drafted for the purposes of this assessment.

For most pillars, two indicator questions are asked in relation to each of the capacity and governance dimensions. For example, in relation to the legislature, the first indicator question about resources asks whether legal provisions ensure the legislature has adequate resources, and the second question asks whether the legislature has adequate resources in practice. This pattern of two questions relating to law and practice is repeated through the other analytical dimensions. Other pillar reports usually follow the same pattern, but in some cases there is only one indicator question for a dimension. For any given indicator question, there may be some variation in the focus of the question asked for different pillars, depending on the nature of the pillar and the issues it faces.

For each pillar, further questions relate to its specific role, and again there may be some variation in the number and focus of questions. The final question on the Treaty of Waitangi is essentially the same for all pillars, although the wording varies slightly.

The indicator questions are scored using a five-point scale where:

5 = very strong

4 = strong

3 = moderate

2 = weak

1 = very weak

The scores are then aggregated (on a scale of 1-100) to provide a score for each pillar dimension and a simple average provides the overall pillar score.

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<sup>140</sup> See [https://www.transparency.org/files/content/nis/NIS\\_AssessmentToolkit\\_EN.pdf](https://www.transparency.org/files/content/nis/NIS_AssessmentToolkit_EN.pdf)

For more information on scoring, see Chapter 1. The Treaty of Waitangi question is not scored, as it is additional to the standard assessment template.

Each pillar report is followed by its own reference section. All major sources have been listed. The research for the civil society pillar report followed a rather different pattern from that for the rest of the report. The report summarises themes from desk research and from a large number of informant interviews, often conducted on a confidential basis. Effort focused on drawing together the diversity of the community and voluntary organisations that were consulted into a meaningful assessment. Given this diversity, the usual referencing of views was not always possible, though all evidence is based on the consultations conducted as part of the research.

Supporting information, mainly for the 2013 public sector pillar report, can be found in the four supplementary papers published in conjunction with this report and available from the TINZ website.<sup>141</sup>

The 2018 edition follows the same format as the original. Pillar reports have been edited for readability and have been updated, as have their reference sections. As far as possible, the update has been done by the original author. However, the reports have not been re-assessed and scores have not been altered.

Change has not occurred evenly across the 12 pillars, and the update has involved more extensive work on some pillar reports than on others. In all 12 reports, more recent data has been added when it is available, but in some reports further research has been undertaken and there is additional comment. The “summary” section of each pillar report is now prefaced by a short description of the further work to make it easier to understand which parts of the report are original and which are later additions.

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<sup>141</sup> See [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)  
[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)  
[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)  
[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)

## Legislature (pillar 1)

### Summary

*The 2018 update of the legislature pillar report has been largely confined to data updating. There is a small amount of additional comment, mostly in relation to the 2017 general election, and it should be clear from the context where this new material has been added. There has also been a new edition of the Cabinet Manual, with consequent alterations to some references.*

Parliament is central to New Zealand’s constitutional arrangements. Historically, the accessibility of MPs to their constituents contributed to public confidence in the legislative process. Politicians were generally held in high regard. However, during the 1980s and early 1990s, there was a rapid erosion of public trust and confidence in politicians and in the first-past-the-post electoral system that had been in place since the previous century. Politicians of both main parties were widely perceived to have broken important election promises when in governmental office. Moreover, in the general elections of 1978 and 1981 first-past-the-post had failed to deliver an allocation of parliamentary seats that reflected voters’ preferences.<sup>142</sup>

Responding to the growing public discontent with first-past-the-post, the fourth Labour government, which came into office in 1984, established a Royal Commission to examine electoral options. This body recommended the adoption of the German system known as mixed member proportional representation (MMP). A non-binding referendum in 1992 revealed an overwhelming majority in favour of electoral change, and in a binding referendum in 1993, 54 per cent of voters supported a change to MMP. This report is, in part, an assessment of how Parliament has evolved under this electoral system.

The introduction of MMP has changed the balance so that Parliament is a more effective check on executive power. But the extent of this checking capacity can depend on the nature of the government make-up and the state of the opposition parties.<sup>143</sup> Because Parliament’s legislative work slowed down and a backlog of draft legislation built up under the new voting system, Standing Orders were amended to extend parliamentary sitting time. Efforts were made through the Legislation Act 2012 to streamline the consideration of “revision” bills that are not politically contentious. This legislation took effect in the next parliamentary term.

Parliament has robust integrity systems. While formal regulation is spare by international standards, in practice Parliament has clear rules for the conduct of MPs, that are fairly applied and generally successful in ensuring ethical behaviour. On the other hand, Parliament seems reluctant to support changes to the law to address new integrity risks and rising integrity expectations in society at large. MPs have not adopted a formal code of conduct, and, in 2013, Parliament had recently declined proposals for legislation to regulate lobbying or for independent oversight of MPs’ travel expenses.

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<sup>142</sup> In 1978, the Social Credit Party won about 21 per cent of the popular vote but gained only two seats; three years later, the New Zealand Party won 12 per cent of the vote but failed to gain a single seat.

<sup>143</sup> Ryan Malone, *Rebalancing the Constitution: The challenge of government law-making under MMP* (Wellington: Institute of Policy Studies, 2008).

Transparency is high but could be enhanced through the extension of the OIA to the officers of Parliament, Parliamentary Counsel Office, Office of the Clerk and Parliamentary Service, and the Speaker. Parliament has adequate powers for holding the executive to account through the requirement that all draft legislation be examined by select committees (except for bills accorded urgency or Imprest Supply Bills) as well as by the House itself, cross-examination of Ministers through oral and written questions, close engagement in the budget process, and the scrutiny of public sector spending and regulation. Against current international good practice, Parliament's oversight of fiscal management is judged as only moderately good, and there is a low level of direct public engagement in the Budget process.

Parliament has become a more effective check on the executive in the two decades since MMP began. It is now more representative of the community with multi-party governments (either coalition governments or minority governments that rely on support parties to govern) ensuring the interests of smaller parties are better considered. However, inter-party contestation dominates the parliamentary culture to the detriment of other important parliamentary roles. Many interviewees feel the strengthening of Parliament, therefore, remains a work in progress. Areas of priority for the strengthening of Parliament identified in 2013 were:

- enhancing scrutiny of the executive by creating a cross-cutting specialist committee for all public accounts and providing it with independent analytical support
- strengthening the quality of Parliament's law-making by creating a specialist select committee for treaties
- reviewing existing procedures to ensure Parliament is better aware of the human rights implications of legislation
- enhancing the quality of legislation with more pre-legislative public disclosure of draft bills and the adoption by select committees of tests for legislative quality to complement the executive's recent adoption of *Disclosure Statements for Government Legislation*.<sup>144</sup>

Only the last of these had received any attention by 2018. A new Legislation Design and Advisory Committee was set up in June 2015.

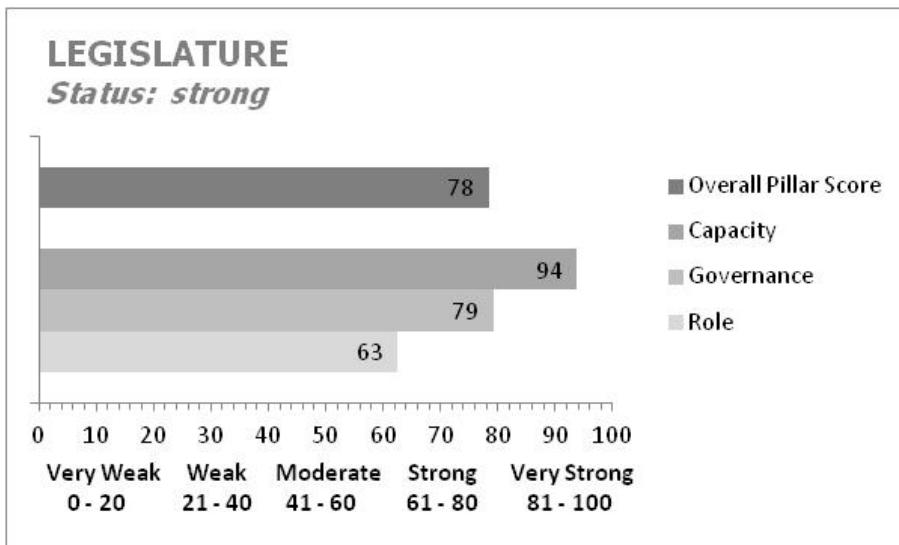
The New Zealand Parliament is representative and generally transparent in its legislative processes, and the public has excellent opportunities to participate in the work of select committees. Some further strengthening of Parliament's role as a check on the dominance of the executive is necessary. The relative dominance of the executive is a significant theme in this report (discussed further in Chapter 6). A lack of transparency in the administration of Parliament (as distinct from its legislative work) is also a concern.

These elements led to the recommendations in Chapter 6 calling for a stronger structure of select committees and better committee support, measures to improve the quality of legislation, extending OIA coverage to the administration of Parliament and its officers, more transparency about lobbying of MPs, and the introduction of a code of conduct for MPs.

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<sup>144</sup> Treasury, *Disclosure Statements for Government Legislation: Technical guide for departments* (Wellington: Treasury, 2013). See also <http://www.pco.govt.nz/disclosure-statements/>.

Figure 3: Legislature scores



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

New Zealand has a constitutional monarchy in which Parliament is the supreme legislative power.<sup>145</sup> Parliament comprises the Sovereign (represented by the Governor-General) and the House of Representatives.<sup>146</sup> Members of the House are elected in accordance with the Electoral Act 1993, and each Parliament has a term of three years, unless it is earlier dissolved. The Governor-General has the power to summon, prorogue, and dissolve Parliament. The Constitution Act 1986 provides for Parliament to have full power to make laws; a bill passed by the House becomes law when the Sovereign or Governor-General assents to it. The Crown may not levy taxes, raise loans, or spend public money except by or under an Act of Parliament.<sup>147</sup>

The Sovereign's functions are to give the Royal assent to bills, call Parliament to meet, dissolve Parliament, deliver the Speech from the Throne, call elections, consent (by means of a "message") to bills affecting the powers and prerogatives of the Crown, and (by means of "address") authorise the House's approval of proposed estimates for the offices of Parliament. These functions are carried out on the advice of Ministers of the Crown (the government). The Sovereign plays no other active role in parliamentary work. The supremacy of Parliament over

<sup>145</sup> New Zealand Parliament, "How our Parliament works: Fact sheets" <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/>

<sup>146</sup> Sir Kenneth Keith, "On the constitution of New Zealand: An introduction to the foundations of the current form of government", Cabinet Office, *Cabinet Manual 2017* (Wellington: Department of the Prime Minister and Cabinet, 2017) <https://www.dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf>

<sup>147</sup> No single document is the constitution, and parts of the constitution are unwritten. Constitutional arrangements are contained in a variety of documents, including several Acts of Parliament, such as the Legislature Act 1908, Constitution Act 1986, New Zealand Bill of Rights Act 1990, and Electoral Act 1993. These Acts include provisions on elections, the term and powers of Parliament, the formation of the government, and individual rights, and have their roots in the English Parliament's struggle to constrain the actions of the Sovereign and place political power in the hands of representatives elected by, and accountable to, the people.

the Sovereign was established in England by the Bill of Rights 1688. This remains part of New Zealand's law today.<sup>148</sup>

Since 1950, New Zealand's Parliament has had only one chamber, the House of Representatives.<sup>149</sup> Its main functions are to provide representation for the people, pass the legislation by which the country is governed, scrutinise the activities of the government, and approve the supply of public funds to the government.<sup>150</sup>

Following the Westminster form, the government is led by the Prime Minister and the Cabinet, who are chosen from the House of Representatives. Parliament has 120 members, elected from seven Māori and 64 general constituencies, with additional list members for proportionality. MPs vote to elect the Speaker, nominated by the government at the start of each new Parliament (after every general election).

#### **1.1.1 Resources (law)**

**To what extent are there provisions in place that provide the legislature with adequate financial, human, and infrastructure resources to effectively carry out its duties?**

Score: 5

*The laws and processes for resourcing Parliament are adequate to enable it to carry out its duties effectively.*

Parliament is resourced under the terms of the Public Finance Act 1989. For the purposes of the Act, the Speaker of Parliament is the “responsible Minister” of the Parliamentary Service and the Office of the Clerk and in practical terms negotiates Parliament’s resource bid with the Minister of Finance and the Treasury, in the same way as Ministers do. Expenditure is also made under permanent legislative authority, covering, for example, the salaries and allowances of Ministers and other MPs, and the salaries of the Ombudsmen and the Controller and Auditor-General.

In determining the resource bid, the Speaker can draw on the advice of the Parliamentary Service Commission, which the Speaker chairs and which comprises representatives of the political parties represented in Parliament. The Speaker is also free to engage other advisers for this purpose. In practice the Speaker’s main source of budgetary advice tends to be the Clerk of the House and the General Manager of the Parliamentary Services.

The Parliamentary Service Act 2000 obliges the Speaker to establish an appropriations review committee every three years and once during the life of each government to review the funds appropriated by Parliament for administrative and support services for the House of

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<sup>148</sup> Office of the Clerk of the House of Representatives, “Parliamentary privilege”, *Parliament Brief*, February 2007 <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/pbrief4/>

<sup>149</sup> Until 1950 the Parliament was bicameral with an upper house known as the Legislative Assembly.

<sup>150</sup> Geoffrey Palmer and Matthew Palmer, *Bridled Power*, 4th ed. (Melbourne: OUP, 2004), p. 158.

Representatives and MPs and for entitlements for parliamentary purposes.<sup>151</sup> The scope of such triennial reviews is at the Speaker's discretion.

Crucial to resourcing is the number of MPs available to carry out the parliamentary functions. By the standards of comparable developed countries, New Zealand has few MPs.<sup>152</sup> Comparing lower houses alone, New Zealand has fewer MPs per 100,000 citizens than Ireland, Sweden, Finland, Norway, and Denmark.<sup>153</sup> This difference is further highlighted if one takes into account the demand on MPs because New Zealand's population is dispersed over a large land area, and that, out of the 120 MPs, a comparatively high number, about 30, are taken out to form the political executive.

### **1.1.2 Resources (practice)**

#### **To what extent does the legislature have adequate resources to carry out its duties in practice?**

Score: 4

*Parliament is adequately funded for its current activities. However, if it is to address weaknesses in the review of bills and the oversight of the executive, reprioritisation and new resources will be required.*

The funds appropriated to the Parliamentary Service, the Office of the Clerk, and the permanent legislative authorities totalled NZ\$138,329,000 for 2012/13,<sup>154</sup> covering:

- Parliamentary Service departmental appropriations for running and maintaining the parliamentary precincts and employing MPs' support staff
- non-departmental appropriations to cover the funding entitlements for Parliament, including MPs' salaries, allowances, and entitlements (permanent legislative authority)
- provision for funding MPs' out-of-Parliament offices
- funding for the Office of the Clerk of the House of Representatives for secretariat services to the House and services related to inter-parliamentary relations (permanent legislative authorities).

The salaries and allowances for MPs come to a total of about NZ\$22 million per year. Basic salaries, as at 1 July 2018, range from NZ\$471,049 for the Prime Minister, NZ\$296,007 for Cabinet Ministers, and NZ\$163,961 for backbench MPs. Annual non-reimbursable allowances range from NZ\$22,606 (for the Prime Minister) to NZ\$16,980 (for MPs)<sup>155</sup>.

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<sup>151</sup> For example, New Zealand Parliament, *Report of the Fourth Triennial Parliamentary Appropriation Review*, June 2010.

<sup>152</sup> Interview of Jonathan Boston with author, 30 June 2013.

<sup>153</sup> Feargal McGuiness, "Number of parliamentarians: International comparisons – Commons Library standard note", 2010 [www.parliament.uk/briefing-papers/SN05690](http://www.parliament.uk/briefing-papers/SN05690).

<sup>154</sup> *Estimates of Appropriations 2012/13: Vote Parliamentary Service* (Wellington: Treasury, 2013). The figures for 2018 are similar.

<sup>155</sup> Parliamentary Salaries and Allowances determination 2017.

The funding for the Office of the Clerk, which includes, among other things, staffing and specialist consultancy support for select committees, is NZ\$26 million for 2017/8.

The Parliamentary Counsel Office, which drafts most legislation and publishes the final versions, is resourced under Appropriation or Imprest Supply Acts, had a budget of NZ\$23.5 million for 2017-8. The Responsible Minister is the Attorney-General.<sup>156</sup>

The Remuneration Authority determines the remuneration of MPs – resourcing under these arrangements is regarded as adequate. MPs are well paid by local standards. The level of resources provided for select committees through the Office of the Clerk and the officers of Parliament is also regarded as adequate for current purposes.<sup>157</sup>

The resourcing of Parliament is under the terms of the Public Finance Act 1989. Theoretically this could open Parliament to interference by the executive, but in practice this does not seem to be a problem because of the standing of the office of the Speaker, the role of the Parliamentary Service (which in allocating resources and services is accountable to Parliament rather than the executive), and the scrutiny of MPs. The level of resourcing for the legislature is mainly determined by incremental adjustments to the historical status quo. Where a Speaker seeks to lead step improvements in the parliamentary process in such areas as information technology, extending the televising of proceedings, or strengthening the investigatory resources for select committees, it is a challenging process.<sup>158</sup>

An important resource-allocation matter is how long Parliament sits.<sup>159</sup> The Business Committee recommends a sitting programme each year. Normal sitting hours are Tuesdays and Wednesdays 2-6pm and 7.30-10pm and Thursdays 2-6pm. For 2018, there are 93 scheduled sitting days.

A review by the Standing Orders Committee in 2011<sup>160</sup> amended Standing Orders to speed up consideration of non-controversial bills and provide more time for the scrutiny of legislative proposals. These measures included the extension of sitting hours, clearer criteria for the use of urgency, and a more active role for the Business Committee (which has cross-party membership) in planning the business of the House. The Legislation Act 2012 makes provision for the streamlining of the consideration of “revision” legislation, the content of which is largely technical rather than political. This Act began to impact on draft legislation in the next session of Parliament.

Another potential resourcing issue is the level of analytical and research support for select committees. Some interlocutors said the committees should be better and more independently resourced to improve the review of legislation and scrutiny of government. Former Clerk of the House David McGee agrees that select committees should be strengthened, but says current

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<sup>156</sup> *Estimates of Appropriations 2017/8: Vote Parliamentary Counsel* (Wellington: Treasury, 2013).

<sup>157</sup> Interview of David McGee, former Clerk of the House, with author, 5 February 2013.

<sup>158</sup> Interview of Margaret Wilson, former Speaker, with author, 22 January 2013.

<sup>159</sup> According to the Schedule of Bills at 21 September 2018, 97 government bills, 58 members' bills, and four local bills, are under consideration by the House of Representatives or select committees.

<sup>160</sup> Standing Orders Committee (Dr Rt Hon. Lockwood Smith, Chair), *Review of Standing Orders*, 49th Parliament (New Zealand Parliament, 2011).

incentives on the committees to do so are weak. His proposal, discussed below, is that some key committees should first be reorganised.<sup>161</sup>

### 1.1.3 Independence (law)

**To what extent is the legislature independent and free from subordination to external actors by law?**

Score: 5

*Parliament is constitutionally supreme. It is independent in its oversight of the executive. However, its role in reviewing legislation could be enhanced with more use of specialist select committees on issues of constitutional and cross-cutting importance.*

Parliament by law is dissolved at the end of a government's electoral term<sup>162</sup> or when prorogued by the Governor-General. The Governor-General has the formal power to dissolve, prorogue (that is, discontinue without dissolving), and summon Parliament under the Constitution Act 1986.<sup>163</sup> By convention these actions are taken on the advice of the Prime Minister. When the term of Parliament ends, or Parliament has been dissolved, a general election is held to determine the composition of the Parliament from which the new government will be formed.<sup>164</sup>

The basic principle of the system of responsible government is that the government must have the confidence of Parliament to stay in office. Where a government loses the confidence of Parliament, the Prime Minister will, by convention, advise that the administration will resign, and in this case a new government may be elected from within Parliament (if the administration has its confidence) or a new election may be called.<sup>165</sup>

Parliament is free to decide when it can meet. Each year, the parliamentary Business Committee recommends the sitting programme for the following year. The sessions cover almost the whole year and extend for the parliamentary term.

While Parliament is constitutionally supreme, its composition and processes and New Zealand's constitutional tradition ensure a close and largely supportive relationship with the executive. By international standards, the executive has fewer checks on its powers than in most comparable countries (because of the partially unwritten constitution, unicameral legislature, and absence of constitutional protection of the powers of local government).

Three important factors contribute to the independence of Parliament. The first factor is the status and capacity of the office of the Speaker. The Speaker is the highest-ranking officer elected by Parliament. The Speaker may maintain links with his or her political party but must not show political bias while chairing the House. The Speaker speaks for Parliament to the

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<sup>161</sup> Interview of David McGee, former Clerk of the House, with author, 5 February 2013.

<sup>162</sup> Defined as three years from the date fixed for the return of the writs issued for the previous general election: in *Cabinet Manual*, 2017: para. 6.2.

<sup>163</sup> Constitution Act 1986, section 18.

<sup>164</sup> *Cabinet Manual*, 2017: paras. 6.2–6.4.

<sup>165</sup> *Cabinet Manual*, 2017: paras. 6.58–6.61.

Crown, chairs Parliament’s meetings, chairs three select committees, acts as landlord for Parliament’s buildings, and represents Parliament to international and other important visitors.

The second factor is the control of Parliament’s business. The Order of Business is decided by the Business Committee, chaired by the Speaker with representation from the political parties in Parliament. It operates by consensus (“near unanimity”) as determined by the Speaker.<sup>166</sup> Disagreements are settled between the Leader of the House and party Whips. The Business Committee sits privately and its proceedings are not recorded.

The third factor is the role of select committees. Membership of select committees is decided by Parliament on the recommendation of the Business Committee. Representation of parties is proportional. Some select committees are chaired by opposition MPs (on agreement between parties) but on a less than proportional basis.

Select committees carry out the intensive legislative, financial, scrutiny, or investigatory work of Parliament. According to the Office of the Clerk, “Whereas debate in the House is confined to MPs, select committees directly involve the public in their work. This interchange between parliamentarians and the public, particularly as part of the legislative process, is a distinctive<sup>167</sup> feature of New Zealand’s parliamentary system”.<sup>168</sup>

There are 12 subject-specific committees and five specialist committees – the Business, Officers of Parliament, Privileges, Regulations Review, and Standing Orders Committees.<sup>169</sup> The Business Committee decides the size and composition of the other committees with a view to overall proportionality of representation by political parties.<sup>170, 171</sup> Chairs and deputy-chairs are generally selected by committee members.<sup>172</sup> Select committees have considerable latitude in how they pursue their roles and may pursue inquiries that are unwelcome from the government’s perspective. Critical to the government’s political management are the numbers on each committee, that is, does the opposition have more votes than the government or

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<sup>166</sup> The committee reaches decisions on the basis of unanimity or, if unanimity is not possible, near-unanimity, having regard to the numbers in Parliament represented by each of the members of the committee.

<sup>167</sup> The distinctiveness lies in the ready access for those making submissions to appear in person before the committees.

<sup>168</sup> New Zealand Parliament, <https://www.parliament.nz/en/footer/about-us/office-of-the-clerk/about/select-committees-and-parliamentary-engagement-group/>

<sup>169</sup> See <https://www.parliament.nz/en/pb/sc/scl> Subjects are defined on the basis of sectors and (ministerial) portfolios. Standing Order 186(2): “The subject select committees may receive briefings on, or initiate inquiries into, matters related to their respective subject areas.”

<sup>170</sup> The Business Committee facilitates House business, decides the size and composition of select committees, grants extensions to the report dates for bills before committees, and grants permission for members’ votes to be counted when they are absent from the House. The Officers of Parliament Committee makes recommendations to the House on the appropriations and the appointments of the Auditor-General, Ombudsmen, and Parliamentary Commissioner for the Environment. The Regulations Review Committee examines the legal instruments variously known as “regulations”, “delegated legislation”, and “subordinate legislation” made under delegated powers in an Act of Parliament. The Standing Orders Committee reviews House procedures and practices.

<sup>171</sup> Standing Orders Committee, “First report”, *Appendices to the Journals of the House of Representatives*, I.14, July 1985, para. 4.4.3.4.

<sup>172</sup> The Speaker chairs the Officers of Parliament Committee.

support party members have to initiate the inquiries? On some committees there will be a government majority, and on others the government will be in a minority.<sup>173</sup>

The 12 subject-specific committees are organised on a portfolio basis. Unlike the United Kingdom, Canada, and Australia, New Zealand does not have a public accounts committee covering the use of, and accounting for, all public funds and resources (the Finance and Expenditure Committee chooses to fulfil only some of these functions).<sup>174</sup>

With a small number of MPs to cover many committees, any change requires reconfiguring committees rather than adding new ones. The advantage of specialist committees is the capacity for coherent oversight of important and sensitive policy areas. They offer incentives for committee members to build profile and depth of expertise in the area in question. Interviewees suggested that New Zealand would benefit from a United Kingdom-style public accounts committee (which deals with all the executive's accounts), a treaties committee<sup>175</sup> to deal with all international treaties, and a human rights committee<sup>176</sup>. Such committees could support the independent role of Parliament by reducing the opportunity for the executive to indulge in "forum shopping", that is, to send legislation to the committee most likely to support the executive's policy.<sup>177</sup>

#### **1.1.4 Independence (practice)**

##### **Is the legislature free from subordination to external actors in practice?**

Score: 5

*Parliament is generally free from subordination in practice. However, the quality of its oversight of the executive could be improved if it developed a more "parliamentary" culture by devoting new attention to the role and status of the Speaker, the control of parliamentary business, and the organisation of select committees.*

The operation of select committees is important to the independence of Parliament's role. In general, the select committee system is not organised to promote consensus among committee members from different parties.<sup>178</sup> The majority rules with no obligation or practice for committees to reach consensus on their reports to Parliament. Such reports regularly include dissenting views on a party basis. One consequence, however, of this approach is that on some select committees the government and its coalition and support party allies do not have a majority. For example, in the 2002–05 and 2005–08 Parliaments, the Labour-led government was in the minority on 10 of the 13 subject select committees.<sup>179</sup> In this situation, the select

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<sup>173</sup> See Malone, 2008: 148–167.

<sup>174</sup> The Estimates for all Votes stand referred to the Finance and Expenditure Committee, but the committee generally refers them and the subsequent financial review to relevant subject committees.

<sup>175</sup> Treaties are dealt with by the relevant sectoral committee.

<sup>176</sup> Interview of David McGee, former Clerk of the House, with author.

<sup>177</sup> As the Public Accounts Committee has in the United Kingdom.

<sup>178</sup> Interview of David McGee, former Clerk of the House, with author.

<sup>179</sup> Malone, 2008: 152.

committee is effectively independent of the executive in the recommendations it makes on bills and budgets, and in any inquiries it undertakes.

In the constitutional arrangements, Parliament is supreme, but the former first-past-the-post electoral system provided the government of the day with a great deal of influence over Parliament for much of the time. This contributed to a situation in which many felt laws were made too quickly and with insufficient consideration. MMP changed the political dynamic because more political parties were represented, and because coalition governments, or minority governments backed by support parties, became the norm. In making it necessary for the government to win some cross-party support in order for Parliament to pass its legislation, MMP has indeed strengthened the independence of Parliament.<sup>180</sup> But the logic of this reform has not been fully followed through. Political contestation remains the dominant driver of parliamentary outcomes, primarily because this culture is deeply imbedded in the way Parliament operates.<sup>181</sup>

The parliamentary agenda is dominated by legislative proposals developed by the executive. The processes of Parliament provide limited opportunity for other matters to be debated in the House, and individual MPs are provided with a narrow window for bringing matters to the attention of the House. A challenge for Parliament is how to maintain sufficient independence to assure the public that its laws are coherent and constitutional, to approve the raising of revenue, and to scrutinise the efficiency and effectiveness of spending and regulation. At present, the parliamentary culture is not strongly supportive of these roles. Improvement would require new attention to the role and status of the Speaker, the control of parliamentary business, and the organisation of select committees.

The New Zealand Public Health and Disability Amendment Act 2013, considered in all stages under urgency, enables family carers of people with disabilities to be paid less than other carers and prohibits new claimants from seeking legal redress. It was enacted despite advice from the Attorney-General that it breaches the New Zealand Bill of Rights Act 1990.<sup>182</sup> In this case, Parliament failed to protect the quality of legislation that citizens have the right to expect. However although questions about the quality of legislation continue to arise, there has been no similar instance since the 2013 NIS was written.

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<sup>180</sup> Malone, 2008: 232: “[I]t is possible to conclude that MMP has produced a significant rebalancing of the constitution. The obligation on Ministers to consult within and between multiple parties and to accommodate the policy preferences of those parties into governmental decision-making has significantly restricted executive power. New Zealand’s executive-dominated constitution is now a creature of the past. In its place is a better-balanced constitution, in which the ideal of limited government promoted by the doctrine of separation of power is more tangible than before. If New Zealand ever was an elective dictatorship under [first-past-the-post] as some critics claimed, it is no longer, and simply cannot be in a multi-party government situation.”

<sup>181</sup> Interviews with Sir Geoffrey Palmer and David McGee, 11 July and 5 February 2013.

<sup>182</sup> David Beetham, *Parliament and Democracy in the 21st Century: Creating a guide to good practice* (Geneva: International Parliamentary Union, 2006), p. 4: “For the people to have any influence over the laws and policies to which they are subject requires the guarantee of basic rights ... It is this framework of rights that also secures for them the further democratic principle of being treated as equals without discrimination ... While respect for these rights is the responsibility of all citizens, it is the particular responsibility of parliament as the legislative power to ensure that their formulation and mode of protection in practice conform to international human rights standards, and that they are not undermined by other legislation.”

### 1.2.1 Transparency (law)

**To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?**

Score: 4

*Law and formal processes provide adequately for the transparency of Parliament except that the OIA, despite its centrality in the constitutional arrangements, does not extend to Parliament's own administration.*

There are a wide range of formal transparency provisions for parliamentary proceedings. These measures, which are spelt out in Standing Orders, include the right of the public and the media to attend parliamentary sessions; the television, internet, and radio broadcast of parliamentary debates; and the publication of *Hansard* with a verbatim record of what is said in the House. There are also provisions to publish reports considered by the House and its committees and to make draft and final legislation public.

Parliament is financed under the Public Finance Act 1989, and its budgeting and reporting processes are in accordance with that Act, which, as covered in the public sector pillar report, is rated as highly transparent by international standards.

Since 2006, there have been major improvements<sup>183</sup> in the transparency and credibility of the processes around MPs' pay and terms and conditions. This is a major step forward from the situation recorded in the 2003 National Integrity System. Salaries are set on a transparent and independent basis by the Remuneration Authority. Processes in the Parliamentary Service have been upgraded to ensure more clarity of and compliance with the rules on MPs' allowances and expenses.

The OIA does not extend to the legislature's own administration. The public cannot access information on the proceedings of some select committees, or on general parliamentary administration. In 2012 The Law Commission recommended<sup>184</sup> extending the OIA to the officers of Parliament, the Parliamentary Counsel Office, the Office of the Clerk, the Parliamentary Service, and the Speaker of the House.<sup>185</sup> The government rejected this on the grounds that New Zealand has an open Parliament by international standards and that it already makes a great deal of information available. The government<sup>186</sup> considered that Parliament was itself better able to develop appropriate rules for the access and use of information.

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<sup>183</sup> The 2003 New Zealand NIS recommended improvements in this area.

<sup>184</sup> Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012).

<sup>185</sup> Committee on Official Information (chaired by Sir Allan Danks), *Towards Open Government* (Wellington: Government Printer, 1981).

<sup>186</sup> New Zealand Government, *Government Response to Law Commission Report on The Public's Right to Know: Review of the official information legislation* (Wellington: House of Representatives, 4 February 2013). <https://www.lawcom.govt.nz/sites/default/files/governmentResponseAttachments/Government%20Response%20to%20R125.pdf>.

The OIA has become, in the words of the Law Commission, “central to New Zealand’s constitutional arrangements”.<sup>187</sup> It is anomalous that the principle of open government is not applied to all aspects of the resourcing and management of the Parliament.

The independent reviews of New Zealand’s first two OGP National Action Plans recommended reform of the OIA, including extending its scope to officers of Parliament. New Zealand’s 2018-20 OGP National Action Plan, released in December 2018, includes a commitment to provide advice to the government on whether to initiate a formal review of official information legislation or whether the focus should instead remain on achieving practice improvements.<sup>188</sup> There is no reference to extending the scope of the OIA to officers of Parliament.

### **1.2.2 Transparency (practice)**

**To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?**

Score: 4

*The public can and does obtain relevant and timely information on the activities and decision-making of Parliament.*

The formal transparency provisions all appear to function well. Public and media attendance at Parliament is well established, the media take an active interest in parliamentary proceedings, the various publications and free public broadcasting of proceedings are timely and well presented, and the Office of the Clerk produces publications and runs an excellent website on the history and organisation of Parliament. All draft legislation is made publicly available online and in hard copy, and final legislation is made available to the public in an accessible and comprehensible form. In 2018 little progress is evident towards making Hansard available in open machine-readable formats.

In general, Parliament (through the Office of the Clerk) is proactive in making the proceedings of the House available to the public.<sup>189</sup> It is regarded as exhibiting international good practice in the guidance and support it gives to those members of the public who wish to make submissions before select committees.<sup>190</sup>

New Zealand’s 2018-2020 OGP National Action Plan, released in December 2018, includes two commitments aimed at improving and broadening the public’s understanding of how Parliament works.<sup>191</sup>

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<sup>187</sup> Law Commission, NZLC R125, 2012.

<sup>188</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 7: Official information. (Wellington: State Services Commission, 2018)

<sup>189</sup> Interview of David McGee, former Clerk of the House, with author.

<sup>190</sup> Beetham, 2006.

<sup>191</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 1: Engagement with Parliament; Commitment 2: Youth Parliament. (Wellington: State Services Commission, 2018)

### 1.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?**

Score: 5

*Overall, there is ample legal provision for Parliament to report on and be answerable for its actions. Parliamentary accountability for legislation could be strengthened by the adoption of a code of legislative standards. All MPs face general elections (or selection as list MPs) every three years or more frequently. This is the most basic accountability mechanism for the legislature. Each parliamentary term, the Standing Orders Committee takes public submissions and reviews the rules and practices of Parliament. There have been occasional ad hoc reviews of Parliament, most recently following the introduction of MMP.<sup>192</sup>*

New Zealand's system of parliamentary democracy not only provides for citizens to elect their representatives, but also allows citizens to have a say in shaping the laws that affect them. The system of public input into legislative proposals is an important element in the parliamentary process. Submissions are also received on parliamentary inquiries and other matters before a select committee.

Internal scrutiny and regulation of parliamentary behaviour is provided through the Office of the Speaker, the Privileges Committee, and the Standing Orders Committee. MPs are shielded by absolute parliamentary privilege only when they make speeches in Parliament. Every New Zealand citizen has the right to petition Parliament to address a grievance or change a policy. Petitions are considered in the first instance by select committees, which may refer the issue to Parliament for action. In 1892, a petition with 30,000 signatures initiated the process whereby New Zealand became the first country to extend the vote to women.<sup>193</sup> In the last 10 years, Parliament has received more than 500 petitions.

All legislation can be scrutinised and reported on by the New Zealand Law Commission, an independent statutory body<sup>194</sup> whose function is to promote the systematic review, reform and development of New Zealand law. The commission advises Ministers on possible changes to the law, and its major reports are placed before Parliament.

Some prominent commentators have seen weaknesses in the way Parliament considers legislation. Sir Geoffrey Palmer points out that Parliament spends about two-thirds of its time on legislation although no more than 15–20 per cent of such legislation is controversial between the parties.<sup>195</sup> He adds that “[despite] great amounts of urgency taken in the life of the

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<sup>192</sup> Rt Hon Sir Geoffrey Palmer QC "Reform of Parliament", Address to the New Zealand Chapter of the Australasian Study of Parliament Group Seminar, *A Vision for New Zealand's 60th Parliament*, Wellington 17 February 2013.

<sup>193</sup> Office of the Clerk of the House of Representatives, "Petitioning Parliament", *How Parliament Works*.

<sup>194</sup> Law Commission Act 1985.

<sup>195</sup> Rt Hon Sir Geoffrey Palmer QC "Reform of Parliament", Address to the New Zealand Chapter of the Australasian Study of Parliament Group Seminar, *A Vision for New Zealand's 60th Parliament*, Wellington 17 February 2013.

Parliament that expired in 2011, in 2013 the Parliament is in the midst of a massive legislative logjam".<sup>196</sup>

Other commentators agree that MMP has slowed down the legislative process<sup>197</sup> and that many bills stay on the Order Paper for too long, and can become outdated. Statutory changes needed by departments are consequently delayed or denied to them.<sup>198</sup> There were complaints from opposition parties before the 2011 general election that the back-log enabled the government to avoid dealing with opposition party members' bills before the election.<sup>199</sup> There are concerns too that the situation means that politically topical legislation gets priority over necessary technical and law reform legislation.<sup>200</sup>

These problems are being addressed. The 2011 Standing Orders amendments provided for more time for the consideration of some legislation and limited the capacity to resort to "urgency" when the real problem was lack of parliamentary time. Urgency is now used less frequently, albeit sometimes controversially. The Legislation Act 2012 has addressed the problem of a build-up of technical and law reform legislation by making provision for a fast-tracked process for the consideration of non-controversial "revision" bills. These changes began to impact on legislation from the next parliamentary term.<sup>201</sup>

Where accountability should lie for improving the quality of legislation is not straightforward. Ministers, the public service, and Parliament each have a role, and there are systemic issues such as the possibility of too low a threshold for proposing new legislation and/or that its generation at departmental level is wastefully fragmented.<sup>202</sup> A 2013 report of the United Kingdom House of Commons concludes that "the majority of poor quality legislation results from either inadequate policy preparation or insufficient time being allowed for the drafting process, or a combination of the two. This is not to point the finger at the Office of the Parliamentary Counsel, which neither produces policy nor determines the speed with which policy is to be transformed into legislative proposals".<sup>203</sup>

This committee recommended that the United Kingdom parliament adopt a Code of Legislative Standards, and create a Joint Legislative Standards Committee to oversee the application of the code.<sup>204</sup> The committee also recommended that Parliament and the executive should agree on a test to determine whether legislation has constitutional implications.

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<sup>196</sup> The size of the backlog, according to the Schedule of Bills at 2 August 2013, appeared roughly the same as in 2011 and 2012, but seems to have grown since then (see Schedule of Bills 21 September 2018).

<sup>197</sup> Malone, 2008. See also David McGee, "Concerning legislative process", *Otago Law Review* vol. 11, 2007, p. 417.

<sup>198</sup> Email correspondence with Ryan Malone, 9 July 2013.

<sup>199</sup> "Backlog of bills causing problems in Parliament", *Stuff*, 24 March 2008. [www.stuff.co.nz/national/328624](http://www.stuff.co.nz/national/328624)

<sup>200</sup> Sascha Mueller, "Where's the fire? The use and abuse of urgency in the legislative process", *Canterbury Law Review* vol. 17(2), 2011, p. 316.

<sup>201</sup> A particularly controversial use of urgency was the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

<sup>202</sup> Interview with Sir Geoffrey Palmer, 11 July 2013.

<sup>203</sup> House of Commons, *Ensuring Standards in the Quality of Legislation* (UK: Political and Constitutional Reform Committee, House of Commons, 2013), summary p. 3.

<sup>204</sup> House of Commons, 2013.

There is a good case for New Zealand to have similar measures to improve law-making. One important step was taken in 2013 by the executive with the requirement for government departments to complete a disclosure statement for all draft government legislation.<sup>205</sup> This statement, which the chief executive of the department concerned must certify personally, aims to ensure that government policies are translated into legislation that is “robust, principled and effective”.<sup>206</sup>

Parliament would do well to complement these regulations with its own set of standards for good parliamentary lawmaking. In the light of serious regulatory failures (covered in the public sector pillar report) there has been public consideration of a Regulatory Responsibility Act.<sup>207</sup> There has been no support for a new Act, but in 2015 the Legislation Design and Advisory committee was established to improve the quality and effectiveness of legislation.<sup>208</sup> In 2017 the Treasury released the 2017 Government Expectations for Good Regulatory Practice<sup>209</sup>:

New Zealand’s 2018-2020 OGP National Action Plan, released in December 2018, includes a commitment to develop a School Leavers Kit to assist schools to integrate civics education into their local curriculum for students before they leave compulsory schooling.<sup>210</sup> Greater clarity could be gained from a classification of literacy as a whole into different subsets of literacy which could include civic, digital, and financial literacy. More efforts are needed to develop understanding of civic literacy across socio-economic demographics

#### **1.2.4 Accountability (practice)**

**To what extent do the legislature and its members report on and answer for their actions in practice?**

Score: 4

*Parliament and its members are answerable for their actions in practice because Parliament’s transparency creates considerable public engagement and because of the frequency of general elections.*

Parliament is accountable to the public because of the frequency of general elections. Historically, citizens have had a close relationship with their constituency MPs,<sup>211</sup> and this is regarded as an essential underpinning of New Zealand’s formal constitutional arrangements.

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<sup>205</sup> Treasury, 2013.

<sup>206</sup> These requirements are in addition to existing *Cabinet Manual* and Legislation Advisory Committee provisions on legislative quality.

<sup>207</sup> For example, Graham Scott, “The Regulatory Responsibility Bill: Some issues in the debate”, *Policy Quarterly* vol. 6(2), 2010, p. 58.

<sup>208</sup> See <http://www.ldac.org.nz/about/uploads/LDAC-website-updated/>

<sup>209</sup> See <https://treasury.govt.nz/information-and-services/economic-policy/regulatory-reform-regulation-information-releases>

<sup>210</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 3: School Leavers Toolkit. (Wellington: State Services Commission, 2018)

<sup>211</sup> Interview with Elizabeth McLeay, 14 February 2013.

However, this may be changing. Some consider the introduction of list MPs has diluted the power of constituencies and increased the influence of parties.<sup>212</sup> At the same time, party membership is falling (covered in the political parties pillar report). While voter turnout for general elections has been high by international standards, the 2011 general election recorded the lowest turnout in 126 years with a decrease of more than 10 per cent from a decade earlier (from 85 per cent to 74 per cent of electors).<sup>213</sup> Given the importance of direct popular engagement as the invisible glue of New Zealand's governance, this drop in voter turnout warrants attention. In the 2017 election, 79% of enrolled voters voted.

#### **1.2.5 Integrity (law)**

**To what extent are there mechanisms in place to ensure the integrity of members of the legislature?**

Score: 4

*The conduct of MPs is covered by criminal law, the provisions of Standing Orders, and the Speaker's rulings. However, Parliament lacks a single, formal code of conduct. The adoption of such a code could encourage more attention to the development of the ethical framework as risks and community standards change.*

Various rules of conduct are contained in Standing Orders and Speakers' Rulings, and are enforced by the Privileges Committee and the Speaker. For example, bribery of MPs, as well as being a crime, is covered by the concept of contempt of Parliament.<sup>214</sup> An MP (or outsider) judged by the Privileges Committee to have committed a contempt can be punished by censure, a fine, or (notionally) up to three years in jail.

MPs are covered specifically by criminal law prohibiting bribery and corruption.<sup>215</sup> In these areas they are not protected by parliamentary privilege, as this can be invoked only where the MP is acting in a parliamentary rather than a personal role.<sup>216</sup> Whether an MP's actions are or are not covered by parliamentary privilege is decided by the Privileges Committee. Actions by Parliament or MPs outside the House must comply with the law.

All MPs must disclose their financial interests in the Parliamentary Register of Pecuniary Interests, which is administered by the Registrar of Pecuniary Interests, who is appointed by the Clerk of the House.<sup>217</sup> This information is available to the OAG and is regularly published in

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<sup>212</sup> Interview with Hon. Hugh Templeton, 5 July 2013.

<sup>213</sup> Not counting the 1978 elections where the official turnout is regarded as understated because of technical problems.

<sup>214</sup> *Standing Orders*, 2011, Standing Order 407.

<sup>215</sup> Crimes Act 1961, section 103.

<sup>216</sup> In 2008, an MP was charged with bribery and corruption. The High Court rejected an appeal for immunity, and the member was subsequently convicted on several charges and sentenced to six years' imprisonment.

<sup>217</sup> New Zealand Parliament, 'Register of pecuniary and other specified interests of members of Parliament', 2013 [www.parliament.nz/resource/0000262069](http://www.parliament.nz/resource/0000262069) [accessed 16 July 2013].

summary form. MPs are also obliged to disclose to the Registrar if they have any pecuniary interest in a matter before Parliament in which they are involved.<sup>218</sup>

As covered in the political executive pillar report, New Zealand, unlike comparable administrations, does not have laws or regulations covering the lobbying of MPs<sup>219</sup> or provisions covering post-government employment from the perspective of avoiding conflicts of interest, nor does there appear ever to have been a prosecution for misconduct in public office.<sup>220</sup>

In 2007, four minor parties drafted and signed a voluntary code of conduct and urged other parties to do likewise. This code, which was placed in the custody of the Speaker, has not attracted the support of the bigger parties. It is nevertheless an evergreen topic. The then Speaker acknowledged in a speech to an international parliamentary conference that most professional bodies have such codes and that there is a general trend for ethical matters to be part of the decision-making in the public and private spheres.<sup>221</sup> However, while acknowledging that the issues would not go away, the Speaker noted: “The New Zealand Parliament ... has a long history of resisting regulatory intrusions into matters that govern the working of Parliament and the conduct of members. Short of the matter becoming subject of a coalition agreement, it is unlikely that the New Zealand Parliament will be subject to a formal code of conduct”.<sup>222</sup>

This opinion should not stand as the last word. It is by no means clear that a code of parliamentary conduct for MPs can be accurately described as a “regulatory intrusion”. It would rather be a voluntary action by parliamentarians to show the public they apply the same standards to themselves as do other important institutions. A code bringing together the rules on integrity could also encourage more attention to the development of the ethical framework as risks, and community standards, change.

The question of a code of conduct continues (2018) to be raised from time to time, but as yet there has been no tangible progress towards achieving it.

### **1.2.6 Integrity (practice)**

#### **To what extent is the integrity of legislators ensured in practice?**

Score: 4

*In a moderate number of cases MPs have broken the law and integrity rules. Sanctions have been applied effectively and without favour.*

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<sup>218</sup> New Zealand Parliament, “Parliamentary privilege”, House of Representatives, *Standing Orders of the House of Representatives*, Chapter 8, Standing Order 399, 2011 [www.parliament.nz/en-nz/pb/rules/standing-orders](http://www.parliament.nz/en-nz/pb/rules/standing-orders).

<sup>219</sup> The 2018 decision to publish ministerial appointment diaries (see below - Political Executive chapter) does not extend to other MPs [https://www.dia.govt.nz/vwluResources/CAB-18-MIN-0587-Minute/\\$file/CAB-18-MIN-0587-Minute.pdf](https://www.dia.govt.nz/vwluResources/CAB-18-MIN-0587-Minute/$file/CAB-18-MIN-0587-Minute.pdf)

<sup>220</sup> See annex to Public Sector Pillar 4

<sup>221</sup> Speaker of the House of Representatives, “A code of conduct for members of Parliament: Is the time ever right?”, speech to the 38th Presiding Officers and Clerks Conference, Rarotonga, Cook Islands, July 2007 [www.parliament.nz/en-nz/about-parliament/how-parliament-works/speaker/speeches/48Speakspeech130720071/a-code-of-conduct-for-members-of-parliament-is-the-time](http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/speaker/speeches/48Speakspeech130720071/a-code-of-conduct-for-members-of-parliament-is-the-time).

<sup>222</sup> Speaker of the House of Representatives, 2007.

The parliamentary environment exposes MPs to public scrutiny, and political parties in Parliament face strong incentives to ensure their members meet public expectations of conduct. New Zealand MPs live in a fish-bowl-like environment with high media interest and under close scrutiny. Even relatively minor transgressions can have disproportionate consequences for the miscreant if the action puts the government or the party in a bad light.<sup>223</sup>

There have been a moderate number of cases over recent years of MPs' misbehaviour. The most serious were in 2009 when an MP was convicted for corruption and the perversion of justice and sentenced to six years in prison,<sup>224</sup> and in 2006 when an MP was imprisoned for almost three years for using documents with intent to defraud and intent to pervert the course of justice.<sup>225</sup> More recent cases have mostly related to the misuse of the perks of office, conflicts of interest, and personal misbehaviour including an admission of benefit fraud many years previously.<sup>226</sup> The materiality of fraud in these other cases was at the lower end of the scale.<sup>227</sup>

There is no evidence that MPs are treated more leniently or are less liable to prosecution than other citizens. To the contrary, precisely because they are the elected representatives of the people, the standards of expected behaviour are arguably much higher than those that would apply to the general public in respect of their personal and professional lives.

### **1.3.1 Oversight of the executive**

#### **To what extent does the legislature provide effective oversight of the executive?**

Score: 4

*Parliament provides effective oversight of the executive through the scrutiny of reports and the questioning of Ministers in select committees and in Parliament and through the reports of the officers of Parliament. However, to date, Parliament has not given systematic attention to the impact of the government's policies and services.*

Ministers are responsible to Parliament both collectively and individually. As a consequence, the executive is required to be accountable to Parliament.<sup>228</sup> Five elements are key to the structure of the government's accountability to Parliament.

The first element is the appropriation and supply of public funds. Parliament must approve public funds under the Constitution Act 1986 and the Public Finance Act 1989. A government

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<sup>223</sup> See the Aaron Gilmore case: "Gilmore: 'I'm not surrendering, I'm retreating' ", TVNZ, 14 May 2013 <http://tvnz.co.nz/politics-news/gilmore-i-m-not-surrendering-retreating-5435981>.

<sup>224</sup> A former Mangere MP was found guilty of 11 charges of bribery and corruption and 15 charges of attempting to obstruct or pervert the course of justice: "Taito Phillip Field guilty of 26 charges", TVNZ, 4 August 2009 [tvnz.co.nz/national-news/taito-phillip-field-guilty-26-charges-2886924](http://tvnz.co.nz/national-news/taito-phillip-field-guilty-26-charges-2886924).

<sup>225</sup> Donna Awatere Huata, a list MP, was convicted of fraud in relation to a government-funded charity and of attempting to pervert the course of justice. Serious Fraud Office, *Report of the Serious Fraud Office Annual for the Year Ended 30 June 2006*, 2006.

<sup>226</sup> See <https://www.radionz.co.nz/news/political/336833/green-party-co-leader-metiria-turei-resigns>.

<sup>227</sup> Compared with the revelations about MPs in the House of Commons.

<sup>228</sup> New Zealand Parliament, "Government accountability to the House", *How Parliament Works* (Office of the Clerk of the House of Representatives, 2010) [www.parliament.nz/resource/0000195068](http://www.parliament.nz/resource/0000195068)

cannot remain in office if it fails to obtain supply. Normally, government expenditure cannot be authorised more than a year ahead.<sup>229</sup> This ensures government spending is kept under constant scrutiny.

The formal Budget process through Parliament comprises the Appropriation (Estimates) Bill, the Budget Speech by the Minister of Finance, and the Estimates. Standing Orders provide for these “set pieces” to take precedence over other business. Substantial time is allocated for their presentation and debate in the House and for their scrutiny by select committees.

The annual Financial Review Bill provides an important opportunity for Parliament to examine the spending of Ministers and their agencies in the previous financial year. Officials are required to provide detailed financial information to Parliament’s select committees and to appear before the relevant committee in person to answer oral questions from committee members.

Parliamentary questions are the second element. An hour is allocated from 2pm every sitting day of a parliamentary session for 12 principal oral questions to be put to, and answered by, Ministers. The opportunity to ask such questions is equally shared among MPs, excluding Ministers. This is an opportunity for Parliament to hold Ministers accountable for policy choices and actions under intense opposition pressure and concentrated media coverage including on television and across social media. Any MP may also submit written questions, and Ministers have six days in which to respond. Approximately 20,000 written questions are asked of Ministers each year. Each question and response is published on the parliamentary website.<sup>230</sup>

Debates in the House make up the third element. An hour is set aside every Wednesday for general debate in which members are free to raise any matters of concern. If the Speaker agrees that a particular matter needs urgent attention, 90 minutes can be set aside for it to be debated.

The executive can be held to account in the Address in Reply Debate, in which Parliament responds to the Speech from the Throne<sup>231</sup> by the Governor-General at the beginning of each parliamentary session. In years with no Speech from the Throne, the Prime Minister’s opening statement to Parliament provides an opportunity for a wide-ranging policy debate among MPs from all sides of the House.

The fourth element is select committees. Scrutiny of the executive occurs in select committees where Ministers and officials attend public hearings and answer questions about their performance and policy intentions. If a select committee makes a recommendation to the government, the government must respond to Parliament within 90 days.

The fifth element is the officers of Parliament. The primary function of an officer of Parliament is to act as a check on the executive as part of Parliament’s constitutional role of ensuring the accountability of the executive.<sup>232</sup>

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<sup>229</sup> See <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-31-appropriation-and-authorisations/>.

<sup>230</sup> See [www.parliament.nz/en-nz](http://www.parliament.nz/en-nz)

<sup>231</sup> The government’s programme for the coming session

<sup>232</sup> Leslie Ferguson, “Parliament’s watchdogs: New Zealand’s Officers of Parliament”, paper for Parliamentary Law, Practice and Procedure, 2008.

Parliament has a comparatively limited role in the appointment of officials. It is required by statute to recommend on the appointment of officers of Parliament. There are only a few statutory officers whose appointment requires Parliament's recommendation or endorsement.<sup>233</sup> The appointment of senior government officials and board members is almost entirely within the exclusive domain of the executive.

As covered in the public sector pillar report, New Zealand has been a world leader in its legislation and performance on fiscal transparency, but international standards in this area are rising. The Open Budgeting Initiative (which adopted the High Level Principles on Fiscal Transparency, Participation and Accountability promulgated by the Global Initiative on Fiscal Transparency (GIFT)) asserts both a citizen right to information on fiscal policies and a citizen right to direct participation in public debate on fiscal policy.<sup>234</sup>

The Open Budgeting Initiative's Open Budget Survey 2012 found that the strength of legislative oversight of fiscal policy in New Zealand was only moderate, as was the level of public engagement in fiscal policy.<sup>235</sup> New Zealand topped the 2017 Open Budget Index, but was again criticised for the low level of public opportunity to engage in the Budget process.<sup>236</sup> In May 2017 a Colmar Brunton report commissioned by Treasury included recommendations that centred round greater transparency and openness in engagement with citizens, the Budget process and data that informs the Budget.<sup>237</sup>

Commitment 1 in New Zealand's OGP National Action Plan 2016-18 sought to make the Budget more open, accessible, and understandable to promote wider public discussion and debate on fiscal matters and move towards public participation in the budget process. The OGP's independent review on this commitment concluded that while access to the budget was improved, the changes were generally unknown, even by commentators on the budget.<sup>238</sup>

From a comparative OECD perspective, the New Zealand legislature's role in the budget process looks "weak" because there is no upper House and Parliament has restricted authority to amend

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<sup>233</sup> Peter Waller and Mark Chalmers, *An Evaluation of Pre-Appointment Scrutiny Hearings* (London: Liaison Committee, House of Commons, 2010).

<sup>234</sup> The UN General Assembly endorsed the GIFT high-level principles in December 2012. GIFT is a multi-stakeholder initiative led by the International Monetary Fund, the World Bank, the International Budget Partnership, the governments of Brazil and the Philippines, and other official sector and civil society entities. The principles are available from the GIFT website, [fiscaltransparency.net](http://fiscaltransparency.net)

<sup>235</sup> "Public participation in the budget process", *Open Budget Survey 2012*, Chapter 4 (Washington D. C.: International Budget Partnerships, 2012).

<sup>236</sup> As above – *Open Budget Index 2017*

<sup>237</sup> See <https://treasury.govt.nz/sites/default/files/2017-07/towards-open-budget-may17.pdf>

<sup>238</sup> See <https://www.opengovpartnership.org/documents/new-zealand-end-of-term-report-2016-2018>

the Budget.<sup>239, 240</sup> There is no parliamentary Budget office or other independent source of advice on fiscal policy,<sup>241</sup> and no provision for public submissions on the annual Budget.

Such comparisons do not take account of the very positive impact of the highly transparent and frequent general elections that characterise New Zealand public governance, but it would be risky to dismiss them on the basis of New Zealand's self-perceived constitutional exceptionalism. The public sector pillar report observes that while the executive has accounted to the legislature on the use of funds and powers for outputs, reporting on the impact of policies and services has been sparse and unsystematic. There has been little evaluation of the impact of major public management policies despite their importance to citizens and future governments.

With scarce analytical resources of its own, the result is that Parliament has addressed such matters only if third parties report them. In 2013 changes to the Public Finance Act 1989<sup>242</sup> covered impact reporting and the policy and regulatory stewardship responsibilities of the public service,<sup>243</sup> which should, when implemented, enable Parliament to strengthen the monitoring of government effectiveness.

### 1.3.2 Legal reforms

#### To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

Score: 3

*Parliament has effective processes for addressing instances of corruption, but it does not use its select committees to give appropriate oversight and priority to bribery and corruption and to the promotion of national integrity at home and abroad.*

Parliament combats public sector corruption through questions in the House, the scrutiny of the select committees, and the activities of the parliamentary officers: the Auditor-General and the Ombudsmen, with the support of the OIA.

The 2013 NIS found that the fight against corruption had not had high priority for Parliament in recent decades. It noted that the global financial crisis, some relaxation of regulatory oversight,

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<sup>239</sup> Standing Orders 318–322 provide that an individual MP or a select committee may propose amendments to the Budget, but that the government may veto any amendments that, in its view, would have more than a minor impact on the fiscal aggregates or on the composition of a Vote. See House of Representatives, *Standing Orders of the House of Representatives*, 2011. <https://www.parliament.nz/mi/pb/parliamentary-rules/standing-orders/>

<sup>240</sup> No amendments to the government's Budget proposal have been approved in recent years. This is not to imply that Parliament should be able to significantly amend the Budget in a Westminster system. What authority a legislature should have to amend the executive's Budget proposal is a fundamental issue of constitutional choice, and no position is being taken on that here. However, the weakness of amendment authority perhaps reduces the incentives for MPs to engage in in-depth analysis and debate on the Budget.

<sup>241</sup> The Finance and Expenditure Committee of Parliament is responsible for oversight of fiscal management and is chaired by a member of the governing party. The committee has not sought independent advice on fiscal policy in recent years, although funding is available for it to do so and it has done so with respect to monetary policy.

<sup>242</sup> Public Finance (Fiscal Responsibility) Amendment Bill.

<sup>243</sup> Described in the public sector pillar report (pillar 4).

and the diversification of the economy and of society had given rise to new risks and problems, including fraud, fiduciary failures, and tax evasion. By 2018 there was also a significant increase in, and reliance on, and access to, technology, thus enabling cybercrime and the significant risks associated, including bribery and corruption. However, there had been some progress in updating New Zealand's corruption and bribery legislation.<sup>244</sup>

New Zealand's business interests are becoming increasingly global. As shown in 2013 in China,<sup>245</sup> illegal actions by foreign subsidiaries of New Zealand firms can have a wider impact on New Zealand's national brand. There is evidence that the relative ease of company registration in New Zealand has been exploited for fraudulent purposes by international actors. The problem has now (2018) at least partly been addressed by legislation.<sup>246</sup>

In 2002, Cabinet authorised New Zealand to sign UNCAC, subject to Parliament examining the Convention and the passage of necessary legislation. The Foreign Affairs, Defence and Trade Committee completed its examination of the Convention in May 2012 and reported it had no issues to raise with the House. Parliament has already fulfilled some Convention obligations by passing the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Criminal Proceeds (Recovery) Act 2009. Since then there have been amendments to the Crimes Act 1961, the Secret Commissions Act 1910, and Mutual Assistance in Criminal Matters Act 1992, and the Convention was ratified in December 2015.<sup>247</sup>

New Zealand is a party to the OECD's Anti-Bribery Convention, and, in response to it, the Crimes Act was amended in 2001 to make bribery of a foreign public official an offence.<sup>248, 249</sup>

Several domestic commentators have raised concerns about the risks of rising corruption in New Zealand society and observed the lack of a focused official response.<sup>250</sup> There is concern that New Zealand's excellent ranking in TI's Corruption Perceptions Index is inducing a misguided sense of complacency. While specific cases of corruption increasingly feature in parliamentary debates, it is not evident that Parliament uses its select committee process to give bribery and corruption and the promotion of national integrity, the oversight and priority they deserve.<sup>251</sup>

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<sup>244</sup> See amendments to Crimes Act and Secret Commissions Act noted in Chapter 4

<sup>245</sup> Fonterra's problems of subsidiaries selling contaminated milk, "Fonterra's Chinese Milk Scandal". *The New Zealand Herald* website August to November 2013.

<sup>246</sup> Limited Partnerships Amendment Act 2014 and Companies Amendment Act 2014

<sup>247</sup> See <https://www.beehive.govt.nz/release/nz-ratifies-un-convention-against-corruption>

<sup>248</sup> The Crimes Act 1961 was amended by the Crimes Act Amendment Act 2001.

<sup>249</sup> Transparency International New Zealand has done several biennial assessments of New Zealand's enforcement of the convention. This is discussed in the law enforcement pillar report (pillars 5 and 9).

<sup>250</sup> For example, Deloitte, "Bribery and corruption: Exposure, enforcement and accountability key risks for New Zealand organisations", press release, 13 September 2012.

<sup>251</sup> Transparency International New Zealand, "Still not enough action on foreign corruption by New Zealand", press release, September 2012.

#### 1.4.1 Te Tiriti o Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the legislature 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 the legislature has 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?**

*Parliament is directly and continuously engaged in Treaty of Waitangi matters. It appears to give effect to its spirit and principles.*

The Treaty of Waitangi looms large in the business of Parliament. In 1985, Parliament passed legislation to allow the Waitangi Tribunal to investigate claims of breaches of the Treaty that had occurred from as early as the signing of the Treaty in 1840. The last phase of a claim settlement is legislation. The first settlement bill was passed in the 1990s, and, as time has passed, the flow of finalised settlements has increased. Five settlement bills were before Parliament in 2013, and by July 2018 a further 32 Acts had been passed with a further five before Parliament.<sup>252</sup> The final process is nicely captured in the following description from the Parliament website:<sup>253</sup>

Sometimes the signing of settlement documents takes place in Matangireia (the former Māori Affairs Committee Room in Parliament House), under the gaze of early Māori members of Parliament whose portraits adorn the walls alongside a large reproduction of the Treaty of Waitangi.

Treaty settlement legislation usually contains a Crown apology for historic Crown actions and omissions that were in breach of the treaty, and a package of cultural and commercial redress. In combination, the redress aims to recognise the claimants' historical grievances, restore the relationship with the Crown, and contribute to their economic development.

The passage of settlement legislation usually enjoys strong support across the House. The conclusion of that passage is a momentous occasion. Members of the claimant communities travel to Wellington to witness and celebrate the historic event.

Te reo, the Māori language, came into Parliament with the first Māori MPs in 1868. Māori language was permitted and interpreters were provided – but not encouraged. The understanding was that statements in Māori should be brief. Parliament made Māori an official language in 1985. *Hansard* is published in both Māori and English, and parliamentary broadcasts include Māori to English translation.

At the 2017 general election, 27 Māori MPs entered Parliament – the highest number in its history.<sup>254</sup> Parliament appoints a kaumātua (elder), who manages the Māori components of all formal and important ceremonies and events for the Speaker and the Speaker's departments,

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<sup>252</sup> See <https://www.govt.nz/organisations/te-kahui-whakatau-treaty-settlements/>

<sup>253</sup> New Zealand Parliament, "Treaty of Waitangi Settlements and the House of Representatives", 16 July 2012 [www.parliament.nz/en-nz/features/00NZPHomeNews201207161/treaty-of-waitangi-settlements-and-the-house-of-representatives](http://www.parliament.nz/en-nz/features/00NZPHomeNews201207161/treaty-of-waitangi-settlements-and-the-house-of-representatives)

<sup>254</sup> See [https://www.kiwiblog.co.nz/2017/10/the\\_52nd\\_new\\_zeland\\_parliament\\_demographics.html](https://www.kiwiblog.co.nz/2017/10/the_52nd_new_zeland_parliament_demographics.html)

the Office of the Clerk, and the Parliamentary Service.<sup>255</sup> The kaumātua supports the kaiwhakarite (functions coordinator) for the Parliamentary Service, and advises on Māori protocol, procedures, and policies relating to te reo and tikanga (Māori law, rules, and practice).

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<sup>255</sup> New Zealand Parliament, “New kaumātua for Parliament appointed”, 7 May 2009  
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## Political executive – Cabinet (pillar 2)

### Summary

*The 2018 update of this pillar report includes data updating and the addition of some comment on developments since then. All such comment is either dated 2018 or clearly refers to developments since 2013.*

“In New Zealand’s system of government, Parliament sets the rules and the courts decide disputes. But it is the Ministers of the Crown who make the decisions. Those decisions are often hard ones. But Cabinet is the place where the hardest decisions must be made.”<sup>256</sup>

The executive is made up of the Prime Minister, Cabinet, and organisations that comprise the public service and the wider state sector. The executive conducts the government, deciding on policy and administering legislation.<sup>257</sup> This pillar report covers the Prime Minister and Cabinet in their collective interest role of leading and coordinating government, and the institutional and legal framework that supports this role. Interactions between portfolio Ministers and the public sector and between the executive and Parliament are covered in the legislature and public sector pillar reports.

The Cabinet has great power to make policy decisions, and the Prime Minister is powerful within it, having the ability to decide on, and to change, ministerial portfolios. Statutory power to give legal effect to policy decisions rests with the Executive Council, which has no policy decision-making power. The powers of the Prime Minister and Ministers are defined in statutes, but how they work collectively is a matter of convention, custom, and the personal preference and management style of the Prime Minister. In practice, Cabinet members demonstrate high compliance with the statutory requirements for their areas of responsibility and with Cabinet conventions. This reflects the overall transparency of the executive’s activities and the exposed political environment of Cabinet. Cabinet Ministers are also MPs owing allegiance to Parliament, to their political party, and to their electorate through elections every three years or more frequently.<sup>258</sup>

The Cabinet system and the wider public sector governance system in which it is embedded generally provide high transparency of, and accountability for, decision-making and implementation and promote ministerial integrity. This important outcome is attributable to a tradition of effective self-regulation through the *Cabinet Manual*,<sup>259</sup> comprehensive and coherent rules governing ministerial direction of the public sector and reporting of public sector

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<sup>256</sup> Marie Shroff, “How government works: Making the hard decisions”, *DecisionMaker* (excerpt from a speech by Shroff in 2002) [www.decisionmaker.co.nz/guide2005/hgw%2005/harddecisions.html](http://www.decisionmaker.co.nz/guide2005/hgw%2005/harddecisions.html).

<sup>257</sup> Cabinet Office, “Cabinet decision making”, in Cabinet Office, *Cabinet Manual 2008*, Chapter 5 (Wellington: Department of the Prime Minister and Cabinet, 2008) <http://cabinetmanual.cabinetoffice.govt.nz>.

<sup>258</sup> Cabinet Office, “National-led administration: Consultation and operating arrangements”, Cabinet Office Circular CO (12) 03, 1 May 2012 [www.dpmc.govt.nz/cabinet/circulars/co12/3](http://www.dpmc.govt.nz/cabinet/circulars/co12/3).

<sup>259</sup> Cabinet Office, *Cabinet Manual 2017* (Wellington: Department of the Prime Minister and Cabinet, 2017) <https://www.dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf>.

activity to the legislature, the independent scrutiny of the officers of Parliament (including the Ombudsman), the OIA, and the use of parliamentary questions.

A key challenge for Cabinet's governance of the public sector is striking the right balance between the whole-of-government interest and the policies and activities of individual portfolio Ministers and their departments. The effectiveness of the self-regulatory nature of the existing public management design<sup>260</sup> was overestimated.<sup>261</sup> It has been found to set up political and administrative incentives that direct insufficient attention to less publicly observable interests such as public sector capacity, cross-departmental public service coordination, the quality of regulation, and the monitoring and evaluation of the longer-run impact of policies.<sup>262</sup> These deficiencies in the design and implementation of the public sector legal framework have undermined Cabinet's collective policy-making effectiveness and weakened the corporate culture within which individual Ministers and chief executives should operate.

Constitutionally, Parliament is sovereign and, as in the original Westminster system, its relationship with the political executive is described as "fused" rather than separate. However, many other countries have constitutional or statutory protection for levers of power that in New Zealand are at the sole disposal of the executive. One such area is the power to select board members for most statutory bodies. These decisions are made in Cabinet. The nomination process addresses merit and conflicts of interest, but the final decision is open to nominees who have not been through the normal selection process, including nominees from the ruling parties' caucuses. A small but significant number of such decisions give the appearance of political patronage, and this has caused public concern. The problem is not political connections per se, but the need to maintain public confidence that the statutory "arm's length" independence of such bodies from government is being respected.

In 2011 the government, supported by the three central agencies (the State Services Commission (SSC), the Treasury, and the Department of the Prime Minister and Cabinet (DPMC) launched reforms and associated legislative changes to address the collective interest problem areas. This is an important endeavour. The 2013 NIS assessment recognised that resolution would be challenging because to be effective the reforms would require changing decision rights between Cabinet as a whole and individual Ministers as well as between central agencies and individual departments. Success would also require strengthening the quality of public service policy advice, which has been judged to be in decline.<sup>263</sup> By 2018 further reform had been proposed, and the State Sector Act is currently under review.

In putting forward the case for change, the State Services Commission said "Governments these days place great emphasis on addressing complex issues that require a highly organised response from the Public Service. Though the system has improved, it remains the case that the response to highly complex issues, especially those that require sophisticated cross-agency

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<sup>260</sup> Described in the public sector pillar report (pillar 4).

<sup>261</sup> Particularly in respect of the belief that output accountability would replace the need for process controls.

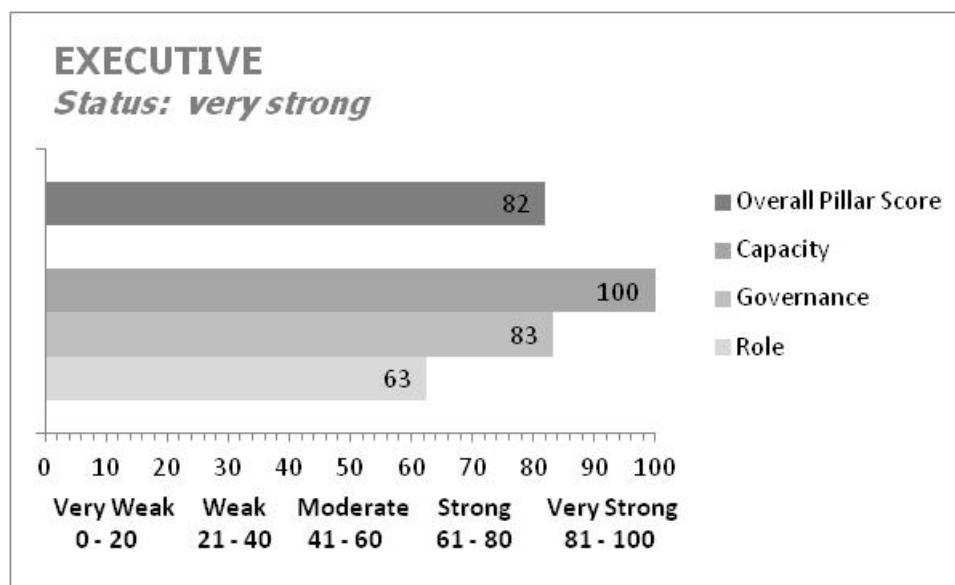
<sup>262</sup> Bill Ryan and Derek Gill, eds., *Future State: Directions for public management in New Zealand* (Wellington: Victoria University Press, 2011).

<sup>263</sup> Review of Expenditure on Policy Advice, *Improving the Quality and Value of Policy Advice: Findings of the committee appointed by the Government to review expenditure on policy advice* (Wellington: Treasury, 2010).

collaboration, is slower than it needs to be. This was shown by the experience of the 10 Better Public Services Results. Successive progress reports to Cabinet on the Better Public Services Results highlighted the extent to which agencies found it challenging to make decisions in the best interests of the broader sector and/or state sector system rather than serving the interests of a single portfolio. Progress reports also highlighted the costs of collaboration between multiple agencies.<sup>264</sup>

Cabinet's power in making policy decisions is balanced by the accountability of Ministers and the transparency of decision-making, although transparency about lobbying needs improvement. In some other respects, Cabinet or ministerial power is not balanced so effectively, and concern about the relative dominance of the executive again emerges as a theme. As examples, in making appointments, Cabinet sometimes introduces candidates outside the normal assessment process, Cabinet Ministers may resist the appropriate independence of the public sector by not encouraging or listening to free and frank advice, Cabinet has on occasion shifted local government roles to central government, and Cabinet may resist the spirit and intent of the OIA in dealing with requests for information. Accountability is relatively weak for the impact and effectiveness of policies. The recommendations in Chapter 6 relating to the executive pick up these areas of concern.

**Figure 4: Political executive scores**



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

The executive branch of government is charged with executing laws and policies and administering public affairs. It consists of Ministers both within and outside the Cabinet, the

<sup>264</sup> <https://www.havemysay.govt.nz/option-2/the-case-for-change/>

public service and the wider state sector. No legislation defines the Cabinet and its powers; these are matters of long-standing convention. This assessment also covers the legislative framework that governs how Cabinet and its Ministers directly oversee and report on the public sector and the central agencies that support the Cabinet in these roles.

The Prime Minister and most Ministers of the Crown serve as the members of Cabinet.<sup>265</sup> All Ministers of the Crown, whether they are inside or outside Cabinet, are members of the Executive Council, the highest formal instrument of government whose principal functions are to advise the Governor-General and make regulations and other orders in council (appointments and such like). The Governor-General presides over, but is not a member of, the Executive Council. When a new Cabinet is sworn in, Ministers are first appointed as executive councillors and then receive warrants for their respective ministerial portfolios.

Each Minister is responsible for exercising the statutory functions and powers under legislation within their portfolios, “within the collective Cabinet decision-making context”.<sup>266</sup> Within Cabinet, the Prime Minister has a dominant role, ultimately constrained only by convention and the need for party and parliamentary support to remain in office.

The most important formal integrity instrument for the Cabinet is the *Cabinet Manual*, which defines the procedures of Cabinet and provides a code of conduct that is an authoritative guide to central government decision-making for Ministers, their offices, and those working within government.<sup>267</sup> It is periodically updated to reflect changes in Cabinet procedures and constitutional developments. Over the years, it has become a primary source of information on New Zealand’s constitutional arrangements and is explicitly endorsed by each Prime Minister at the first Cabinet meeting of a new government.<sup>268</sup>

### **2.1.1 Resources (practice)**

#### **To what extent does the Cabinet have adequate resources to effectively carry out its duties?**

Score: 5

*The Cabinet and the organisations that support it are adequately resourced.*

The remuneration of Ministers is covered in the legislature pillar report and is assessed as adequate. This section focuses on the resourcing of the Cabinet system.

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<sup>265</sup> Cabinet Office, “Executive Council and the Governor-General”, in *CabGuide: Guide to Cabinet and Cabinet committee processes* (Wellington: Department of the Prime Minister and Cabinet)  
<http://cabguide.cabinetoffice.govt.nz/procedures/executive-council-governor-general>.

<sup>266</sup> *Cabinet Manual*, 2017: para. 2.22d.

<sup>267</sup> *Cabinet Manual*, 2017.

<sup>268</sup> It is indicative of the standing of the *Cabinet Manual* that its introduction by Sir Kenneth Keith is regarded as the most definitive account of New Zealand’s constitutional arrangements, and that the manual is widely referred to by constitutionalists and public governance experts. (For example, Hon Dame Silvia Cartwright, Governor-General, “Our constitutional journey”, speech at Government House, May 2006.)

The Prime Minister is responsible for Vote Department of the Prime Minister and Cabinet (DPMC), NZ\$28.9 million is budgeted for 2018/19 covering outputs for<sup>269</sup>

- policy coordination and the provision of policy advice for the Prime Minister, the Cabinet, and Ministers
- support for secretarial services to Cabinet and Cabinet committees and for the New Zealand Royal Honours system<sup>270</sup>
- intelligence coordination and national security priorities
- support for the role and facilities of the Governor-General.

The funds are appropriated by Parliament and accounted for by the Prime Minister as the responsible Minister as required by the Public Finance Act 1989.

DPMC's "overall area of responsibility is in helping to provide, at an administrative level, the 'constitutional and institutional glue' that underlies [New Zealand's] system of parliamentary democracy".<sup>271</sup> Within DPMC is the Cabinet Office, which provides secretarial services for the Cabinet system and the Executive Council.<sup>272</sup> The Prime Minister's Office provides the Prime Minister with political advice. This office operates independently from DPMC's policy advisory role.

Funding for intelligence coordination and security priorities covers the Intelligence Coordination Group, which coordinates relations between the Prime Minister and the intelligence community. This group also supports the Officials Committee for Domestic and External Security Coordination, the National Assessments Bureau, and the Commissioner of Security Warrants. The other organisations comprising the intelligence community, the New Zealand Security Intelligence Service and the Government Communications Security Bureau are not funded through Vote DPMC.

The 2013 NIS noted that a then recent Performance Improvement Framework<sup>273</sup> review of DPMC had concluded that, while the department performed well and had capable staff, its infrastructure and systems were weak and underdeveloped and required new investment.<sup>274</sup> This recommendation was addressed a later Budget Update for DPMC, which increased DPMC's 2013/14 funding by NZ\$2.5 million.<sup>275</sup> It appears that subsequent increases have generally maintained this level of funding (see above).

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<sup>269</sup> See <https://treasury.govt.nz/publications/estimates/vote-prime-minister-and-cabinet-finance-and-government-administration-sector-estimates-2018-2019-html>

<sup>270</sup> Department of the Prime Minister and Cabinet, *Statement of Accountability*, 2012. [www.dpmc.govt.nz/dpmc/publications/ar-2012/0400-accountability](http://www.dpmc.govt.nz/dpmc/publications/ar-2012/0400-accountability). See also *Cabinet Manual*, 2008: 1.30–1.34 and 5.77–5.81.

<sup>271</sup> See [www.dpmc.govt.nz](http://www.dpmc.govt.nz)

<sup>272</sup> Department of the Prime Minister and Cabinet, "The department's role", 2012 [www.dpmc.govt.nz/dpmc/publications/ar-2012/0200-role](http://www.dpmc.govt.nz/dpmc/publications/ar-2012/0200-role).

<sup>273</sup> The Performance Improvement Framework process is described in the public sector pillar report (pillar 4).

<sup>274</sup> State Services Commission, Treasury, and Department of the Prime Minister and Cabinet, *Review of the Department of the Prime Minister and Cabinet (DPMC)* (Wellington: New Zealand Government, 2013).

<sup>275</sup> Treasury, "Budget 2013 information release, 2013 [www.treasury.govt.nz/publications/informationreleases/budget/2013](http://www.treasury.govt.nz/publications/informationreleases/budget/2013).

### **2.1.2 Independence (law)**

#### **To what extent is the Cabinet independent by law?**

Score: 5

*The independence of the Prime Minister and Cabinet is embedded in law and constitutional convention. In exercising their powers, the Prime Minister and Ministers are bound by the legal framework for the public sector, laws relating to particular portfolios, and the decisions of relevant statutory bodies and officers.*

Under the Letters Patent Constituting the Office of Governor-General of New Zealand, the Governor-General appoints the Prime Minister and Ministers. By constitutional convention, the Queen and the Governor-General act only on the advice of the Prime Minister or Ministers who have the support of the House of Representatives. Thus, as stated in Sir Kenneth Keith's introduction to the *Cabinet Manual*, "The Queen reigns ... but the Government rules ... so long as it has the support of the House of Representatives".<sup>276</sup>

Under the Constitution Act 1986, the Letters Patent Constituting the Office of Governor-General, the New Zealand Bill of Rights 1990, and the Public Finance Act 1989, the Crown may not levy taxes, raise loans, or spend public money except by or under an Act of Parliament. The government, particularly through the Minister of Finance, is responsible for exercising the statutory public finance powers. The Queen and Governor-General (subject to the convention mentioned above) have powers to appoint and dismiss Ministers and other holders of important offices, to summon and dissolve Parliaments, to assent to bills passed through the House, and make regulations and Orders submitted to them by the Executive Council and Ministers. In rare cases the Governor-General may exercise a degree of personal discretion, under what are known as the "reserve powers".<sup>277</sup> According to the *Cabinet Manual*, even then, convention usually dictates what decision should be taken.<sup>278</sup>

The Prime Minister is the head of government and he or she alone, by constitutional convention, can advise the Governor-General to dissolve Parliament and call an election and can appoint, dismiss, or accept the resignation of Ministers. Ministers constitute the executive arm of government. Their powers rise from legislation and common law, and they are supported in their portfolios by the public service. In exercising their powers the Prime Minister and Ministers are bound by the legal framework for the overall governance of the public sector, including fiscal

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<sup>276</sup> Sir Kenneth Keith, "On the constitution of New Zealand: An introduction to the foundations of the current form of government", in *Cabinet Manual* (Wellington: Department of the Prime Minister and Cabinet, 2017: Introduction p 3) <https://www.dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf>.

<sup>277</sup> In 1984, the Governor-General did not take Prime Minister Robert Muldoon's advice to call a snap election until he had been assured that a majority of the House of Representatives supported the Prime Minister.

<sup>278</sup> *Cabinet Manual*, 2017: para. 1.18.

governance, the laws relating to particular portfolios, and the decisions of individuals and bodies under statutes that require them to act independently.<sup>279, 280, 281</sup>

### 2.1.3 Independence (practice)

#### To what extent is the Cabinet independent in practice?

Score: 5

*The Cabinet is independent in practice. No other institution, public or private, interferes with its lawful activities and decisions.*

While New Zealand does not have constitutionally autonomous branches of the state as exist in the United States and much of Europe, there is a separation of powers in the sense of having an independent judiciary, along with executive and legislature branches which each have separate areas of competence and functionality.

Within DPMC, special organisational and staffing arrangements provide assurance that the Cabinet Office is independent and non-partisan in its support for Cabinet and the Executive Council, and that the Prime Minister's non-political Policy Advisory Group operates independently. While the chief executive of DPMC supports the Prime Minister as head of government, the Cabinet Secretary supports the Prime Minister as the chair of Cabinet.<sup>282</sup> These arrangements have given little cause for public or political concern.

There was public concern about the government's independence when the Prime Minister and his staff got involved in direct negotiations with SkyCity Entertainment Group Ltd concerning its proposal to build a convention centre in exchange for regulatory concessions. No evidence was found that the commercial actor was exerting undue influence on public policy. However, an OAG inquiry found deficiencies in the procurement process, which contributed to a perception of favouritism.<sup>283</sup> Also, as discussed in the public sector pillar report, the government's decision process did not comply with established principles of fiscal transparency.

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<sup>279</sup> Especially the Public Finance Act 1989, State Sector Act 1988, and Crown Entities Act 2004.

<sup>280</sup> For example, the laws covering foreign affairs, defence, inland revenue, customs, resource management, and local government.

<sup>281</sup> In addition to statutory bodies such as the Law Commission and Commerce Commission, some departmental chief executives exercise statutory powers for some functions, for example, the Commissioner of Inland Revenue, Secretary to the Treasury, State Services Commissioner, Commissioner for the Environment, Government Statistician, and Secretary for Transport. Also, some staff within departments have statutory powers such as the Director of Public Health, Registrar of Companies, and Surveyor-General: State Services Commission, *State Sector Management Bill: Supplementary Information*, submission to the Education and Science Committee, 6 October 2010.

<sup>282</sup> Interview with Diane Morcom, former Secretary of Cabinet, 14 February 2012.

<sup>283</sup> Office of the Auditor-General, *Inquiry into the Government's Decision to Negotiate with Sky City Entertainment Group Ltd for an International Convention Centre*, 2013.

### 2.2.1 Transparency (law)

**To what extent are there regulations in place to ensure transparency in relevant activities of the Cabinet?**

Score: 4

*There is robust legal provision for the transparency of Cabinet and individual Ministers including the Standing Orders of Parliament, the OIA, the Public Finance Act 1989, and the Register of Pecuniary Interests. New Zealand, unlike similar countries, does not have legislation to ensure the lobbying of Ministers is transparent.*

**Cabinet minutes:** There is no blanket exemption for Cabinet material (or indeed any class of papers) from the disclosure obligations under the OIA. Requests for Cabinet material must be considered on their merits against the criteria in the OIA. Information held by a Minister in his or her capacity as a member of a political party or as an MP (for example, caucus material), however, is not official information for the purposes of the OIA. Furthermore, the Attorney-General, when performing law officer functions, is not subject to the OIA. Where the Minister decides that departmental information should not be released, the request may be transferred by the department to the Minister (if the department considers the information to be more closely connected with that Minister's functions), and the Minister is then responsible for fulfilling his or her obligations under the OIA.

Cabinet minutes are distributed within two to three days of a Cabinet meeting. They cover the decisions made, but not the Cabinet discussion. Minutes are sent to portfolio Ministers, with a copy for their department if the Minister agrees. If not, the department may be sent a summary or excerpts.

In August 2017 the Cabinet Office issued guidance to agencies on the proactive release of Cabinet material, which provides that:"It is generally expected that Cabinet material on significant policy decisions will be released proactively once decisions have been taken, most often through publication online. Where possible, papers and their relevant minutes should be proactively released together to ensure context for readers."<sup>284</sup>

In September 2018 the coalition government announced that from 1 January 2019, Cabinet papers will be released within 30 business days of the Cabinet decision unless there is good reason not to publish.<sup>285</sup>

**Financial information:** The provisions of the Public Finance Act 1989 apply to the resources provided for the Prime Minister and his or her department and the Votes for which individual Ministers are responsible. The estimates, appropriations, and independently audited financial reports are available to Parliament and the public and are scrutinised by the House and its

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<sup>284</sup> See <https://www.dpmc.govt.nz/publications/proactive-release-cabinet-material>

<sup>285</sup> See <https://www.beehive.govt.nz/release/government-proactively-release-cabinet-papers-%E2%80%93-and-open-government-action-plan-be-issued>

committees. A fuller description of fiscal transparency is in the legislature and public sector pillar reports.<sup>286</sup>

**Conflict of interest provisions:** All Ministers, as MPs, are required to disclose certain assets and interests in the annual Register of Pecuniary Interests of Members of Parliament. This register is designed to promote accountability and transparency by identifying personal financial interests that might influence MPs. Each year, the Clerk of the House publishes these interests in summary form. The *Cabinet Manual* provides, specifically for Ministers, further principles and guidance on avoiding the reality and perception of conflicts of interest. In 2013, the government accepted a recommendation from the Chief Ombudsman for regular and proactive disclosure of information about the management of ministerial conflicts of interest.<sup>287</sup>

In August 2013, a select committee rejected a private member's Lobbying Disclosure Bill,<sup>288</sup> which proposed a public register for lobbyists of MPs (including Ministers) and requirements for them to follow a code of ethics drawn up by the Auditor-General and to file quarterly returns. The draft legislation proposed it be a criminal offence for unregistered corporate lobbyists, union members, or workers with non-government organisations to lobby MPs. The Attorney-General opposed the draft legislation on the grounds that it would limit freedom of expression and that the bill went beyond what was necessary to limit the activities of lobbyists.

Some other Commonwealth countries have such laws.<sup>289</sup> The small size of New Zealand society is not a good argument against making the lobbying of Ministers more transparent.<sup>290</sup> The select committee, in rejecting the bill, nevertheless made the important recommendation that Parliament should change its own rules to provide more transparency about lobbying.

Action since 2013 on the regulation of lobbyists includes an undertaking to review the list of lobbyists with access to Parliament and to require them to agree to have their names made public<sup>291</sup> and an announcement in December 2018 that Cabinet has agreed to the release of summary information from their Ministerial diaries from January 2019 onwards, with the first publication in February 2019.<sup>292</sup> The processes for this would benefit from streamlining such as informing visitors to Parliament that their electronic diary references will be published instead of seeking permission after the visit.

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<sup>286</sup> See also Murray Petrie, *Integrity Plus 2013: New Zealand National Integrity System Assessment – Fiscal transparency*, supplementary paper 3 (Wellington: Transparency International New Zealand, 2013) [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>287</sup> Office of the Ombudsman, "Chief Ombudsman recommends regular and proactive disclosure of information about ministerial conflicts of interest", 31 January 2013.

<sup>288</sup> "MPs decide law to restrict lobbyists unnecessary in 'village New Zealand'", *New Zealand Herald*, 24 August 2013.

<sup>289</sup> New Zealand Parliament, "Lobbying Disclosure Bill", July 2012 [www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH\\_BILL11278\\_1/lobbying-disclosure-bill](http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL11278_1/lobbying-disclosure-bill).

<sup>290</sup> Claims have been made that direct lobbying from farmers was a driving force in the legislation passed under urgency to suspend the powers of Environment Canterbury (covered in the public sector pillar report (pillar 4)). Farmers are an important interest group for decisions on water use, but these interests should be a transparent part of the statutory decision-making process.

<sup>291</sup> See <https://www.stuff.co.nz/national/politics/98473124/list-of-lobbyists-with-access-to-parliament-to-be-reviewed-by-new-speaker>

<sup>292</sup> See <https://www.beehive.govt.nz/release/government-proactively-release-ministerial-diaries>

## 2.2.2 Transparency (practice)

### To what extent is there transparency in relevant activities of the Cabinet in practice?

Score: 4

*Cabinet is transparent in practice, except concerning appointments by Ministers to state sector boards.*

The provisions for transparency in the activities of the Cabinet are generally effective. Cabinet Ministers operate in a publicly exposed environment in which the Prime Minister and political parties are under strong political incentives to deal with ministerial breaches of the rules. Transparency is reinforced by the high fiscal transparency of the public sector, the OIA, parliamentary questions, and the scrutiny of select committees. As covered in the accountability section of this report, several Ministers have lost their posts when found in breach of *Cabinet Manual* provisions.

A matter for integrity concern is apparent party political bias in a few appointment decisions taken in the context of the Cabinet Appointments and Honours Committee. Despite improvements in recent years in the supporting bureaucratic process, the final political decision-making is opaque<sup>293</sup> and provides limited public assurance against the risk of political patronage.

Each year the Crown appoints members to some 400 bodies. The administrative process supporting such appointments is managed by the departments concerned and the SSC or the Treasury.<sup>294</sup> These processes meet good standards,<sup>295</sup> but the final ministerial decision is taken in the Cabinet Appointments and Honours Committee, meeting in camera and having also received advice from party caucuses. There is a perception<sup>296</sup> and some research<sup>297</sup> evidence that Ministers sometimes put their “friends” on these boards. This perception is damaging to citizens’ confidence that the arm’s-length principle that underpins the Crown entity system is being respected. This is a case where Cabinet should consider ways to reassure the public that it is using its powers in the public interest.<sup>298</sup>

The appointment process is already replete with guidance and rules. The assurance of public confidence in this area would benefit from the application of a New Zealand equivalent to the

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<sup>293</sup> The committee notes the decisions of portfolio Ministers; it does not make the decisions: Cabinet Office, “Appointments”, *CabGuide*, [cabguide.cabinetoffice.govt.nz/procedures/appointments](http://cabguide.cabinetoffice.govt.nz/procedures/appointments)

<sup>294</sup> The departments involved, or the SSC, identify candidates for board positions for statutory Crown entities, statutory tribunals and regulatory bodies, and a variety of other bodies and agencies with boards in the state services. The Crown Ownership Monitoring Unit in Treasury advises Ministers on candidates suitable for appointment to the boards of entities such as state-owned enterprises, the Crown financial institutions, other Crown entity companies, and statutory entities and for the boards of Crown research institutes. Ministers make 5–60 new Crown company appointments each year.

<sup>295</sup> Such guidance is provided by the SSC and the Cabinet Manual.

<sup>296</sup> This finding is drawn from media reports (referred to in the public sector pillar report (pillar 4)) and from interviews of former and current state sector board members.

<sup>297</sup> Richard Norman, “How should state-owned enterprises be governed?”, *Public Sector* vol. 30(4), 2008.

<sup>298</sup> The United Kingdom created the position of Commissioner of Public Appointments.

“Nolan Rules” in the United Kingdom,<sup>299</sup> which reaffirm ministerial responsibility for appointments but have other trust promoting criteria.

In 2015, the SSC responded to the recommendations in the 2013 NIS assessment. On the question of appointments, it said

“Good guidance is available for Boards and Ministers, in the form of *It Takes Three: Operating Expectations Framework*, published in 2014. The guidance explains the respective roles and responsibilities of Ministers, Crown entities and monitoring departments to build a shared understanding of how legislative obligations are appropriately put into practice. SSC’s Board Appointment and Induction Guidelines were updated in 2015 and provide greater clarity about the roles and responsibilities of Ministers, Monitoring departments and Boards. More recent amendments to the State Sector Act allow the State Services Commissioner to apply a code of conduct to Board members.”<sup>300</sup>

The Commercial Operations Group (formerly COMU) of The Treasury also continues to do work in relation to appointments.”<sup>301</sup>

### 2.2.3 Accountability (law)<sup>302</sup>

**To what extent are there provisions in place to ensure that members of the Cabinet have to report and be answerable for their actions?**

Score: 5

*The law and processes for ensuring the accountability of Cabinet and of individual Ministers are comprehensive.*

**Ministerial accountability:** All Cabinet members must be MPs, so face general elections every three years or more frequently. They are also accountable for their actions if they break the law. Under a constitutional convention, Ministers are individually responsible and accountable for:

- their decisions within their portfolio responsibilities
- their own professional and personal conduct
- the decisions and actions of individuals and organisations for which they have ministerial responsibility.

On the advice of the Prime Minister, the Governor-General may dismiss a Minister at any time so Ministers are largely obliged to work within a Cabinet framework as determined by the Prime Minister. In this forum, Ministers jointly discuss the policy that the government as a whole will

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<sup>299</sup> See the discussion of these rules in the Australian context in John Halligan, Bryan Horrigan, and Geoffrey Nicoll, “Appointments and boards”, in *Public Sector Governance in Australia*, Chapter 9 (Australian National University, 2012).

<sup>300</sup> See <https://www.parliament.nz/en/pb/bills-and-laws/bills-digests/document/52PLLaw25391/state-sector-and-crown-entities-reform-bill-2018-bills>

<sup>301</sup> See <http://www.ssc.govt.nz/tinz> at p 9.

<sup>302</sup> This section draws, in part, on an interview with Elizabeth McLeay, academic and author on New Zealand Cabinet governance.

pursue. Ministers who do not exercise their powers in a manner compatible with Cabinet's decision risk losing those powers.

The *Cabinet Manual* says, "Ministers are accountable to the House for ensuring that the departments for which they are responsible carry out their functions properly and efficiently. On occasion, a Minister may be required to account for the actions of a department when errors are made, even when the Minister had no knowledge of or involvement in, those actions."<sup>303</sup> Other forms of accountability include the obligation on a responsible Minister to explain unappropriated expenditure when it is validated through a Financial Review Bill.<sup>304</sup>

There is an entrenched expectation that MPs, including Ministers, will disclose and explain their actions. The Standing Orders of the House of Representatives list, "deliberately attempting to mislead the House or a committee" as representing contempt of the House, to be dealt with by the Privileges Committee.<sup>305</sup> The Speaker can, and often does, insist on a clear response from Ministers in the House.

**Collective responsibility:** According to the *Cabinet Manual*, "The principle of collective responsibility underpins the system of Cabinet government. It reflects the democratic principle that the House expresses its confidence in the collective whole of government, rather than in individual Ministers."<sup>306</sup>

Under the mixed-member proportional representation electoral system, however, the principle has been modified to allow for minority parties in coalition governments to "agree to disagree" with the majority party on specific issues. Over time, the *Cabinet Manual* has accepted the legitimacy of the agreement to differ.<sup>307</sup> The coalition government elected in 2017 has laid out its requirements for its coalition partners in a Cabinet circular that says, among other things, that:

"Labour and New Zealand First Ministers as members of the coalition are subject to the principle of collective responsibility as set out in the Cabinet Manual. This means that once Cabinet makes a decision, Ministers must support it (unless "agree to disagree provisions apply) regardless of their personal views and whether or not they were at the meeting concerned."<sup>308</sup>

"Collective responsibility applies differently in the case of the Green party which is not a coalition partner but supports the government with a confidence and supply agreement. Support party Ministers are only bound by collective responsibility in relation to their own respective portfolios (including any specific delegated responsibilities). When support party Ministers speak about the issues in their portfolios, they speak for the government and as part of the government. When the government takes decisions within their portfolios, they must support those decisions, regardless of their personal views and whether or not they were at the meeting concerned. When support party Ministers speak about matters outside their portfolios, they may speak as

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<sup>303</sup> *Cabinet Manual*, 2017: para 3.27

<sup>304</sup> Public Finance Act 1989, section 26C.

<sup>305</sup> *Standing Orders of the House of Representatives*, 2011, Standing Order 407. [www.parliament.nz/en-nz/pb/rules/standing-orders](http://www.parliament.nz/en-nz/pb/rules/standing-orders)

<sup>306</sup> *Cabinet Manual*, 2017: para. 5.24.

<sup>307</sup> Vernon Bogodor, *The Coalition and the Constitution* (UK: Hart Publishing, 2011).

<sup>308</sup> See <https://www.dpmc.govt.nz/sites/default/files/2017-12/coc-17-10.pdf>

political party leaders or members of Parliament rather than as Ministers, and do not necessarily support the government position.”<sup>309</sup>

As covered in the legislature pillar report, the Standing Orders require the government to articulate its policies and give account to the House in the State of the Nation address and in the debates during the examination of the Budget. MPs may ask oral and written questions of Ministers and question Ministers when they appear before select committees. Oral questions are a key part of the daily regime of the House. The Public Finance Act 1989 requires comprehensive information on the intentions and performance of departments and agencies under each ministerial portfolio, as well as for the government as a whole, and this contributes to their accountability both to Parliament and to the public. All government expenditure and regulation comes under the scrutiny of the OAG and, in some areas, of other officers of Parliament.

Accountability is also enhanced by statutory bodies such as the Law Commission, which reviews the quality of law-making, and the External Reporting Board, which sets standards for the financial reporting of government. Standing Orders also make provision for the public to witness Parliament, holding the government accountable through the public gallery, the press gallery, and the publication and broadcasting of House proceedings.

#### **2.2.4 Accountability (practice)**

##### **To what extent is there effective oversight of Cabinet in practice?**

Score: 5

*Cabinet accountability is reinforced by the incentives arising from political contestation within Parliament and by high public exposure. In practice, Ministers are held to account at least for publicly visible mistakes or accidents involving organisations in their portfolios.*

The decisions and actions of Ministers and their departments are, in practice, reviewed by parliamentary select committees, questions in the House, royal commissions, commissions of inquiry, judicial reviews, and the offices of the Auditor-General, Ombudsmen, and Privacy Commissioner. In addition, public scrutiny of the executive is close. Where ministerial or departmental actions are controversial, Ministers ultimately find it difficult to avoid explaining themselves to the media.

The OAG has undertaken several politically sensitive inquiries. These include inquiries into negotiations with SkyCity Entertainment Group Ltd for an international convention centre, board-level governance of the Accident Compensation Corporation, and the Department of Internal Affairs management of spending that could give personal benefit to Ministers. The government took these reports seriously, and there is no evidence of its trying to impede the investigations.

The consequences for Ministers of errors or accidents in their department depend in practice on the risk to the government’s reputation and perceptions of the Minister’s culpability

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<sup>309</sup> See <https://www.dpmc.govt.nz/sites/default/files/2017-12/coc-17-10.pdf>

compared with that of the chief executive. Any sanctions are determined by the Prime Minister. There is a view that if the matter is serious, the Minister should resign forthwith, but in practice Ministers sometimes stay on to “put things right”.<sup>310</sup> Resignation is more likely with a failure in the Minister’s personal integrity. Sometimes the minister resigns from Cabinet, and in other cases the minister loses the portfolio in question but retains others.<sup>311</sup>

The key finding is that ministers are held to account at least for publicly visible mistakes or accidents involving organisations in their portfolios. The main drivers of accountability are the incentives created by political contestation within Parliament and by high public exposure. This means penalties also depend on politics.

### **2.2.5 Integrity (law)**

#### **To what extent are there mechanisms in place to ensure the integrity of Cabinet ministers?**

Score: 4

*The Cabinet Manual is a comprehensive “code of conduct” for Ministers, and it commands high respect. However, Cabinet gives low priority to the further development of its integrity framework. Two unregulated areas of risk for the New Zealand executive are post-ministerial employment and the activities of lobbyists.*

The most important formal instrument relating to the integrity of Ministers is the *Cabinet Manual*.<sup>312</sup> The manual has no legal status. In form it is descriptive and not prescriptive.<sup>313</sup> However, in the context where Cabinet is itself a creature of convention, the manual’s influence comes from the principles, laws, and conventions it draws together; the focus on the behaviour of Ministers; and the fact each new government formally accepts its provisions. The manual has commanded the respect of successive governments and, increasingly, the wider community. As a former Minister summed up, “The *Cabinet Manual* is now seen as an essential element of transparent governance.”<sup>314</sup> Two decades ago the manual had very restricted distribution. It is now readily available on the internet.

The *Cabinet Manual* provides the code of conduct for Ministers. It provides detailed guidance for Ministers covering conduct; public duty and personal interests; gifts; fees, endorsements, and outside activities; government advertising guidelines; and ministerial travel. As MPs, Ministers are required to make an annual declaration of interests, including employment and

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<sup>310</sup> The responsible Minister at the time of the Cave Creek tragedy in 1995 stayed on as Minister for Conservation for seven months and remained in Cabinet.

<sup>311</sup> A former Minister of Labour resigned from that portfolio following the release of the critical Royal Commission report on the Pike River Coal Mine tragedy, but remained as a Minister in Cabinet with her other responsibilities. More recently, a Minister resigned her portfolios as Minister of Government Digital Services and Minister of Open Government but kept her Broadcasting, Communications and Digital Media and associate ACC portfolios. However she later resigned from Cabinet as well.

<sup>312</sup> *Cabinet Manual* 2017, <https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/publication-information>.

<sup>313</sup> Interview with Diane Morcom, former Secretary of Cabinet, 14 February 2012.

<sup>314</sup> Interview with Margaret Wilson, 22 January 2013.

business interests, shareholdings, real estate, mortgage debts, overseas travel (unless paid for personally), gifts worth more than NZ\$500, and payments for outside services.

The Remuneration Authority independently determines the salaries and allowances for all MPs, including Ministers.<sup>315</sup> In 2013, the House rejected, by a large cross-party majority, a bill proposing that the authority also determine MPs' travel entitlements.<sup>316</sup>

The integrity of Ministers is also reinforced by the OIA, the Protected Disclosures Act 2000, and officers of Parliament.

Compared with the case in other similar developed countries, including Australia, it appears Cabinet is giving low priority to the further development of its own integrity framework. Two unregulated areas of risk for the New Zealand executive are post-ministerial employment and the activities of lobbyists.<sup>317</sup> The possibility of a conflict of interest in the post-government employment of Ministers can be high in small countries where business and political elites have close connections. Australia under the earlier Rudd government produced standards of ministerial ethics that require an 18-month moratorium before former Ministers can "lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as minister in their last eighteen months in office".<sup>318</sup>

## 2.2.6 Integrity (practice)

### To what extent is the integrity of Cabinet Ministers ensured in practice?

Score: 4

*The Cabinet Manual's integrity-related provisions are mainly effective in practice. There are risks in the opacity that sometimes exists in the relationship between Ministers and their departments.*

Periodically, breaches of the manual's provisions attract a good deal of attention from MPs and the public, especially when Ministers have been dismissed or have resigned from Cabinet because of misconduct. Transgressions have included conflicts of interest, misuse of public money, misleading statements to Parliament and the media, and personal misconduct.<sup>319</sup> It is noteworthy that these sackings and resignations were not because of major instances of corruption. They arose mainly from cronyism, conflicts of interest, and the failure to observe

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<sup>315</sup> The Remuneration Authority is a statutory body that sets pay for key office holders across the country.

<sup>316</sup> Anthony Hubbard, "MPs unite to keep travel perk in-house", *Stuff*, 10 August 2013 [www.stuff.co.nz/dominion-post/news/9025221/MPs-unite-to-keep-travel-perk-in-house](http://www.stuff.co.nz/dominion-post/news/9025221/MPs-unite-to-keep-travel-perk-in-house)

<sup>317</sup> For the activities of lobbyists, see above under "Transparency (practice)"

<sup>318</sup> *Codes of Conduct in Australian and Selected Overseas Parliaments* (Canberra: Department of Parliamentary Services, 2012).

<sup>319</sup> "List: Sacked or resigned ministers", *The Dominion Post*, 21 March 2012. Or more recently, concerning Judith Collins' resignation. [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11316644](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11316644), Clare Curran's resignation from Cabinet, <https://www.stuff.co.nz/national/politics/106546493/jacinda-ardern-announces-clare-curran-removed-from-cabinet> and Meka Whaitiri's removal from Cabinet, <https://i.stuff.co.nz/national/politics/107248175/prime-minister-announces-decision-on-meka-whaitiri-inquiry>

administrative law and regulation. The transparency of the Cabinet context gives strong incentives to Ministers to follow the *Cabinet Manual* and to resign when they fall short on judgement.

As covered in the public sector pillar report, a risk in the public management system is that individual portfolio Ministers may override administrative law and convention in their role in directing the public sector. In these areas public scrutiny is not close, the formal protection of the OIA is not necessarily effective, and the Protected Disclosures Act 2000 has so far had little impact.<sup>320</sup> As discussed in the public sector pillar report, the Protected Disclosures Act does not meet good international standards and is another area where Cabinet integrity could be strengthened. The offence of misconduct in public office appears to be unknown in New Zealand.<sup>321</sup>

### 2.3.1 Legal system

**To what extent does the Cabinet prioritise public accountability and the fight against corruption as a concern in the country?**

Score: 4

*Cabinet does not appear to assign priority to fighting corruption in New Zealand or abroad. This is a matter for concern despite the country's international reputation for low corruption.*

The legislature pillar report covers New Zealand legislation dealing with bribery, corruption, and related offences, and notes recent developments.<sup>322</sup> A risk is that New Zealand's very good record on corruption may reduce alertness to emerging risks. The global financial crisis, regulatory failures, and the diversification of the economy and society have given rise to new risks and problems, including public safety, fraud, fiduciary failures, and tax evasion. Furthermore, New Zealand's business interests are increasingly global. The 2013 NIS assessment found that the relative ease of company registration in New Zealand had been exploited for fraudulent purposes by international actors and New Zealanders,<sup>323</sup> but this has since been addressed at least in part, and further legislation is planned. The Companies Act 1993 and the Limited Partnerships Act 2008 have been amended to include requirements for companies and limited partnerships to provide an identifiable and accessible point of contact and to disclose their ultimate holding company (if they have one) to identify relationships between companies. The government is now (2018) publicly consulting on two key measures to increase transparency of beneficial ownership of New Zealand companies and limited partnerships.<sup>324</sup>

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<sup>320</sup> See the public sector pillar report (pillar 4).

<sup>321</sup> See annex to public sector pillar report (pillar 4).

<sup>322</sup> Including the Crimes Act 1961 (which makes it an offence to bribe Ministers and other high officials (and includes money laundering)), the Secret Commissions Act 1910 (which criminalises the bribing of agents in the private sector), the Serious Crimes Office Act 1990 and the Serious Fraud Office Act 1990 (which cover fraud), and the Securities Market Act 1978 (which covers insider trading and market manipulation).

<sup>323</sup> The government is proposing to address this problem through the Companies and Limited Partnerships Amendment Bill, which is before the select committee on commerce.

<sup>324</sup> <https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/supporting-the-integrity-of-the-corporate-governance-system/>

In 2013 the Cabinet appeared to be giving low priority to two important international treaties dealing with bribery and corruption. As covered in the legislature pillar report, despite becoming a party to UNCAC in 2009, the enabling legislation to meet the Convention obligations had not been passed and there were questions over the effectiveness of New Zealand’s implementation of the OECD Anti-Bribery Convention. UNCAC has now been ratified and there has been action on legislative reform such as the increase in penalties for private sector bribery offences.<sup>325</sup>

It seems there has been some improvement in the low priority Cabinet assigned to fighting corruption in New Zealand or abroad, which was seen in 2013 as a matter for concern despite the country’s high international reputation for low corruption.<sup>326,327</sup> The 2013 NIS assessment looked at the institutional underpinnings of integrity, as an indicator of future national performance and found that traditionally, governance in New Zealand has been characterised by a low level of legal formality, with the people closely engaged with the governmental process. As these characteristics change, and the globalisation of commerce is an important driver, the risks to national integrity increase.<sup>328</sup>

### **2.3.2 Public sector management (law and practice)**

**To what extent is the Cabinet committed to and engaged in developing a well-governed public sector?**

Score: 3

*The government is acting to redress a long-standing imbalance between the whole-of-government interest and the policies and activities of individual portfolio Ministers and their departments. These reforms will require cross-public service policy advisory changes with new boundaries between Ministers and public servants and between the Cabinet as a whole and portfolio Ministers.*

The laws through which Cabinet governs the public sector from a collective interest perspective are the Public Finance Act 1989, the State Sector Act 1988, the Crown Entities Act 2004, and the State-Owned Enterprises Act 1986. Within that framework, Ministers individually exercise powers over departments and agencies under portfolio-related legislation. The main characteristics of the governance of the public sector are covered in the public sector pillar report.

Cabinet is supported in its relations with the public sector by the three central agencies: DPMC, the Treasury, and SSC. These agencies aim to work together as a “corporate centre” to support Cabinet decision making. DPMC supports policy leadership and coordination. The Treasury

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<sup>325</sup> The Crimes Act 1961 as amended in 2015; The Secret Commissions Act 1910 as amended in 2015 .

<sup>326</sup> “New Zealand tops our list of the best countries for business”, *Forbes*, 14 November 2012, [www.forbes.com/sites/kurtbadenhausen/2012/11/14/new-zealand-tops-list-of-the-best-countries-for-business](http://www.forbes.com/sites/kurtbadenhausen/2012/11/14/new-zealand-tops-list-of-the-best-countries-for-business). This list was determined by grading 141 nations on property rights, innovation, taxes, technology, corruption, freedom (personal, trade, and monetary), red tape, investor protection, and stock market performance.

<sup>327</sup> Transparency International Corruption Perceptions Index.

<sup>328</sup> Two other small countries (Ireland and Iceland) tumbled down international Transparency International Corruption Perceptions Index rankings, after the surfacing of scandals arising from underlying governance problems.

advises on economic, financial, and regulatory policy for the Crown and administering the public sector in respect of the Public Finance Act and the State-Owned Enterprises Act, and the use of financial powers under the Crown Entities Act. SSC appoints and employs public service chief executives, advises on public service management, administers Crown entity governance, promotes integrity across state services generally, and advises on chief executive employment in a variety of state sector agencies.<sup>329</sup>

The legal architecture and role of the central agencies gives Ministers a framework for directing departments and holding them accountable for specified activities and the funds appropriated. Non-public service areas of the state (responsible for the bulk of public expenditure) are coherently structured with clear rules on decision rights and accountability.<sup>330</sup> The budgeting, financial management, and accounting arrangements across the public sector have improved transparency and operational accountability.<sup>331</sup>

The key challenge for Cabinet's governance of the public sector is striking the right balance between the whole-of-government interest and the policies and activities of individual portfolio Ministers and their departments. The effectiveness of the self-regulatory nature of the original public management reform design was overestimated.<sup>332</sup> Over time it has been found that the political and administrative incentives that were set up led to insufficient attention to the less publicly observable collective interests such as public sector capacity, cross-departmental public service coordination, the quality of regulation, and the monitoring and evaluation of the longer-run impact of policies.<sup>333</sup>

If these problems are to be addressed, a central challenge is changing the interface between the public service and Ministers on policy matters. The Scott Report found that public service policy advice is “generally under-managed” and noted a growing unwillingness by some Ministers to seek public service advice and by some senior officials to provide it.<sup>334</sup> The quality and coherence of policy advice is fundamental to the collective interest of government. Poor policy quality is not a single attribute, but an emergent property arising from the interaction of many factors. This matter is discussed in more detail in the public sector pillar report, but contributing factors are the lack of collective discipline around the policy process, an excessive output focus by departments, and a lack of attention to what it takes to develop and maintain key institutional competencies in policy-intensive departments.

An important step in addressing these problems is the legislation enacted in July 2013<sup>335</sup> that strengthens (among other things) the legal obligation on chief executives to report on the strategic direction and capability of departments and the effectiveness of their activities. This provides specificity to the requirement on the public service for professional policy advice and independent reporting. There has since been sector leadership and work done by the Policy

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<sup>329</sup> Treasury website, [www.treasury.govt.nz](http://www.treasury.govt.nz)

<sup>330</sup> OECD, *Distributed Governance* (Paris: OECD, 2004).

<sup>331</sup> As elaborated in the public sector pillar report (pillar 4).

<sup>332</sup> Particularly in respect of the belief that output accountability would replace the need for process controls.

<sup>333</sup> Ryan and Gill, 2011.

<sup>334</sup> Review of Expenditure on Policy Advice, 2010.

<sup>335</sup> Public Finance Amendment Act 2013.

Project at DPMC.<sup>336</sup> New Zealand’s 2018-20 OGP National Action Plan, released in December 2018, includes a commitment for the Policy Project to develop a deeper and more consistent understanding of what good policy engagement with the public means.<sup>337</sup>

The current (2018) review of the State Sector Act is an opportunity to make further progress.<sup>338</sup>

#### **2.4.1 Te Tiriti o Waitangi**

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the executive 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 the executive has 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?**

*Cabinet complies with the Treaty-related legal rights and obligations passed to it by the Crown.*

The statement on New Zealand’s constitutional arrangements that prefaces the *Cabinet Manual* says those laws and convention that make up the constitution “increasingly reflect the fact that the Treaty of Waitangi is regarded as a founding document of government in New Zealand”.<sup>339</sup>

Sir Kenneth Keith says the Treaty

“... may indicate limits in our polity on majority decision making. The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi of two parties negotiating and agreeing with one another is appropriate. Policy and procedure in this area continues to evolve”.<sup>340</sup>

The Legal Advisory Committee advises:

“The Treaty of Waitangi does not directly create rights or obligations in law except where it is given effect by legislation. It however has been judicially described as ‘part of the fabric of New Zealand society’ ... and has become a constitutional standard. Legislation is expected to comply with the principles of the Treaty ... The Government’s recognition of the need for legislation to comply with Treaty principles if possible is itself a recognition that, whatever the difficulties, the Treaty is constitutionally important and must (at the least) strongly influence the making of relevant legislation”.<sup>341</sup>

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<sup>336</sup> See <https://dpmc.govt.nz/our-programmes/policy-project>.

<sup>337</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 5: Public participation in policy development. (Wellington: State Services Commission, 2018)

<sup>338</sup> State Sector and Crown Entities Reform Bill 2018

<sup>339</sup> Keith, 2017.

<sup>340</sup> Keith, 2017.

<sup>341</sup> Legislation Advisory Committee, *Guidelines on Process and Content of Legislation* (Wellington: Ministry of Justice, updated 2012), [www2.justice.govt.nz/lac/](http://www2.justice.govt.nz/lac/)

*Cabinet Manual* guidance on the development and approval of bills states, “Ministers must confirm that bills comply with certain legal principles or obligations when submitting bids for bills to be included in the legislation programme”. The first example given of such a principle or obligation is the Treaty of Waitangi.<sup>342</sup>

The Cabinet Committee on Treaty of Waitangi Negotiations, chaired by the Prime Minister, considers Treaty settlement negotiations and related policy issues. Cabinet and its Ministers appear to accept the constitutional importance of the Treaty. A 1986 Cabinet directive is included in the current *Cabinet Manual*. Successive Cabinets have continued to be committed to the Treaty-claim settlement process.<sup>343</sup>

Ministers’ responsibilities on Treaty matters are as required under the legislation related to their portfolios. The legal arrangements for the management of state services do not require collective state services action related to the Treaty, although Ministers have sometimes asked SSC to take Treaty-related actions.<sup>344</sup>

Cabinet appears to be meeting its legal Treaty-related responsibilities. The public sector pillar report, in reflecting on the current efforts to strengthen the whole-of-government coherence of state services direction, suggests that reporting on public sector progress in realising the goals and spirit of the Treaty might form part of an enhanced public service responsibility for policy stewardship.

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<sup>342</sup> *Cabinet Manual*, 2017: 7.7.65.

<sup>343</sup> Cabinet, in a directive of 23 March 1986, agreed that “all future legislation referred to it at the policy approval stage should draw attention to any implications for recognition of the principles of the Treaty and Departments should consult with appropriate Māori people on significant matters affecting the application of the Treaty”. The Minister of Māori Affairs is to provide any necessary assistance in identifying those people. It also noted that “the financial and resource implications of recognising the Treaty could be considerable and should be assessed wherever possible in future reports”.

<sup>344</sup> For example, in November 2004, the government directed the SSC to facilitate a series of discussions and produce a report on the place of the Treaty of Waitangi in contemporary New Zealand: State Services Commission, *A Report of the Treaty of Waitangi Community Discussions Initiative* (Wellington: State Services Commission, 2006).

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## Judiciary (pillar 3)

### Summary

*Most of the updating of this pillar report relates to the enactment and implementation of the Senior Courts Act 2016, along with some comment on its effects. Other data has been updated where more recent material is available, and there is some comment on changes in government policy after the change of government in 2017.*

The judiciary meets high standards of independence, integrity, and accountability. The judiciary provides a system of justice in accordance with the requirements of a legislative framework. Although the judiciary is an arm of government it operates independently of the executive. It is accountable through a system of appeals and through the Judicial Conduct Commissioner, which is an independent agency.

Several reports have reviewed the operation of the court system and the judiciary, including *Review of the Judicature Act 1908: Towards a new Courts Act*,<sup>345</sup> *Review of Public Prosecution Services*,<sup>346</sup> *A Review of the Role and Functions of the Solicitor-General and the Crown Law Office*,<sup>347</sup> and *Follow Up Review of the Crown Law Office*.<sup>348</sup> There has also been a major restructuring of the public sector, including the Ministry of Justice, which is responsible for the administration and resources of the judiciary and the courts.<sup>349</sup>

The Law Commission's review of the Judicature Act 1908 identified areas in need of reform, including the need for a more transparent process of appointment of High Court judges and more resources for the judiciary to be able to report independently on their activities. The government implemented the recommendation to make the appointment of judges more transparent through the Senior Courts Act 201.<sup>350</sup> There is no commitment, however, to increase resources to the judiciary or for the judiciary to report independently on its activities.

Although various reviews have identified areas for improvement (for example, the Ministry of Justice's engagement with stakeholders such as the judiciary has been seen as weak),<sup>351</sup> the reviews overall support the conclusion that New Zealand has a judiciary that has independence, integrity, and accountability. It is important to note that most of the reviews do not primarily

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<sup>345</sup> Law Commission, *Review of the Judicature Act 1908: Towards a new Courts Act*, NZLC R126 (Wellington: Law Commission, 2012).

<sup>346</sup> John Spencer, *Review of Public Prosecution Services*, 2011, [www.justice.govt.nz/publications/global-publications/p/prosecution-review/review-of-public-prosecution-services](http://www.justice.govt.nz/publications/global-publications/p/prosecution-review/review-of-public-prosecution-services)

<sup>347</sup> Miriam Dean and David Cochrane, *A Review of the Role and Functions of the Solicitor-General and the Crown Law Office* (Wellington: Crown Law Office, 2012), [www.crownlaw.govt.nz/uploads/review\\_2012.pdf](http://www.crownlaw.govt.nz/uploads/review_2012.pdf)

<sup>348</sup> State Services Commission, Treasury, and Department of the Prime Minister and Cabinet, *Follow Up Review of the Crown Law Office* (Wellington: Crown Law Office, 2013), [www.crownlaw.govt.nz/uploads/pif-crownlaw-followup.pdf](http://www.crownlaw.govt.nz/uploads/pif-crownlaw-followup.pdf)

<sup>349</sup> State Services Commission, Treasury, and Department of the Prime Minister and Cabinet, *Formal Review of the Ministry of Justice* (Wellington: New Zealand Government, 2012), [www.ssc.govt.nz/sites/all/files/pif-moj-review-july2012.pdf](http://www.ssc.govt.nz/sites/all/files/pif-moj-review-july2012.pdf)

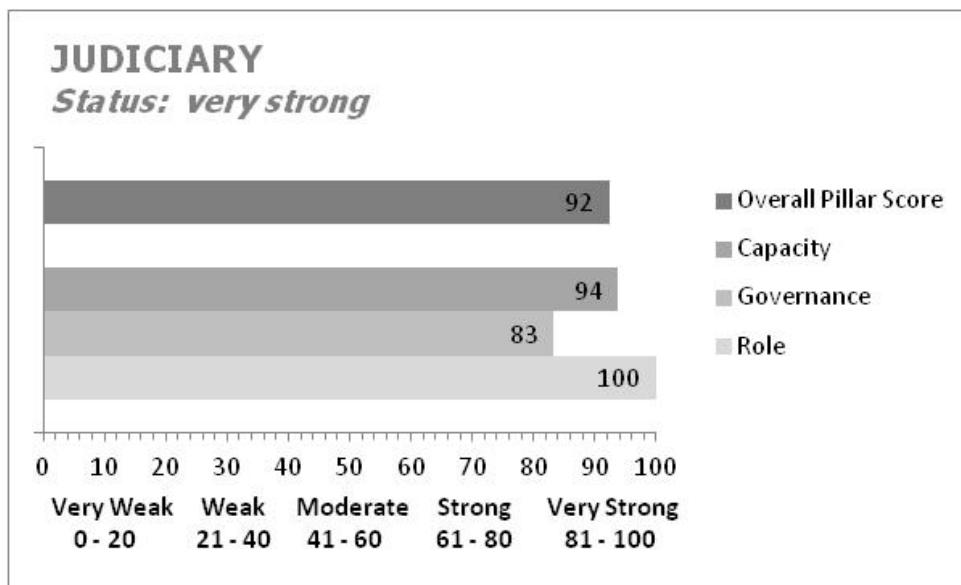
<sup>350</sup> Senior Courts Act 2016 s. 93

<sup>351</sup> State Services Commission et al., 2012: 19.

focus on the judiciary but on the administration of justice from the perspective of value for money and customer satisfaction. This perspective was part of the Better Public Services initiative of the National-led government.<sup>352</sup> The current coalition government, elected in 2017, has discontinued that initiative and appears generally to be taking a wider view. However, any effect on the judiciary will take time to become apparent, so rather than make assumptions about possible outcomes, the focus in this analysis is largely on the evidence available in 2013, updated where possible. The characterisation of the relationship between the Ministry of Justice and the judiciary as one of “partnership” has been criticised because it is seen to undermine the notion of judicial independence.<sup>353</sup>

The judiciary is an important check on executive decision-making. The court system is seen to be free of corruption and unlawful influence. The 2013 NIS assessment found some specific transparency issues – a lack of financial disclosure by members of the judiciary, weaknesses in public access to court information, a lack of regular reporting to the public on the activities of the judiciary (which is linked to the adequacy of administrative resources), and a need for more transparency in judicial appointments. The recommendations in Chapter 6 of the 2013 NIS assessment relating to the judiciary address these transparency requirements. They have only partially been implemented.

**Figure 5: Judiciary scores**



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

<sup>352</sup> Better Public Services Advisory Group, *Better Public Services Advisory Group Report* (Wellington: State Services Commission, 2011), [www.ssc.govt.nz/sites/all/files/bps-report-nov2011\\_0.pdf](http://www.ssc.govt.nz/sites/all/files/bps-report-nov2011_0.pdf)

<sup>353</sup> Justice Andrew Tipping, “Final sitting”, retirement speech, 2012, [my.lawsociety.org.nz/news/justice-andrew-tippings-final-sitting-speech/Final\\_Sitting\\_Address\\_-\\_17\\_August\\_2012.pdf](http://my.lawsociety.org.nz/news/justice-andrew-tippings-final-sitting-speech/Final_Sitting_Address_-_17_August_2012.pdf)

## Structure and organisation

The judiciary as a state institution plays an important role in the maintenance of and support for good governance generally and, specifically, is the institution relied on to redress abuse of executive power. The jurisdiction, independence, and accountability of the judiciary are achieved through a combination of legislation, convention, and practice.

There is a hierarchy of courts in New Zealand – Supreme Court, Court of Appeal, High Court, and District Court.<sup>354</sup> Judges appointed to the High Court are eligible for appointment to the Court of Appeal and Supreme Court. There are also specialist courts – Family Court, Youth Court,<sup>355</sup> Employment Court, Environment Court, Māori Land Court, and Courts Martial Court (and Appeal Court). Twenty-eight tribunals, authorities, and committees established by legislation hear and resolve disputes over fact and law.<sup>356</sup> The function, powers, and jurisdiction or authority of these bodies are set out in legislation. This assessment has focused on the independence, integrity, and accountability of the judicial members of the Supreme Court, Court of Appeal, High Court, and District Court.

### 3.1.1 Resources (law)

#### To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

Score: 5

*Judges have appropriate and protected salaries with working conditions in courts administered by the Ministry of Justice.*

Although the Remuneration Authority determines judicial salaries, the funding of judges' remuneration and the administration of the courts is the responsibility of the Ministry of Justice. The former process accords independence to the judiciary, while the latter is subject to political priorities.<sup>357</sup> The Remuneration Authority is established under the Remuneration Authority Act 1977. Decisions of the authority are published.<sup>358</sup> Under the Constitution Act 1986, the salaries of judges cannot be reduced.<sup>359</sup> The New Zealand judiciary, unlike the Australian judiciary, has no independent control over expenditure. The level of consultation or influence over judicial resources is dependent on the relationship between the chief executive of the Ministry of Justice and the Chief Justice. The nature of this relationship is confidential to the parties as no formal constitutional rules govern the relationship.

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<sup>354</sup> The Supreme Court Act 2003, the Judicature Act 1908, and the District Courts Act 1947.

<sup>355</sup> Technically, the Family Court and the Youth Court are divisions of the District Court.

<sup>356</sup> Listed at <https://www.justice.govt.nz/tribunals/>. Twenty are listed as at 11 June 2018.

<sup>357</sup> For an understanding of the resourcing of the judiciary and the courts, see [www.justice.govt.nz](http://www.justice.govt.nz) and Treasury, "Performance information for appropriation: Vote Courts 2012/13", in *Justice Sector: Information supporting the estimates 2012/13*, 2012, <https://treasury.govt.nz/sites/default/files/2012-05/ise12-v7-pia-just.pdf>

<sup>358</sup> Judicial Salaries and Allowances Determination 2012.

<sup>359</sup> Constitution Act 1986, section 24.

### 3.1.2 Resources (practice)

**To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?**

Score: 4

*The members of the judiciary have adequate salaries. There is potential for conflict over resources as the Ministry of Justice pursues cost efficiencies.*

The spending and governance of the judiciary is part of Vote Justice, which is part of the budget process. Parliament agrees the expenditure, and the Appropriations Review Committee has reviewed it.

The question of adequate resources in terms of salaries is linked to the ability to attract suitable candidates to serve on the judiciary, and there is no evidence of the lack of such candidates. In 2018 the Chief Justice received an annual salary of NZ\$532,400 plus an allowance of NZ\$7,900, with Supreme Court judges and the President of the Court of Appeal receiving \$499,850 and an allowance of NZ\$6,500. Court of Appeal judges received \$460,200, High Court judges \$446,800, and District Court judges NZ\$340,900.<sup>360</sup> The Law Society and Momentum Legal Salary Survey 2012 gave some indication of remuneration in the legal profession at that time.<sup>361</sup> For example, equity partners or directors of law firms were reported as having annual salaries of NZ\$40,000–NZ\$2 million while barristers with more than 10 years' experience received NZ\$20,000–NZ\$650,000. The income of Queen's Counsel was unavailable but it is assumed to be much higher. Salaries had increased across all position groups by 2018, with an average rise of 6.2% over 2017. Solicitors/lawyers, executive and senior management employees took home pay 8% higher than in 2017<sup>362</sup>. Although judges are normally appointed from Queen's Counsel or lawyers with more than 10 years' experience, who often have an income higher than judges, there is no evidence of a lack of candidates for the appointment to the judiciary. The Remuneration Authority, which determines judges' salaries, takes account of the "need to achieve and maintain fair relativity with the level of remuneration received elsewhere".<sup>363</sup>

Concern has recently (2018) been expressed about the adequacy of District Court judicial resources. In announcing the redeployment of judicial resource from the criminal jurisdiction to the Family Court, the Chief District Court Judge commented on unacceptable delays in the Family Court and the likelihood of increasing delays in the criminal and civil work streams. The

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<sup>360</sup> See <http://www.legislation.govt.nz/regulation/public/2017/0041/latest/whole.htm> for the period of 1 October 2017 to 30 September 2018. See Salaries and Allowances (2017/18) Determination 2017, accessible from <http://www.legislation.govt.nz/regulation/public/2017/0280/9.0/DLM7480301.html>

<sup>361</sup> New Zealand Law Society and Momentum Consulting Group, *Law Society/Momentum Legal Salary Survey 2012*, 2012, [my.lawsociety.org.nz/in-practice/practice-management/human-resources-and-remuneration/new-zealand-law-societymomentum-legal-salary-survey-2012/Law\\_Society\\_and\\_Momentum\\_Legal\\_Salary\\_Survey\\_2012\\_Report.pdf](http://my.lawsociety.org.nz/in-practice/practice-management/human-resources-and-remuneration/new-zealand-law-societymomentum-legal-salary-survey-2012/Law_Society_and_Momentum_Legal_Salary_Survey_2012_Report.pdf).

<sup>362</sup> Source: 2018 ALPMA/McLeod Duminy NZ Legal Industry Salary & HR Issues Survey, <https://www.alpma.com.au/Research/salary-survey/new-zealand-2018>

<sup>363</sup> Explanatory memorandum, Judicial Salaries and Allowances Determination 2012, [www.legislation.govt.nz/regulation/public/2012/0424/latest/DLM4940731.html](http://www.legislation.govt.nz/regulation/public/2012/0424/latest/DLM4940731.html)

New Zealand Law Society called for the appointment of more District Court judges<sup>364</sup> and criticised the limitations of the District Courts Act 2016.

Resources are available to the judiciary for training and development. Changes to the system, such as the e-bench project, have had judicial input and justice officials believe the system is working well so far, although more training is required. There is no evidence of a lack of computer resources. As the courts are undergoing restructuring there is some instability of staff as new positions are created and appointments made.<sup>365</sup>

However, the chief executive of the Ministry of Justice noted in 2012 in a formal review: “We need to work in partnership with the judiciary to deliver improvements in the accessibility, timeliness and predictability of justice delivered by courts and tribunals and to develop agreed, appropriate targets for these areas that are reported on publicly.”<sup>366</sup> The lead reviewers noted: “Justice delivered by courts and tribunals needs to be accessible, timely, predictable and deliver correct outcomes according to the law. The Ministry cannot deliver on its own. Judges are constitutionally independent and decide how a case is dealt with and what is correct outcomes according to law.”<sup>367</sup> The reviewers noted the relationships between the Ministry on the one hand and the judiciary and the legal profession on the other are “difficult”.<sup>368</sup> The reviewers argue for a closer “partnership” to achieve key operational targets. The next review will assess what measures have been taken to develop a closer partnership.

The concept of partnership was criticised in a speech by a retiring Supreme Court justice, Justice Tipping, who said the relationship between the Ministry and the judiciary should be one of “mutual cooperation” rather than partnership. This separation was necessary to maintain the separation and balance of powers.<sup>369</sup>

The 2013 review of the public prosecutions service recommended the need for cost-efficient service.<sup>370</sup> The Crown Law Office has also been reviewed.<sup>371</sup> In March 2013, a follow-up review of Crown Law noted, “There has been substantial progress on organisational development since the original [Performance Improvement Framework], and high standards of legal service have been maintained”.<sup>372</sup> The reviewers further noted that Crown Law now faced the critical implementation period and that there was a need for a better understanding and demonstration of value for money.<sup>373</sup> Those interviewed indicated that contracting out the Crown prosecution duties does not necessarily ensure a better service in the public interest. Also the fact that lawyers working for the Public Defence Service are employees of the Ministry of Justice raises a question of the independence of public defenders in terms of their obligation to the court.

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<sup>364</sup> New Zealand Law Society *LawTalk* 919 July 2018

<sup>365</sup> State Services Commission et al., 2012.

<sup>366</sup> State Services Commission et al., 2012: 4.

<sup>367</sup> State Services Commission et al., 2012: 9.

<sup>368</sup> State Services Commission et al., 2012: 12.

<sup>369</sup> Tipping, 2012.

<sup>370</sup> Spencer, 2011.

<sup>371</sup> Dean and Cochrane, 2012.

<sup>372</sup> State Services Commission et al., 2013: 7.

<sup>373</sup> State Services Commission et al., 2013: 9.

The regular future performance reviews of the Ministry of Justice and Crown Law Office will provide evidence of the impact of these changes on the administration of justice and the work of the judiciary.

The 2011/12 annual report of the Judicial Conduct Commissioner also commented on the increasing workload and the need for more resources (that subsequently were made available) to assist with the workload.<sup>374</sup>

### **3.1.3 Independence (law)**

#### **To what extent is the judiciary independent by law?**

Score: 5

*Judicial independence is a fundamental tenet of New Zealand law and is well protected.*

New Zealand's constitutional arrangements do not provide for a clear separation of powers. There is no written constitution as such but a collection of laws, conventions, and practices. An understanding of the absence of constitutional legislation in the sense of superior law that overrides other laws is fundamental to an understanding of the role of the judiciary in New Zealand. The sovereignty and supremacy of Parliament is a fundamental tenet of New Zealand's constitutional arrangements. The judiciary in New Zealand is the third arm of government, but is theoretically subject to the accepted notion of parliamentary sovereignty. This means the judiciary interprets the law but does not make new laws.

The independence of the judiciary is primarily protected through a statutory safeguard against removal from office. First, the tenure of judges is guaranteed by provisions in the Constitution Act 1986. Section 23 of that Act provides that a judge of the High Court cannot be removed from office except by the Governor-General acting on an address of the House of Representatives on the grounds of misbehaviour or incapacity to fulfil the functions of the office. Section 24 provides that the salaries of High Court judges cannot be reduced during their commission (all judges of the Supreme Court and Court of Appeal are also judges of the High Court).<sup>375</sup> The Governor-General may remove District Court judges from office on the grounds of misbehaviour or inability under section 7 of the District Courts Act 1947. Secondly, all judges retain their appointment until the age of 70,<sup>376</sup> although a retired judge can be appointed as an acting judge until the age of 75. Thirdly, the Remuneration Authority, an independent statutory body, determines all judicial remuneration.<sup>377</sup>

Appointments to the High Court and higher judiciary are made by the Governor-General on the recommendation of the Attorney-General, who is a member of the executive, with the administrative process directed by the Solicitor-General. The provisions of the Senior Courts Act

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<sup>374</sup> Office of the Judicial Conduct Commissioner, *Annual Report for 2011/2012*, 2012, [www.jcc.govt.nz/pdf/annual-report-11-12.pdf](http://www.jcc.govt.nz/pdf/annual-report-11-12.pdf)

<sup>375</sup> Senior Courts Act 2016 sections 103 and 104, <http://www.legislation.govt.nz/act/public/2016/0048/50.0/DLM5759262.html#DLM5759270>

<sup>376</sup> Judicature Amendment Act 1908, section 13.

<sup>377</sup> Remuneration Authority Act 1977.

2016 govern these appointments. The District Courts Act 2016 governs the appointment of District Court judges, who are also appointed by the Governor-General on the recommendation of the Attorney-General, but with the process directed by the Secretary for Justice (who leads the Ministry of Justice). The only statutory qualification for appointment to the judiciary is that the appointee has held a practising certificate as a barrister and solicitor for seven years. Appointment to the Māori Land Court also requires knowledge of te reo (Māori language) and tikanga (Māori law, rules, and practice) and appointments are made after consultation with the Minister of Māori Affairs.

Several conventions are designed to protect the independence of the judiciary. For example, the convention that MPs and Ministers of the Crown do not criticise the judiciary is incorporated within the Standing Orders of Parliament.<sup>378</sup> Judges are also accorded immunity from civil action when acting within their judicial functions.

### **3.1.4 Independence (practice)**

**To what extent does the judiciary operate without interference from the government or other actors?**

Score: 5

*The judiciary is free from external interference.*

Codes of practice and informal understandings have evolved relating to the judicial appointment process, but concern has been expressed about the lack of transparency in appointments, at the High Court level in particular (see below).

The issue of the independence of the judiciary was raised during the process of disestablishing appeals to the Privy Council and establishing the New Zealand Supreme Court as the final court of appeal. Since the Supreme Court has heard appeals, the issue of independence has not been raised. Issues around judicial conflicts of interest and recusal attracted public attention over allegations of inadequate disclosure by Justice Wilson when sitting on the Court of Appeal in relation to his financial relationship with counsel appearing before him. Those allegations led to a complaint to the Judicial Conduct Commissioner, litigation, and, ultimately, the resignation of the judge.<sup>379</sup>

The relationship between the legislature and the judiciary is formally set out in the Standing Orders of the House of Representatives.<sup>380</sup> These Standing Orders were amended in 2011 because a few MPs were making disparaging references to the decisions of the courts and referring to matters before the courts but not determined. If an MP wishes to refer to matters under adjudication or subject to a suppression order, the member must now notify the Speaker, and the Speaker may permit reference to the matter after balancing the privilege of freedom of speech against the public interest in maintaining confidence in the judicial resolution of

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<sup>378</sup> Standing Orders 112–114.

<sup>379</sup> For details, see *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 122; [2010] 1 NZLR 76.

<sup>380</sup> Standing Orders 112–114.

disputes. The Speaker also takes into account the constitutional relationship of mutual respect that exists between the legislative and judicial branches of government and the risk of prejudicing a matter under adjudication. The Standing Orders also clearly state a member may not use offensive language against a member of the judiciary.

There is no evidence of judges having to be removed before their retirement age of 70.<sup>381</sup> After retirement, judges may be appointed as acting or temporary judges until the age of 75.<sup>382</sup> Before such appointments are made, the New Zealand Law Society is consulted to ensure there are no quality issues. The need for some acting or temporary judges is understood as an administrative necessity, but it is not a practice that should be commonly used. The need for temporary judges arises from the statutory cap on the number of judges that can be appointed. The Senior Courts Act 2016 sets a limit of 55 High Court judges,<sup>383</sup> and the District Courts Act 2016 sets a limit of 160 District Court judges.<sup>384</sup>

Judges also deal frequently with judicial review matters, and there is no evidence that the executive influences the judiciary. A current example of a high-profile case dealt with by the courts is the matter dealing with the legality of the police search warrants in the “Kim Dotcom case” where the Chief Judge of the High Court held that the arrest warrants were not issued in compliance with the law.<sup>385</sup>

In 2013 a potential indirect threat to the independence of the judiciary was identified in the then current justice policy<sup>386</sup> that was aimed at making the whole justice system more cost-efficient by changing the rules relating to civil and criminal procedure. For example, setting quotas and time limits could interfere with the rule of law and the rights of litigants if they impeded access to the courts. The focus of policy has changed with the change of government in 2017, and it is too soon to assess the likely effect on the administration of justice.

### **3.2.1 Transparency (law)**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?**

Score: 4

*The public generally has good access to information, and access has improved with the passing of the Senior Courts Act 2016. The judiciary does not produce an annual report.*

The Criminal Procedure Act 2011 provides that there is a presumption that every criminal hearing is open to the public,<sup>387</sup> but the court, under sections 200 and 205, may grant a suppression order relating to identity or evidence if specified criteria are complied with. There

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<sup>381</sup> Office of the Judicial Conduct Commissioner, 2012.

<sup>382</sup> Senior Courts Act 2016, section 116

<sup>383</sup> Senior Courts Act 2016 section 7(1)

<sup>384</sup> District Courts Act 2016 section 12(1).

<sup>385</sup> *Dotcom v Attorney-General* [2012] NZHC 1,494.

<sup>386</sup> State Services Commission et al., 2012.

<sup>387</sup> Criminal Procedure Act 2011, section 196.

has been media controversy about name suppression, and in 2009 the Law Commission reported on the issue.<sup>388</sup> The Criminal Procedure Act 2011 incorporates the law relating to suppression.<sup>389</sup> For example, the fact a person seeking name suppression is well known is not a reason for the suppression of name.

The public does not have access to transcripts of court proceedings unless there is a good reason but all proceedings are held in public. Access to documentation of court proceedings is governed by the Criminal Proceedings (Access to Court Documents) Rules 2009 and the Civil High Court Rules.<sup>390, 391</sup>

The OIA also provides a means to access further information not otherwise publicly available. The courts are not subject to the Act but a 2012 review by the Law Commission<sup>392</sup> recommended that it be extended to the courts in respect of statistical and administrative information. In a press statement on 4 February 2013, the Minister of Justice announced that the government would progress this recommendation and it was addressed by the Senior Courts Act 2016.<sup>393</sup>

Apart from the High Court in 2011, there has been no recent independent reporting from the judiciary on the activities of the judiciary and the court system. The Law Commission in its review of the Judicature Act 1908 sought consultation on this matter and recommended that there should be a statutory requirement on the Chief Justice to publish an annual report on the judiciary covering matters agreed between the Ministry of Justice and the Chief Justice.<sup>394</sup> The judiciary in its submission on this matter noted such a report should not be to Parliament as the judiciary is a separate branch of government. The Law Commission agreed with this position and suggested the report should be made public but not to Parliament. One of the barriers to judicial reports is a lack of resources.

### **3.2.2 Transparency (practice)**

#### **To what extent does the public have access to judicial information and activities in practice?**

Score: 4

*The public has good access to judicial information, but there is insufficient transparency in the judicial appointment process.*

Annual reports, Statements of Intent, and a variety of performance statistics are publicly available.

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<sup>388</sup> Law Commission, *Suppressing Name and Evidence*, NZLC R109, 2009.

<sup>389</sup> Criminal Procedure Act 2011, sections 200–204.

<sup>390</sup> Civil High Court Rules, rules 3.5–3.16.

<sup>391</sup> The government recently announced it would take steps to improve and clarify rights to access court records information: Collins, 2013.

<sup>392</sup> Law Commission, NZLC R125, 2012.

<sup>393</sup> Section 173 and Schedule 2.

<sup>394</sup> Law Commission, NZLC R126, 2012.

The public has access to judicial decisions through the Judicial Decisions Online website.<sup>395</sup> The reasoning of the judges is in the judgment. The judiciary is conscious of the need to make their judgments accessible but there is a risk that explanation beyond the written judgment will undermine the legitimacy of the decision itself and the appeal process. However, judges participate in conferences and the Chief Justice - in particular through lectures and conference papers - undertakes a responsibility to explain the law.<sup>396</sup><sup>397</sup> The Chief Justice, President of the Court of Appeal and Chief High Court Judge must also publish information about reserved judgments such as the number of judgements that they consider to be “outstanding beyond a reasonable time for delivery” or any other information that they consider useful.<sup>398</sup>

The Ministry of Justice website provides statistics on the work undertaken by the courts, such as number of cases, completion rates, and customer satisfaction. The statistics provide a form of transparency but they are related to government policy targets and may be characterised more in terms of compliance than transparency.<sup>399</sup>

All primary legislation is publicly available in hard copy and online, and as at 31 December 2018 a project is under way to make secondary legislation more accessible.<sup>400</sup> Specialist courts such as the Family Court provide additional information through pamphlets and forms to assist court users. The Courts of New Zealand website also provides information about both the judiciary and the administration of the courts.<sup>401</sup>

Concerns have been expressed about a lack of transparency in the appointment of High Court judges and in the promotion of judges to appeal courts. In 2012 the Law Commission<sup>402</sup> issued a report reviewing the Judicature Act in which, after extensive consultation, it recommended greater statutory transparency in the appointment process.<sup>403</sup> The evidence collected by the Law Commission showed a growing consensus that more transparency is needed in the appointment and promotion of judges. A lack of transparency can affect the morale of sitting judges and those qualified for appointment as well as deterring qualified lawyers from accepting appointment. It means applicants do not know if their application was considered fairly and according to accepted criteria.

The government, after consideration of the Law Commission report, announced an overhaul of the Judicature Act 1908, to include “steps to improve and clarify rights to access court record information, for example, statistical information about court cases and expenditure” and “making the processes and criteria for appointing judges more transparent by requiring the

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<sup>395</sup> Ministry of Justice, “Judicial decisions online”. <https://forms.justice.govt.nz/jdo/Introduction.jsp>

<sup>396</sup> Recent speeches of the Chief Justice, include Sian Elias, “Fundamentals: A constitutional conversation”, Harkness Henry Lecture, University of Waikato, 2011, and Sian Elias, “Justice for one half of the human race?”, address to the Canadian Chapter of the International Association of Women Judges, 2011. <https://www.courtsfnz.govt.nz/publications/speeches-and-papers/#speechpaper-list-2011>

<sup>397</sup> See [www.justice.govt.nz/justice-sector/statistics](http://www.justice.govt.nz/justice-sector/statistics)

<sup>398</sup> Senior Courts Act 2016, s 170.

<sup>399</sup> See [www.justice.govt.nz/justice-sector/statistics](http://www.justice.govt.nz/justice-sector/statistics)

<sup>400</sup> See <http://www.pco.govt.nz/assets/Uploads/pdf/Access-Project-at-a-glance.pdf>

<sup>401</sup> See [www.courtsfnz.govt.nz/](http://www.courtsfnz.govt.nz/)

<sup>402</sup> Law Commission, NZLC R126, 2012.

<sup>403</sup> Law Commission, NZLC R126, 2012: 57.

judicial selection and recommendation process to be published by the Attorney-General". These provisions now form part of the Senior Courts Act 2016. It did not accept the Law Commission's recommendations as to the qualities required for an appointment or who should be consulted before the appointment is made."<sup>404</sup>

The Attorney-General is now (2018) required to publish information about the judicial appointment process, including information about the process for seeking expressions of interest and the process for recommending persons for appointment.<sup>405</sup> In November 2018 the government issued a press statement about the process for appointing a new Chief Justice.<sup>406</sup> Although the statement explained the key personnel involved in the selection process, such as the role of the Governor-General and Solicitor-General, much of the process, including the candidates for the role and the selectors, remained confidential. The statement did however outline the professional and personal qualities that would be required for the successful candidate.

On the other hand, there is a consensus that the two Royal Commissions of Inquiry into the Pike River Coal Mine Tragedy and the Canterbury Earthquake were conducted in an open and transparent way that enabled the various responsible agencies and individuals to be held accountable.

### **3.2.3 Accountability (law)**

**To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?**

Score: 4

*The appeal process provides accountability for judicial decisions and the Judicial Conduct Commissioner for judicial conduct.*

Accountability for judicial decisions is through the appeal process. Under rules for the District Court, High Court and Court of Appeal a judge may give a judgment in writing or orally.<sup>407</sup> If it is given orally, the affected parties or their counsel must be given a reasonable opportunity to be present when judgment is given or to hear the judgement via telephone, conference call, or video link. The Supreme Court Rules 2004 require a reserved judgment to be delivered in open court by at least two permanent judges.<sup>408</sup> The Senior Courts Act also requires that the Supreme Court must give reasons for any refusal to give leave to appeal to it. These reasons may be stated briefly and in general terms only.<sup>409</sup> Immunity for the judiciary does not apply for corruption and criminal offences.

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<sup>404</sup> Collins, 2013.

<sup>405</sup> Senior Courts Act 2016, section 93 .

<sup>406</sup> See <https://www.beehive.govt.nz/release/process-underway-appoint-next-chief-justice-new-zealand>

<sup>407</sup> The rules of each court must be read in conjunction with the relevant acts for the court .

<sup>408</sup> Supreme Court Rules 2004, rule 27. This is provided for in section 81 of the Senior Courts Act 2016.

<sup>409</sup> Senior Courts Act 2016, section 77.

Members of the judiciary are held accountable for their conduct through the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. The purpose of the Act is “to enhance public confidence in and to protect the impartiality of, the judiciary” by providing an independent investigation through a fair process that “recognises and protects the requirements of judicial independence and natural justice”. An independent commissioner conducts the investigation and the Office of the Judicial Conduct Commissioner produces an annual report detailing the number of complaints and the action taken.

### **3.2.4 Accountability (practice)**

**To what extent do members of the judiciary have to report and be answerable for their actions in practice?**

Score: 4

*The accountability process appears to be adequate in practice.*

The Judicial Conduct Commissioner appears to be active and effective. For example, in 2017/18, there were 223 new complaints and 48 outstanding complaints, rather fewer than in the previous year.<sup>410</sup> The most common complaint was that a decision was wrong, although such complaints are not about conduct and do not fall within the commissioner’s jurisdiction. Other complaints specified perceptions of rudeness, unfairness, inappropriate remarks, a failure to listen, a failure to take note of material, prejudice, bias, predetermination, conflicts of interest, and corruption.

The annual Judicial Conduct Commissioner’s report for 2011/12 noted that allegations of corruption are taken “especially seriously”.<sup>411</sup> After investigation of the few allegations of corruptions, however, no evidence was found to support any assertion of corruption.<sup>412</sup>

The action the Commissioner can take is to:

- dismiss the complaint or take no further action because it is outside jurisdiction (this happened to 364 complaints in 2011/12 and 176 in 2017-8)
- refer it to the Head of Bench (eight complaints were dealt with in this way in 2011/12 and eight again in 2017-8)
- recommend the Attorney-General appoints a judicial panel (no matters were so referred in 2011/12 or in 2017-8).

The appeal process is routinely used. There is public access to court proceedings including (with the permission of the court) the televising of court proceedings. In practice, judges endeavour to write decisions that are readily understood by court users and often also provide press releases summarising the decision and the reasons for it. The media also asserts an influence on the public perception of the conduct of the judiciary.<sup>413</sup>

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<sup>410</sup> See <http://www.jcc.govt.nz/pdf/annual-report-16-17.pdf>

<sup>411</sup> Office of the Judicial Conduct Commissioner, 2012: 8.

<sup>412</sup> There is no specific mention of corruption cases in the 2016-17 report (see above)

<sup>413</sup> The *New Zealand Herald* ran a week of articles and commentary on the judiciary during 15–19 April 2013.

### 3.2.5 Integrity mechanisms (law)

**To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?**

Score: 4

*A code of judicial conduct covers judges' financial interests, but asset disclosure is not required. Integrity mechanisms will be improved when new rules and processes are put in place to govern conflicts of interest.*

The expected conduct of the judiciary is extensively set out in *Guidelines for Judicial Conduct*.<sup>414</sup> The Heads of Bench and the Judicial Conduct Commissioner ensure compliance with these guidelines. Among other things, these guidelines cover judges' financial interests. Under the District Courts Act and Senior Courts Act, judges are prohibited from having outside employment or holding other offices without the permission of the Chief District Court Judge and, in the case of judges of the higher courts, the Chief Justice in consultation with the appropriate head of court.<sup>415</sup> There is a convention that judges do not appear in court once they have retired from the Bench, but they can undertake opinion work as well as arbitration and mediation work. Judges also do not undertake other paid work while appointed to the Bench.

A member's bill (non-government bill) before Parliament in 2012 provided for the disclosure of judges' assets.<sup>416</sup> The Law Commission considered whether there should be such a legal requirement and recommended against legislation.<sup>417</sup> However, it also recommended that if there were such a register:

- it should include sufficient detail to disclose the nature of the judges' interests (subject to privacy interests)
- a person in the office of or nominated by the Chief Justice should compile and maintain it
- a fair and accurate summary of the information should be published
- the information should be publicly available on the Courts of New Zealand website.

It has been argued that the provisions of the bill would be a disincentive for experienced practitioners to undertake appointment as it would be an invasion of their privacy.<sup>418</sup>

It is a criminal offence to bribe or offer to bribe a judicial officer or for a judicial officer to accept a bribe.<sup>419</sup>

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<sup>414</sup> *Guidelines for Judicial Conduct* (Courts of New Zealand, approved in 2003, reviewed last in March 2013). [www.courtsofnz.govt.nz/business/guidelines/guidelines-for-judicial-conduct](http://www.courtsofnz.govt.nz/business/guidelines/guidelines-for-judicial-conduct) [accessed 1 June 2011].

<sup>415</sup> District Court Act 2016, section 17. Senior Courts Act 2016, section 142

<sup>416</sup> Register of Pecuniary Interests of Judges Bill 2010. This Bill did not proceed.

<sup>417</sup> Law Commission, NZLC R126, 2012.

<sup>418</sup> The government has announced it will not support a register of judges' pecuniary interests: "Appendix 1", *Government Response to the Law Commission's Report*, 2013.

<sup>419</sup> Crimes Act 1961, sections 100 and 101.

The Law Commission also reviewed the issue of judicial conflict of interest and when judges should recuse themselves.<sup>420</sup> The Law Commission expressed the view that the substantive law relating to recusal as decided in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd*<sup>421</sup> – a case that arose from an allegation of conflict of interest against a Court of Appeal judge – was consistent with other Commonwealth jurisdictions. It found, however, a lack of clarity in the process whereby a judge should be subject to recusal and recommended that there should be a statutory requirement for the Heads of Bench, in consultation with the Chief Justice, to develop clear rules and processes for recusal in their courts,. The National-led government accepted this recommendation,<sup>422</sup> and the Senior Courts Act 2016 includes requirements for the development and publication of recusal guidelines.<sup>423</sup>

### **3.2.6 Integrity mechanisms (practice)**

#### **To what extent is the integrity of members of the judiciary ensured in practice?**

Score: 4

*There has been no serious questioning of the integrity of the judiciary and practice appears to be consistent with the law.*

The Institute of Judicial Studies<sup>424</sup> was established in 1998 and is administered by the judiciary in partnership with the Ministry of Justice. The institute's objective is to support the development of judges in best practice. It asserts its independence as the guiding principle for managing and developing the education programmes and resources of the institute.

### **3.3.1 Executive oversight**

#### **To what extent does the judiciary provide effective oversight of the executive?**

Score: 5

*The judiciary is highly effective in providing oversight of the executive.*

The primary oversight by the judiciary of the executive is through judicial review. Actions of Ministers and public bodies exercising decision-making power are subject to judicial review by the High Court of the process, but generally not of the decision itself. The rationale for this judicial oversight is that public bodies should act according to the law, and it is a means by which those exercising public power are held accountable. A 2008 review of judicial review in the New Zealand context demonstrated it was a much-used remedy.<sup>425</sup>

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<sup>420</sup> Law Commission, *Review of the Judicature Act 1908: Towards a new Courts Act*, NZLC R 126 (Wellington: Law Commission, 2012), pp. 58–72.

<sup>421</sup> *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72; [2010] 1 NZLR 35.

<sup>422</sup> *Government Response to Law Commission Report*, 2013.

<sup>423</sup> Section 171(1) High Court and Court of Appeal, section 171(2) Supreme Court,

<sup>424</sup> See [www.ijs.govt.nz](http://www.ijs.govt.nz)

<sup>425</sup> Jenny Cassle and Dean Knight, *The Scope of Judicial Review: Who and what may be reviewed*, NZLS Intensive – Administrative Law, 2008. [www.vuw.ac.nz](http://www.vuw.ac.nz)

The courts will not interfere with the right of the executive to make policy decisions, but will ensure any decision made by the executive is made in accordance with the law. In a 1996 Wellington City Council case, the Court of Appeal said,

"[t]here are constitutional and democratic constraints on judicial involvement in wide public policy issues. There comes a point where public policies are so significant and appropriate for weighing by those elected by the community for that purpose that the Courts should defer to their decision except in clear and extreme cases. The larger the policy content and the more the decision making is within the customary sphere of those entrusted with the decision, the less well equipped the Courts are to reweigh considerations involved and the less inclined they must be to intervene".<sup>426</sup>

In the Wellington City Council case, the court found that rating requires the exercise of political judgment by the elected representatives of the community and that this was not one of those extreme cases meeting the stringent test for impugning the rating determinations. However, in the 2012 case *Atkinson v Ministry of Health*,<sup>427</sup> the Court of Appeal held that the government's policy not to reimburse parents for the care of their adult children with disabilities was discriminatory on the grounds of family status under the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. These two cases, although involving different issues, demonstrate a shift in the approach of the courts to government policy. There appears to be a greater willingness to review that policy to ensure it is consistent with the law, especially on issues of human rights.

The relationship between the executive and the judiciary is set out in the *Cabinet Manual*.<sup>428</sup> The Attorney-General is the link between the judiciary and the executive government. Members of the executive must exercise judgement when commenting on judicial decisions whether generally or in relation to a specific matter. No view should be expressed that adversely comments on the impartiality, personal views, or ability of any judge. If there is such a concern, the Minister should contact the Attorney-General. Ministers also must not involve themselves in the decision whether to prosecute a person. The Attorney-General from time to time will remind Ministers of the protocol not to criticise the judiciary.

Members of the executive are subject to judicial review and may be called to give evidence or produce documents. Ministers are not immune from civil or criminal proceedings. There is no evidence of the judiciary being intimidated by the executive.<sup>429</sup> A website set up in 2013, Judge the Judges, cites no cases of executive direction to the judiciary.<sup>430</sup>

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<sup>426</sup> *Wellington City Council v Woolworths New Zealand Ltd (No 2)* [1996] 2 NZLR 537

<sup>427</sup> *Atkinson v Ministry of Health* [2012] NZCA 184.

<sup>428</sup> *Cabinet Manual*, 2017: paras 4.12–4. 165.

<sup>429</sup> Office of the Judicial Conduct Commissioner, 2012.

<sup>430</sup> See [www.judgethejudges.co.nz](http://www.judgethejudges.co.nz)

### 3.3.2 Corruption prosecution

**To what extent is the judiciary committed to fighting corruption through prosecution and other activities?**

Score: Not scored

*The judiciary does not have a role in decisions to prosecute.*

The New Zealand legal system is a common law system, and judges play no part in decisions to prosecute or not to prosecute for offences. A judge may decide in the course of legal proceedings that there is no case for the defendant to answer, but there has never been any suggestion that this power has been used corruptly.

There is no evidence that members of the judiciary fail to conduct the corruption cases that come before them according to the rule of law. Corruption cases have not involved members of the judiciary but members of the public.

Constitutionally, the Attorney-General is responsible through Parliament to the citizens of New Zealand for all public prosecutions and the prosecution system in general. The constitutional convention is that the Solicitor-General, a public official, exercises this responsibility to ensure there is no political interference with prosecutions. The Solicitor-General provides general oversight of the prosecution system through the Prosecution Guidelines<sup>431</sup> that are issued by the Attorney-General and Solicitor-General.

### 3.4.1 Te Tiriti o Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the judiciary do to partner with Māori, to respect and affirm Māori rights to make decisions, and to enhance Māori participation in its field of activity? Where the judiciary 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?**

*Although the Treaty of Waitangi is not enforceable, the judiciary recognises its constitutional status. The Waitangi Tribunal has been established to consider Treaty matters, but has recommendatory powers only. There is a need for more Māori judges.*

The Treaty of Waitangi is not legally enforceable as a standalone Treaty.<sup>432</sup> This would require an Act of Parliament specifically giving legal recognition to the Treaty. When this procedure was recommended at the time of the enactment of the New Zealand Bill of Rights Act 1990, it did not receive the support of Māori during the consultation process, so the Treaty was not incorporated into legislation.

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<sup>431</sup> Crown Law, *Prosecution Guidelines*, January 2010, [wwwcrownlaw.govt.nz/uploads/prosecution\\_guidelines](http://wwwcrownlaw.govt.nz/uploads/prosecution_guidelines)

<sup>432</sup> Margaret Wilson, "The reconfiguration of New Zealand's constitutional institutions: The transformation of tino rangatiratanga into political reality?", *Waikato Law Review* vol. 5, 1997, pp. 17–34.

Although the Treaty of Waitangi is not legally enforceable, the courts acknowledged its constitutional status in *New Zealand Māori Council v Attorney-General*.<sup>433</sup> The provisions of the Treaty have been incorporated in many Acts of Parliament, and those provisions are subject to the normal rules of statutory interpretation. The now repealed Supreme Court Act 2003 provided that one purpose of the Act was “to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history, and traditions”.<sup>434</sup> The Senior Courts Act continues to recognise the importance of issues relating to the Treaty of Waitangi and specifically lists it as a matter of general or public importance that the Supreme Court can grant leave to hear.<sup>435</sup>

A separate legal regime to deal with Māori land was first enacted in the Native Land Act 1862, and the current legal regime is incorporated in Te Ture Whenua Maori Act 1993 (Maori Land Act 1993). Te Ture Whenua Maori Act 1993 established the Māori Land Court with the primary objective to promote and assist the retention of Māori land and general land owned by Māori in the hands of the owners, and the effective management, use, and development of that land by or on behalf of the owners. The decisions of the court are enforceable.

The Treaty of Waitangi Act 1975 was enacted “to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendation on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty”.<sup>436</sup> The decisions of the tribunal are recommendatory only, and this has been criticised because the government may choose not implement the recommendations.

There has also been a move to Rangatahi (Youth) Courts on marae as a means to address offending by Māori youth in a culturally appropriate way. There has been recent publicity critical of the lack of Māori judges to serve on these courts, and the Attorney-General acknowledged more Māori appointments were needed.

The Institute of Judicial Studies is responsible for the professional development of judges and for fostering an awareness of developments in the law and judicial administration. In its 2010–15 strategic plan, there is included an awareness of the promotion of the Treaty of Waitangi in the context of New Zealand’s conditions, history, and traditions.<sup>437</sup> The judiciary has been conscious of the need to ensure Māori are well represented among court officials. Māori is an official language of New Zealand so there is a right to speak and be represented in te reo (Māori language). The need to ensure the judiciary reflects the diversity of New Zealand society, including Māori, is recognised in the Law Commission report on the review of the Judicature Act 1908, which includes a recommendation that the criteria for appointment to the judiciary should include “social awareness of and sensitivity to tikanga Māori [law, rules, and practice]”.<sup>438</sup> The government has not accepted this recommendation.

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<sup>433</sup> *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 513.

<sup>434</sup> Supreme Court Act 2003, section 3(a)(ii).

<sup>435</sup> Senior Courts Act 2003, section 74.

<sup>436</sup> Treaty of Waitangi Act 1975, Long Title.

<sup>437</sup> Institute of Judicial Studies, *Strategic Plan 1 July 2010 – 30 June 2015*, 2011. [www.ijs.govt.nz/strategic\\_plan](http://www.ijs.govt.nz/strategic_plan)

<sup>438</sup> Law Commission, NZLC R126, 2012: 57

The number of Māori appointed to the District Court has increased, and some Māori District Court judges are leaders in their field, but only three High Court judges have acknowledged Māori heritage<sup>439</sup>. It is difficult to ascertain the number of Māori judges.<sup>440</sup> but the New Zealand Law Society notes that in 2017 Māori are 6.1 per cent of the lawyer population.<sup>441</sup> Since Māori have only relatively recently entered the legal profession in any numbers and given that the qualifying period is a minimum of seven years for appointment, it may take some time for the number of Māori judges to increase.

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<sup>439</sup> Justice Joe Williams was appointed to the Court of Appeal in 2017 Source: Radio NZ <https://www.radionz.co.nz/news/te-manu-korih/346715/new-challenge-for-justice-joe-williams>

<sup>440</sup> A Radio New Zealand report in 2015 found 28 Māori judges working in New Zealand, mostly in the District Court. <https://www.radionz.co.nz/news/te-manu-korih/265037/few-maori-judges-in-nz's-legal-system>. Accessed 11June 2018

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## Public sector (pillar 4)

### Summary

*The public sector pillar report was the most thoroughly researched and extensive section of the 2013 NIS assessment. Since then, there is evidence of significant progress by the public sector, much which has been referenced in this 2018 update. As this is an update, and not a full assessment, the updating has largely been focussed on the core public sector, although where new statistical and similar data are available for other parts of the public sector, they have been added. The discontinuation of the Better Public Services programme in 2018, the review of the State Sector Act (announced in 2018) and the new emphasis on a wellbeing framework are all noted, and the text augmented or amended within the scope of the 2018 update approach. While these developments will clearly have a major effect on the public sector, it is too soon to comment on the likely consequences. Partly for this reason, and partly because this report is an update and not a complete reassessment, much of the 2013 discussion and analysis has been retained, especially where it concerns long-standing issues that may or may not have been successfully addressed by the Better Public Services programme and may or may not be successfully addressed by the policy still in development for its replacement.*

The “public sector” covers the public service, Crown entities, and local government as separate governance subsystems and as components of the national public sector system.<sup>442</sup> The National Integrity System is assessed for its effectiveness in containing corruption and promoting ethical behaviour and in safeguarding other governance values.<sup>443</sup>

Public sector institutions contribute to New Zealand’s low level of corruption against each integrity dimension. Important integrity underpinnings are:

- a national culture that strongly supports adherence to the rule of law with, in general, a high congruence between what the laws say and actual practice<sup>444</sup>
- sophisticated and comprehensive approaches to transparency and accountability, including central bank independence and public sector financial management
- operational accountability integrated into the fabric of public management processes rather than treated as an afterthought<sup>445</sup>

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<sup>442</sup> The “public sector” includes the state services (entities that serve as instruments of the executive branch of government, and also local government, sub-national governance entities that exercise their powers under statute. This report does not cover state-owned enterprises or statutory bodies outside the executive such as the Reserve Bank of New Zealand. It is hoped that after this National Integrity System assessment, a separate assessment will be undertaken of state-owned enterprises against international standards such as OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (Paris: OECD, 2005).

<sup>443</sup> In keeping with the wider definition of integrity adopted for the New Zealand National Integrity System.

<sup>444</sup> For example, after the Christchurch earthquakes public concern focused on the adequacy of building standards. Compliance with existing standards (with one or two tragic exceptions) has not been an issue.

<sup>445</sup> Allen Schick, *The Spirit of Reform: Managing the New Zealand state sector in a time of change* (Wellington: State Services Commission, 1996).

- coherence across public sector governance frameworks covering state-owned enterprises, monetary policy, fiscal policy, and central and local government and their autonomous agencies.

Low corruption is important to, but by no means the only element in, good public sector governance. New Zealand has a powerful executive with comparatively weak formal checks and balances, and the 2013 NIS assessment highlighted emerging governance challenges in the making of policy and regulation, the relationship between Ministers and officials, and the relationship between central government and local government. The main findings in the assessment related to resourcing, independence, transparency, accountability, public procurement, integrity systems, integrity promotion, and the public sector reform programme. While progress has been made since 2013, many of these findings are still relevant in 2018.

**Resourcing:** The systems for resourcing public sector organisations are adequate. Output-based budgeting and reporting provides reliable information on the cost and volume of services.<sup>446</sup> Two systemic factors can contribute to the under-funding of services: insufficient information on the results of policies and a regulatory interface between central and local government that risks distorting local resource allocation.<sup>447</sup>

**Independence:** The public sector is not improperly influenced by other branches of the state or by non-governmental institutions. Public services are delivered without party-political bias. Public servants are seen as non-political actors. Well-institutionalised rules and conventions maintain public sector political neutrality around general elections.

Despite a reasonably clear outline in the *Cabinet Manual*<sup>448</sup> some commentators find a lack of clarity in the conventions about relationships between Ministers and departments in respect of independent policy advice and major decisions on departmental management.<sup>449</sup> Some decisions by central government on local governance leave unclear the place of local democracy in the country's governance. Some decisions on Crown entity board appointments have left room for doubt that the principle of Crown entities' arm's-length relationship with government has been respected.<sup>450</sup>

**Transparency:** The OIA<sup>451</sup> combined with the Public Finance Act 1989, generally accepted accounting principles, the Reserve Bank of New Zealand Act 1989, and good financial management control make the New Zealand public sector one of the world's most

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<sup>446</sup> This judgement on the resourcing system does not mean that all individual entities are adequately resourced.

<sup>447</sup> Productivity Commission, *Towards Better Local Regulation* (Wellington: New Zealand Productivity Commission, 2013).

<sup>448</sup> See <https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/3-ministers-crown-and-2>

<sup>449</sup> Review of Expenditure on Policy Advice, *Improving the Quality and Value of Policy Advice: Findings of the committee appointed by the government to review expenditure on policy advice* (Wellington: Treasury, 2010) (often called the "Scott Report"). The review was chaired by former Secretary to the Treasury Dr Graham Scott. The other team members were former Secretary of the Department of Human Services in Victoria, Australia, Patricia Faulkner and Commerce Commission member Pat Duignan.

<sup>450</sup> See the independence section of this pillar report.

<sup>451</sup> New Zealand was one of the earliest countries to so introduce such legislation. It has a wide scope that covers Cabinet papers when they are held by organisations subject to the Act.

transparent.<sup>452</sup> This institutional assessment generally confirmed this high standing. Transparency shortcomings (now remedied at least in part) were, however, found in meeting international good practice standards for national environmental reporting.<sup>453</sup> There have also been important systemic shortcomings across government in the reporting on the impact of policies.<sup>454</sup>

**Accountability:** Accountability relationships within the public sector, among agencies, departments, and their Ministers, are clear at the operational level. There is a strong legal framework for the executive's accountability to the legislature. A variety of laws and processes all contribute in practice to public sector accountability for management and activities.<sup>455</sup> Legislation for local government and for the management of natural resources provides for the direct engagement of, and accountability to, local communities. School boards are locally elected from among students' parents.

The executive's accountability for the impact of policies is not well institutionalised. Project and programme evaluation occurs in some sectors, but the public management system does not demand that major policies be independently monitored and evaluated. This exposes the government and the public to the risk that policy failures are not recognised and corrected.<sup>456</sup> The public has been particularly at risk from the lack of accountability for regulatory policies.

**Public procurement principles:** The 2013 NIS assessment found that public procurement principles reflected international good practice and that the process appeared to be working well in general. Faults identified in oversight reports usually relate to relatively marginal issues of process. However, the system was highly decentralised by international standards and systematic procurement records were not readily available within departments and agencies, leading to shortcomings in information and transparency about what might be the full state of affairs. Public procurement had improved since the 2003 NIS assessment, but risks arose from the capability of staff, especially in smaller entities; passive oversight with reliance on targeted discovery through the OIA, select committee mechanisms, and entity-level *ex post* audits; and the potential for conflicts of interest in a small market. The country's exposure to procurement corruption was seen to be increasing with the changing geography of its trade and purchasing patterns and increasing off-shore procurement. Since 2013, substantial changes have led to improvements, but there is still room for integrity and transparency to be strengthened in procurement chains and joint ventures, and for public release of details of all contracts awarded.

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<sup>452</sup> Open Budget Index 2011

<sup>453</sup> Parliamentary Commissioner for the Environment, *How Clean is New Zealand? Measuring and reporting on the health of our environment*, 2010.

<sup>454</sup> The government released a discussion document in 2013 concerning a proposal for new legislation to improve nation-level state of the environment reporting and improve some of the environment statistics that underpin it: Ministry for the Environment, "Release of discussion document: Proposed Environmental Reporting Bill", Cabinet Economic Growth and Infrastructure Committee, March 2013.

<sup>455</sup> The OIA, citizens' surveys, the chief executive management process, the financial management and accounting system, departmental and agency Performance Improvement Framework reports, and reviews of regulatory regimes.

<sup>456</sup> The Public Finance (Fiscal Responsibility) Amendment Bill may rectify this.

**Integrity systems:** Integrity systems in departments and agencies for the control of corruption and promotion of ethical conduct are generally sound, and the evidence is that, in general, public sector staff act with integrity. Improvements could be made by embedding codes of conduct focussed on doing the right thing rather than prescribing conduct. Surveys of integrity and conduct (by the SSC) and of fraud awareness, detection, and prevention (OAG) show good results overall. Management control in some departments and agencies does not appear to be adequate to assure internal processes for administrative justice.<sup>457</sup>

**Integrity promotion:** Following publication of the 2013 NIS assessment, the State Services Commission set up an Advisory Board chaired by Dame Beverley Wakem to develop a New Zealand State Sector Integrity Roadmap. Amongst others the Board included representatives from Business New Zealand, the Public Service Association and Transparency International New Zealand. It was supported and advised by the State Services Commission and officials seconded from Inland Revenue, Office of the Auditor General and other government agencies.

The departments and agencies involved in this area are active in fighting corruption and promoting integrity. Those involved in international trade provide information and advice to the business community on New Zealand's international anti-bribery and corruption obligations.<sup>458</sup>,<sup>459</sup> New Zealand signed and ratified the OECD Anti-Bribery Convention (2001).<sup>460</sup> Key issues identified in the 2013 NIS assessment were the need to increase penalties for private sector bribery offences and the ratification and implementation of the UNCAC. Both of these have since occurred.

**Public sector reform programme:** At the time of the 2013 NIS assessment, the government had recently launched ambitious reforms to better protect the public interest in the managerial problem areas identified. Many of these problems are institutionally embedded, and earlier attempts to solve them have proven unsustainable. The lesson from the past is that success requires a multi-faceted systemic approach and should be regularly evaluated. In 2013, it was not clear how successful the reforms had been, and the coalition government elected in 2017 has announced further reviews and reforms.

The policy advisory responsibility of the public service is an important underpinning of public sector integrity. The move to enhance the stewardship responsibility of the public service is a positive development. However, the desired outcome of a more capable and professional public service advisory cadre will require active support from Ministers and Parliament.

The variety of institutions and processes covered in this pillar report is extensive. At a general level, the institutional and governance arrangements strongly support ethical behaviour, suppress corruption, and promote transparency and high levels of accountability. This finding

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<sup>457</sup> Protection of private information, integrity of complaint and dispute settlement procedures, and responsiveness to the OIA and Protected Disclosures Act 2000.

<sup>458</sup> The SFO, the Ministry of Justice, the OAG , and theSSC.

<sup>459</sup> The Ministry of Foreign Affairs and Trade and the New Zealand Export Credit Office provide high-level advice on their websites.

<sup>460</sup> The effectiveness of its implementation is being assessed by an OECD working group undertaking a phase 3 evaluation.

remains unchanged since 2013. However, it was qualified in 2013 by noting that there were pressures (including governance arrangements that had promoted fragmentation) on the capacity of the public service to provide free and frank advice and to assure high-quality regulatory processes. Information on the impact of policies was insufficient, and the role of local government was variable. At a practical level, there had been resistance to the obligations established by the OIA.<sup>461</sup> While procurement processes had improved considerably, specific enhancements were still needed. The public sector had been helpful in promoting integrity among exporters, but could do more to encourage integrity-focused education and training in wider civil society. By 2018, progress had been made on some, but not all, of these concerns.

Some of the recommendations that would fall to the public sector to implement arise from the analysis in other pillar reports, for example those relating to providing more civics education and establishing registers that record the owners or beneficiaries of companies and trusts. The recommendations in Chapter 6 of the 2013 NIS assessment<sup>462</sup> that flow directly from this pillar report include developing strategies to enhance evidence-based policy-making and evaluate the effects of policies and departmental restructuring, initiating or improving reports on social and environmental outcomes and fiscal matters, getting a more firmly embedded role for local government, and improving transparency and capability in procurement processes.

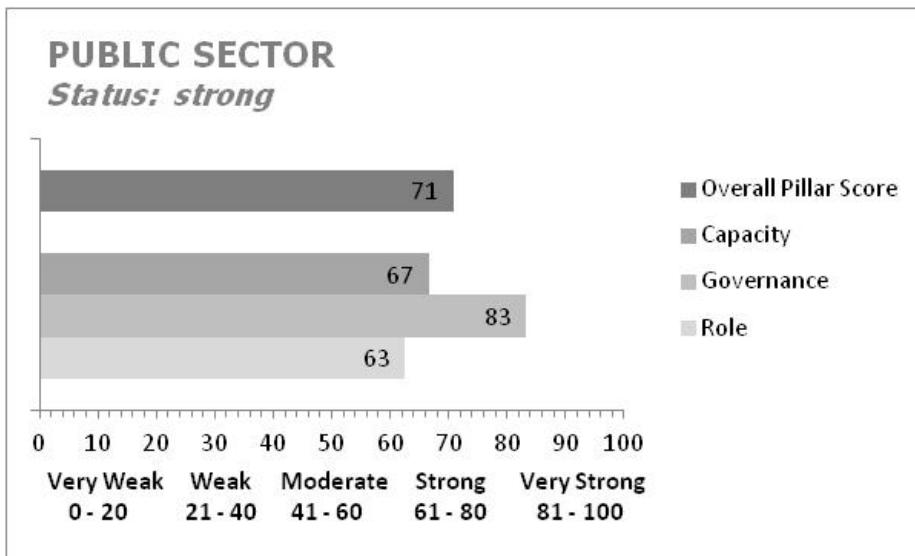
Three broader sets of recommendations drew together many of the threads in the 2013 report, and both Ministers and the public service would need to drive them. These are recommendations for a national anti-corruption strategy (see the law enforcement pillar report), the development of an Open Government Partnership plan using a consultative process, and further research and evaluation. Since 2013, progress has been made on implementing these recommendations, especially in the development of Open Government Partnership National Action Plans, and a national anti-corruption programme but much remains to be done. Appendix 10 sets out the 2016 government response to the 2013 recommendations.

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<sup>461</sup> See generally the 2014 report of the Chief Ombudsman on the handling of official information requests, [www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/399/oia\\_report\\_not\\_a\\_game\\_of\\_hide\\_and\\_seek.pdf?1449533820](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/399/oia_report_not_a_game_of_hide_and_seek.pdf?1449533820)

<sup>462</sup> See Recommendation 4: The integrity of the permanent public sector, and its role in promoting integrity should be strengthened in a range of priority areas.

Figure 6: Public sector scores



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

In major reforms in the 1980s, New Zealand’s “machinery of government” was transformed at both national and local levels. Large departments were broken up into smaller, more focused departments; policy functions were separated from delivery functions; some non-commercial public functions were corporatised under government-appointed boards; statutory regulators were created; and the commercial operations of government were sold off or corporatised in state-owned enterprises. An integrated set of laws with the Public Finance Act 1989 as its centrepiece drove fundamental changes in fiscal transparency and management. The reforms aimed to reduce regulatory burdens (or transaction costs) within state services and in society at large. Top-down restrictive regulation was replaced by “self-regulatory” design features. In the public service, the specification and reporting of outputs for each department and the accountability of chief executives were seen as replacing much central process control – so too was the use of statutory boards for many public sector functions.

These reforms, combined with an output-based budgeting and reporting system, enhanced transparency, efficiency, and accountability for departmental activities. However, beginning with a review by Allen Schick,<sup>463</sup> a growing number of internal and external commentators concluded that the deep incentives for chief executives to attend to departmental outputs came at the expense of whole cross-governmental effectiveness and due attention to the impact of policies.<sup>464, 465</sup> In the subsequent 15 years, central agencies launched several efforts to retrofit a

<sup>463</sup> Schick, 1996.

<sup>464</sup> Particularly government reports on “Managing for Outcomes” and “Review of the Centre”.

<sup>465</sup> Ed Campos and Sanjay Pradhan, *Budgetary Institutions and Expenditure Outcomes: Binding Governments to Fiscal Performance* (World Bank, 1999) (an early critique that the New Zealand emphasis on technical efficiency

stronger culture of collective endeavour across the public service, but these did not produce sustainable change. The government initiatives current in 2013 are described below, and, more recently, a review of the State Sector Act has begun, with public consultation now under way.<sup>466</sup>

### **Public service**

The public service comprises 32 departments.<sup>467</sup> The management of the core public service is decentralised. In the late 1980s, traditional permanent secretaries were replaced by chief executives with wide responsibility and authority for department management, including for organisation and personnel. Each chief executive has a performance agreement with the relevant Minister and a limited-term employment contract with the State Services Commissioner. Ministers are forbidden by law to become involved in departmental staffing matters.

### **Crown entities**

The Crown entities covered in this assessment are as defined in the Crown Entities Act 2004. They are established by Acts of Parliament and are legal entities in their own right, owned by the Crown.<sup>468</sup> The assigning of functions or activities to a Crown entity indicates that they should be carried out at arm's length from the government. Crown entities spend about two-thirds of current and capital spending and one-third of total Crown expenses.<sup>469</sup> District health boards, school boards of trustees, universities and polytechnics, and organisations such as the Privacy Commission, the Accident Compensation Corporation, and Radio New Zealand Ltd are Crown entities.<sup>470</sup>

Crown entity boards are accountable to a responsible Minister, who is assisted by a monitoring department, and to Parliament. Boards have powers similar to those of boards of private enterprises and appoint chief executives. While Ministers appoint most Crown entity boards, some are a mix of elected representatives and ministerial appointees. School boards of trustees are elected by the school communities they serve.

### **Local government**

Local government reforms in 1989 fundamentally changed local government governance, management, and services.<sup>471</sup> Further reforms in 2002 required councils to undertake participatory longer-term planning for their communities' desired outcomes, including

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and aggregate control was at the expense of allocative efficiency – the capacity to identify and fund new priorities).

<sup>466</sup> See [http://www.ssc.govt.nz/state\\_sector\\_organisations](http://www.ssc.govt.nz/state_sector_organisations)

<sup>468</sup> Cabinet Office, *Cabinet Manual 2008* (Wellington: Department of the Prime Minister and Cabinet, 2008), [www.cabinetmanual.cabinetoffice.govt.nz/3.28](http://www.cabinetmanual.cabinetoffice.govt.nz/3.28)

<sup>469</sup> State Services Commission, "Crown entities: Balancing independence and risk", updated 28 June 2010, [www.ssc.govt.nz/node/1314](http://www.ssc.govt.nz/node/1314)

<sup>470</sup> *Cabinet Manual*, 2008: para. 3.28.

<sup>471</sup> The 1989 reforms reduced 691 multi-function and special purpose local authorities to 86 new councils encompassing regional and territorial (city and district) councils. In 2010 the number of councils was further reduced to 78 when the new Auckland Council replaced former city councils and the regional council.

sustainable development.<sup>472</sup> Councils have statutory duties and authority to undertake their functions and to secure revenue through a variety of rating and charging mechanisms. They are legally required to be financially prudent. By international standards, local government in New Zealand has a narrow range of functions and low central government financing (on average, 9 per cent of operating revenue).

### Recent developments (2013)

In April 2011, the government responded to concerns about public service policy advice with a suite of priority actions aimed at sustained improvement in the quality and management of policy. Actions included producing better financial and management information to drive value for money and efficiency; improving the leadership and management of policy advice within agencies; and driving stronger central agency stewardship of the state sector to support cross-agency collaboration, performance improvement, capability building, and a focus on medium and longer term policy challenges.<sup>473, 474</sup>

These priorities informed existing and new central agency programmes, some of which culminated in the major public sector reform programme Better Public Services, with consequent amendments to the Public Finance Act 1989 and the State Sector Act 1988.<sup>475, 476</sup> Key goals of Better Public Services were to reallocate decision-rights, so Ministers, supported by the central agencies (the SSC, the Treasury, and the DPMC) were better able to act strategically across the public sector and to use public sector resources more efficiently from a whole-of-government perspective.<sup>477, 478</sup>

In a supporting initiative, the three central agencies<sup>479</sup> were driving the Performance Improvement Framework under which external consultants (including former senior public servants) were contracted to work with individual departments and agencies to report against

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<sup>472</sup> The Local Government Act 2002, the Local Government Electoral Act 2001, and the Local Government Rating Act 2002 have the explicit joint purposes of enhancing local government's responsiveness to community needs and its accountability to those communities.

<sup>473</sup> New Zealand Government, *Summary of the Government Response to the Review of Expenditure on Policy Advice*, April 2011, [www.treasury.govt.nz/statesector/policyexpenditurereview/summ-repa-apr11.pdf](http://www.treasury.govt.nz/statesector/policyexpenditurereview/summ-repa-apr11.pdf)

<sup>474</sup> Review of Expenditure on Policy Advice, 2010.

<sup>475</sup> Better Public Services Advisory Group, *Better Public Services Advisory Group Report* (New Zealand Government, 2011).

<sup>476</sup> State Sector Amendment Act 2013 and Public Finance Amendment Act 2013.

<sup>477</sup> The programme aims to enhance customer feedback, and make better use of private sector services. It has measurable and time-bound outcome targets in 10 high-priority cross-cutting areas. The legislative proposals include a greater range of organisational options (including operational agencies with their own Minister), more meaningful information to Parliament about what state services are spending and achieving, requiring Crown entities to collaborate with other public entities, and expanded scope for government direction for Crown entities. Better Public Services requires the central agencies to work more collaboratively as the public sector's "corporate centre": Parliament is considering the Public Finance (Fiscal Responsibility) Amendment Bill to introduce greater transparency in relation to priorities for resource allocation, the interaction between fiscal and monetary policy, inter-generational impacts, and the consistency of past fiscal policy with fiscal strategy.

<sup>478</sup> Territorial local authorities were not covered in *Better Public Services Advisory Group Report* (Better Public Services Advisory Group, 2011), yet the Productivity Commission found that local governments have responsibility for implementing 30 pieces of primary legislation, which is overwhelming their capacity and interfering with local priority setting: Productivity Commission: 2013.

<sup>479</sup> the SSC, the Treasury, and the DPMC.

a “mixed scorecard” questionnaire, covering results (responsiveness to government priorities, and the efficiency and effectiveness of core business) and organisational management. The Performance Improvement Framework review was expected to identify management problems, enhance cross-government learning, and support interdepartmental cooperation. Between the time the framework was piloted in 2009 and the compilation of the 2013 NIS assessment, most government departments had been reviewed and reviews of Crown entities had started.

The main goal of Better Public Services was to shift the locus of management attention away from individual agencies towards the goals and interests of government as a single enterprise. The proposed combination of legal, structural, and regulatory measures was seen to have the potential to change the dynamics of the public management system. The 2013 NIS assessment commented that success would require Ministers to accept a higher level of cross-portfolio leadership and central agencies and departments to develop the processes and culture necessary for sustained matrix management across the government agenda. These are challenging goals, and, as with any major regulatory reform in a complex area, the consequences were uncertain.<sup>480</sup> The incoming coalition government in 2017 announced the discontinuation of the Better Public Services programme from January 2018.<sup>481</sup> Its replacement is not yet fully developed, but there is an enhanced focus on the living Standards Framework (LSF) and the measurement of impacts for government policy-making:

- The Treasury integrated key elements of the LSF into the Budget requirements for Budget 2019 and guidance for agencies.<sup>482</sup>
- The wellbeing analysis covers the LSF elements of current and future wellbeing, as well as risks and resilience and is supported by fit-for-purpose cost-benefit analysis. The Treasury has updated its cost benefit analysis (CBAx) tool to include the intergenerational wellbeing domains. The CBAX procedures now require agencies to describe the impact of their proposed initiatives on the relevant areas of wellbeing.
- Public consultation has recently closed on a government proposal to embed a focus on wellbeing into the Public Finance Act 1989. Public submissions on the proposal closed on 12 October 2018. A discussion document was released on 6 March 2019.

**Regulatory governance** has become more important as the economy has become more complex. Government interventions rely increasingly on influencing independent actors, rather than on direct government action. Big changes have occurred in the scope of regulation, as markets have become global and in the design of regulation to minimise the perceived “dead weight” costs of compliance imposed on those regulated. The public sector reforms of the 1980s and 1990s can be viewed, in retrospect, as a regulatory revolution. New approaches to regulation, whether for health and safety, building standards, financial institutions, or the machinery of government, relied heavily on self-regulation and allowing those regulated to find the best way to reach regulatory goals.

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<sup>480</sup> Peter Mumford, “Best practice regulations: Setting targets and detecting vulnerabilities”, *Policy Quarterly* vol. 7(3), 2011, p. 36.

<sup>481</sup> See [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11980625](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11980625)

<sup>482</sup> See <https://treasury.govt.nz/information-and-services/nz-economy/living-standards>

Until 2010, the main means for ensuring the quality of regulation was a *Cabinet Manual* requirement that Cabinet papers with regulatory implications be accompanied by a regulatory impact statement. In 2009, ministerial approval was obtained for a regulatory impact analysis framework, which has been the basis for an ongoing Treasury programme of risk assessment of the main regulatory regimes across government. As of April 2013, the Treasury obtained ministerial approval for “Initial Expectations for Regulatory Stewardship”.<sup>483</sup>

### **Recent developments (2018)**

In September 2016 the SSC published a response to the recommendations made in the 2013 NIS report<sup>484</sup> (see Appendix 10). One of the core responses was

“In the last three years, much has been done to strengthen policy capability in the State services. This strengthening is being achieved through the use of more robust evidence to inform policy advice; “free and frank” communication of policy advice to Ministers; and improvements to the legislative process and the quality of the legislation. The elements of strengthened policy-making include:

- a shift towards the use of robust, high quality evidence in creating, and in reviewing the impact of, government policy advice
- the appointment of a Chief Science Advisor (CSA) to the Prime Minister in 2009 and a number of Departmental Science Advisors (DSAs) to key social, economic, environmental and security agencies. The CSA and DSAs meet regularly with the Chief Economist, Deputy State Services Commissioner and Deputy Secretary of Treasury. DSAs work across the sector as well as in departments
- a new Head of Profession for policy advice has been established. This role carries responsibility for driving improvement in the policy system (i.e. capabilities, systems, processes, and standards).
- a “Policy Project”, led by DPMC in collaboration with public service policy leaders, supports the new Head of Profession. Government agencies are monitoring and evaluating policy projects through new methods of scientific analysis. There is now a much greater focus on testing before implementation
- the Social Policy Evaluation and Research Unit (Superu)<sup>485</sup> is championing the use of evidence in policy-making, particularly for complex social issues
- In 2013 amendments to the State Sector Act 1988 codified the obligation of officials to provide free and frank advice to Ministers and obliged chief executives to steward the capacity of their agencies to be able to continue to provide free and frank advice.”<sup>486</sup>

By 2018 there had been further developments, including

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<sup>483</sup> The Treasury, “Regulation information releases”, <https://treasury.govt.nz/information-and-services/economic-policy/regulatory-reform-regulation/information-releases-0>

<sup>484</sup> See <http://www.ssc.govt.nz/tinz>

<sup>485</sup> Superu no longer exists, having closed in 2018.

<sup>486</sup> As above, at p 11-12

- establishment of a Policy Capability Leads Network of policy practitioners and managers who already take a lead role in improving their agencies' policy capability.<sup>487</sup>
- devising an online **Policy Methods Toolbox**, emphasising methods like design thinking, behavioural insights and a "Start Right" commissioning tool
- a **policy workforce analysis** to identify issues and assess the appetite for collective action.
- helping the Policy Profession Board expand its role to include developing and deploying senior policy leaders (as one of three public-service-wide Career Boards)
- issuing new "Speaking Up"<sup>488</sup> and "Conflicts of Interest"<sup>489</sup> standards and support
- issuing a new Code of Conduct for ministerial staff, in September 2017;<sup>490</sup>
- discontinuation of the Better Public Services programme
- issuing new guidance on "free and frank advice and policy stewardship", with guidelines, in December 2017<sup>491</sup>
- undertaking a review of the State Sector Act 1988.<sup>492</sup>

The improvements made since 2013 have been noted in an OECD Public Governance Review "Skills for a High Performing Civil Service".<sup>493</sup>

In his 2018 speech<sup>494</sup> at a Policy Managers' Forum on 'The Future of the Policy Profession' Andrew Kibblewhite – chief executive of the DPMC and Head of the Policy Profession – said that there had been significant progress towards more professional policy practice since the establishment of the Policy Project in 2014. He also said an important achievement was the design of common standards of excellence regarding what the profession delivers and what its members are capable of, although so far there has been a relatively slow uptake of the quality framework tools.

He also commented on the improvement in the area of "free and frank advice", both in strengthening Ministers' understanding of their obligation to receive free and frank advice, and producing guidance designed to strengthen public service and ministerial expectations about the supply of free and frank advice and policy stewardship.

Andrew Kibblewhite identified some areas of challenge for public services:

- upskilling and deploying policy professionals across the policy system, more seamlessly, and in areas of greatest need;
- achieving more diversity within the policy workforce;
- getting better at public participation/ engagement;

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<sup>487</sup> Kibblewhite, A, "Reflections on the first three years of the New Zealand Policy Project" *Civil Service Quarterly*, 28 March 2018

<sup>488</sup> See <http://www.ssc.govt.nz/speaking-state-services>

<sup>489</sup> See <https://www.ssc.govt.nz/sites/all/files/conflicts-of-interest-model-standards.pdf>

<sup>490</sup> See [http://www.ssc.govt.nz/upload/downloadable\\_files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/upload/downloadable_files/Code-of-conduct-StateServices.pdf)

<sup>491</sup> See <https://www.ssc.govt.nz/node/10621>

<sup>492</sup> See <http://www.ssc.govt.nz/sites/all/files/REP-2018-156-13Mar2018.pdf>

<sup>493</sup> See [https://read.oecd-ilibrary.org/governance/skills-for-a-high-performing-civil-service\\_9789264280724-en#page1](https://read.oecd-ilibrary.org/governance/skills-for-a-high-performing-civil-service_9789264280724-en#page1)

<sup>494</sup> See <https://dpmc.govt.nz/publications/future-policy-profession-andrew-kibblewhite-speech-dec-2018>

- enabling more free and frank advice; and
- improving policy stewardship

It is also worth noting that audit committees now serve an important governance oversight role. They are constituted as a sub-board of Crown agencies, or a sub-council of local government or independent body appointed by departmental chief executives. In late 2014, the OAG in conjunction with the Institute of Internal Auditors (NZ), surveyed the existence and effectiveness of audit committees in the public sector. More than half of public sector entities have audit committees, and 80% of these committees were considered effective by their appointed auditors. More recently, the OAG has hosted a biannual forum of committee chairs to discuss topical matters and to promote the strengthening of public sector transparency and accountability. From information obtained from their survey and forums, the OAG has promulgated new resources for audit committees to improve effective practice.<sup>495</sup>

#### **4.1.1 Resources (practice)**

**To what extent does the public sector have adequate resources to effectively carry out its duties?**

Score: 4

*The public sector has coherent systems for resourcing the public sector with the exception of central government's transfer of regulatory responsibilities to local government. The high managerial delegation to chief executives and the scarcity of information on service impact makes it difficult to assess resource adequacy at the individual department or agency level.*

#### **Public service**

Public service funds are allocated by, and reported to, Parliament on the basis of outputs and are accounted for in a way that reveals the cost of capital and commitments. This provides an information base that helps to ensure activities planned by departments are adequately resourced. Decentralised responsibilities for staff numbers and remuneration levels generally allow departments, within their overall budget, to secure the skills they need.

Resources provided to the public service appear adequate for the services agreed. The SSC commissions a survey of citizens' satisfaction with 42 frequently used public services.<sup>496</sup> This survey, which covers services from both the public service and Crown entities, has shown a small increase in citizens' satisfaction levels since it began in 2009.<sup>497</sup> However, while levels have increased steadily from 2007 to 2015, results for both trust based on personal experience and service quality dropped slightly in 2016 and remain static for 2017. On the other hand, trust in the public sector brand increased to a new high in 2017, although it is still at a relatively low

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<sup>495</sup> See <https://www.oag.govt.nz/our-work/audit-committees>

<sup>496</sup> State Services Commission, "Kiwis Count survey: NZers satisfaction with public services," update August 2012.

<sup>497</sup> The overall service quality score for public services between February and June 2012 was 72, an increase over the 2009 score of 69.

level.<sup>498</sup> Departmental reporting systems do not show up under-funding in particular organisations.

It is not clear whether public service resources are adequate from the perspective of impact on desired outcomes, because little policy impact evaluation is undertaken. This information gap makes it difficult to know when activities are sub-critical or being funded to no avail.

### Crown entities

The Crown entity sector is diverse. A broad indication of the adequacy of Crown entity resourcing is that their financial statements show their operating costs are less than their revenue. Individually, Crown entities have freedom to set rates of remuneration according to market conditions in accordance with an agreed plan. They are funded in different ways, reflecting their roles and degrees of autonomy *vis-à-vis* ministerial control. Funding options include a dedicated budget appropriation, appropriation as part of a broader Vote, formula-based funding allocated from an appropriation, a mix of government and other funding, third-party fees for services, and income from services provided.

Like other agencies within the state sector, Crown entities have operated in an environment of fiscal constraint since 2008, following a sustained period of increased government funding before that. There is a general sense that services are being delivered effectively.<sup>499</sup> Board fees (the SSC fees framework is currently (2018) under review) and Crown entity employees' wages and salaries are set within broader requirements and expectations for state sector remuneration that aim to achieve consistency in levels of remuneration and ensure reasonable use of public funds.

### Local government

Strategic and annual plan provisions for resourcing local government encourage transparency and accountability. Territorial local authorities are mainly resourced from rates and other local charges. The availability of resources is subject to the ability of councils to justify and sustain their requirements. Central government imposes constraints on their borrowing. They have the freedom to establish their own rates of remuneration for their staff.

The overall adequacy of territorial local authority resourcing is affected not only by the demands on local councils, but by the cost of discharging diverse regulatory responsibilities on behalf of central government. The Productivity Commission recently concluded that “the monitoring of local regulations is under-resourced and that this is undermining the achievement of regulatory objectives. Inquiry participants suggested that statutory timeframes are resulting in councils spending more resources on processing consents than they would otherwise consider efficient. The result is that other regulatory tasks (such as monitoring and enforcement) may receive fewer resources than necessary.”<sup>500</sup> The commission recommended that central and local government should agree on a protocol to govern their interaction on regulatory matters.

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<sup>498</sup> Kiwis Count 2017 Annual Report at <http://www.ssc.govt.nz/kiwis-count>

<sup>499</sup> State Services Commission, “Kiwis Count survey”, [www.ssc.govt.nz/kiwis-count](http://www.ssc.govt.nz/kiwis-count)

<sup>500</sup> Productivity Commission, 2013.

#### 4.1.2 Independence (law)

##### To what extent is the independence of the public sector safeguarded by law?

Score: 4

*Weaknesses in the professional independence of the public sector are now being addressed through new legislation on policy advice and stewardship responsibilities. There is confusion and a lack of clarity about the circumstances in which central government can override decisions taken by democratically elected local politicians.*

##### Public service

The independence of the public service is safeguarded by law and legal convention. The public service is under the direction of the political executive, but it has its own professional obligations in terms of acting lawfully, acting impartially, and providing politically neutral policy advice.

Public service independence serves the public interest in the continuity of the government system. Important conventions and rules guide the service during the vulnerable periods of election campaigning, a caretaker government (when there are delays in forming a government), and government formation. For general elections, conventions for Ministers and officials protect public confidence in the democratic process by keeping the public sector running but abstaining from making decisions that might compromise the rights of an incoming government and by ensuring the public service is even-handed in its provision of information to the political parties involved in forming the government.

A more difficult area is balancing the public sector's professional independence with its obligation to serve the government of the day. Portfolio Ministers' legal powers over their departments are extensive. The State Sector Act's restrictions on ministerial power over departments are precise only about the independence of chief executives in staffing decisions, and the responsibility on the State Services Commissioner to appoint chief executives. Even then, the Executive Council has the power to decline the commissioner's recommendation in favour of a named alternative. In such a case, the decision is published in the *New Zealand Gazette*.<sup>501</sup>

In Ministers' relations with departments, the discretion of individual Ministers is limited by the law and by Cabinet discipline. The public service must serve the government of the day and in so doing it is expected to operate as a non-partisan, merit-based career service operating within the law and providing Ministers with "free and frank" policy advice – alerting Ministers to the possible consequences of following particular policies, whether or not such advice accords with ministers' views.<sup>502</sup> The *Cabinet Manual* says Ministers are responsible for the direction and policies of their departments, but should not be involved in their day-to-day operations.<sup>503</sup>

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<sup>501</sup> The government's "official newspaper" that the Department for Internal Affairs produces.

<sup>502</sup> Michael Wintringham, "State Services Commissioner". *Guide to the Parliament and the Government*, [www.decisionmaker.co.nz/guide2005/hgw%2005/hgw\\_sscom\\_06.html#state](http://www.decisionmaker.co.nz/guide2005/hgw%2005/hgw_sscom_06.html#state)

<sup>503</sup> *Cabinet Manual*, 2017: para. 3.7.

These legal and conventional arrangements are intended to promote the collective interest of government and to maintain the confidence of successive governments, and, in so doing, maintain public trust in government institutions over time.<sup>504</sup> In other developed countries' government systems, these values are preserved through detailed administrative law<sup>505</sup> or the oversight of the legislature.<sup>506</sup> New Zealand inherited the Westminster system in which the independence of the public service is mainly maintained by convention and culture, although more recently legislation such as the State Sector Act has become more influential.

### Crown entities

The Crown Entities Act 2004 provides for Crown entities' independence<sup>507</sup> by focusing on the relationships between Ministers, boards, and Crown entities. The framework legislation specifically addresses the interaction of Crown entities with the public, stakeholder groups, or business. It may also be covered in individual Crown entities' enabling legislation. State services Crown entities are subject to the SSC code of conduct, which sets independence requirements for interactions with these groups.<sup>508</sup> Boards of state and state-integrated schools and tertiary education institutions have independence provisions included in the Education Act 1989.<sup>509</sup>

Legislative provisions for board appointments emphasise appointment based on merit as well as providing for diversity. In making appointments, Ministers must take account of these factors.<sup>510</sup> A Crown entity's enabling legislation defines its board's composition.<sup>511</sup> Board structures reflect the degree of Crown entity independence – some boards require a mix of ministerial appointees and elected representatives from communities and staff groups, and school boards of trustees consist entirely of elected members. There are normally limits on the length of board members' terms.<sup>512</sup>

### Local government (territorial and local authorities)

New Zealand local government's scope is not defined in a single, constitutional document. Its powers are found in numerous statutes, principally the Local Government Act 2002, Local Government (Rating) Act 2002, and Local Electoral Act 2001. Together, these Acts "provide for those spheres in which forms of local government have authority".<sup>513</sup> Within its own sphere, local government has a considerable degree of independence, but no entrenched constitutional

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<sup>504</sup> The appointment of Heads of Mission and Heads of Post in the Ministry of Foreign Affairs and Trade is exempt from this provision of the Act.

<sup>505</sup> For example, Sweden (and other European countries with detailed administrative law).

<sup>506</sup> In the US system, Congress must approve the Administration's senior appointments, and the Congressional Budget Office and the General Accounting Office have statutory advisory independence.

<sup>507</sup> Crown entities' individual legislative provisions for safeguarding independence have not been examined.

<sup>508</sup> State Services Commission, *Standards of Integrity and Conduct* (Wellington: State Services Commission, 2007), [www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf)

<sup>509</sup> Education Act 1989, sections 75 and 161.

<sup>510</sup> Crown Entities Act 2004, section 29.

<sup>511</sup> For example, section 94 of the Education Act 1989 (provisions for boards of trustees), section 267 of the Accident Compensation Act 2001, or section 10 of the Museum of New Zealand Te Papa Tongarewa Act 1992.

<sup>512</sup> Crown Entities Act 2004, section 32.

<sup>513</sup> Matthew S. R. Palmer, "What is New Zealand's Constitution and who interprets it? Constitutional realism and the importance of public office-holders", *Public Law Review* vol. 17, 2006, p. 145.

provisions protect that independence, and Parliament may alter the governing statutes by a simple majority vote.

Amendments to the Local Government Act 2002 extended the Minister's powers to intervene in territorial local authority affairs.<sup>514</sup> The government explained that it was introducing a graduated mechanism for government assistance and intervention. The powers include requesting information; appointing a Crown review team, a Crown observer, a Crown manager, or a commissioner; and calling a local body election. Local Government New Zealand and the Society of Local Government managers argued in vain that the new provisions for government intervention were unnecessary given existing legislation and external scrutiny, and given that the Minister already had powers of intervention in a disaster or a failure of a local authority to perform its functions, duties, and responsibilities.

In 2010, the Minister of Local Government and Minister for the Environment promoted a law change, passed under urgency, allowing appointed commissioners to replace the elected members of Environment Canterbury, a regional council, with a view to improving its relationship with the region's 10 territorial local authorities in the context of work on a fresh-water management strategy. A further law change, also under urgency, provided for Environment Canterbury's governance arrangements to be reviewed in 2014 and for commissioner governance to be extended until 2016,<sup>515</sup> followed by a move in 2016 to a mixed model (part elected, part appointed) until 2019.<sup>516</sup> These legislative actions have been controversial. There have been accusations that central government failed to uphold the rule of law and interfered because of farmer lobby concerns about regional water management decision-making.<sup>517</sup> A leading constitutional lawyer described the process as "constitutionally repugnant".<sup>518</sup> He observed, "This didn't go through any select committee consideration, no submissions and no consultation. Why should urgency be taken on a matter such as this?"

The 2013 supplementary paper on environmental governance<sup>519</sup> expresses concern about the Environment Canterbury laws in the light of the risk of central government overriding other resource decisions assigned by statute to the local government level. It also expresses concern that amendments to the Resource Management Act 1991,<sup>520</sup> the administration of which has

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<sup>514</sup> The most recent amendments to the Local Government Act 2002 were through the Local Government Act 2002 Amendment Act 2012.

<sup>515</sup> Environment Canterbury (Transitional Governance Arrangements) Act 2016.

<sup>516</sup> Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

<sup>517</sup> Human Rights Commission, *Submission to the Select Committee on Local Government and the Environment, on the Environment Canterbury Act*, 2012).

<sup>518</sup> Philip Joseph, "Environment Canterbury legislation", *New Zealand Law Journal* June 2010, p. 193.

<sup>519</sup> Ralph Chapman, Amanda Thomas, Sophie Bond, Eddie Goldberg and Chris Livesey, *Transparency International New Zealand Project: A report on New Zealand environmental governance*, supplementary paper 2 (Wellington: Transparency International New Zealand, 2013), [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>520</sup> The Resource Management Act 1991 is the centrepiece of environmental governance in New Zealand and the broad statutory framework provides for a degree of public involvement. However, potential systemic issues include ensuring all those interested or affected are aware of plan-making processes and their rights to make submissions, the skills and resources of local authorities to adopt wider participatory approaches, and the timing of planning processes and whether these limit responsiveness to participation. Also there are concerns about how much information is available to the public to allow them be fully informed to make submissions.

become part of councils' democratic role, will constrain public participation and access to justice and place elements of environmental decision-making beyond public access.<sup>521</sup>

In 2018, the SSC reports that the Productivity Commission has been asked to examine and report on local government funding and financing arrangements. Terms of reference have been settled and the Commission is due to report in November 2019.<sup>522</sup>

#### **4.1.3 Independence (practice)**

##### **To what extent is the public sector free from external interference in its activities?**

Score: 3

*The public sector remains politically impartial, but organisational fragmentation over the last two decades has weakened the provision of professional policy advice. There are also concerns about how central government transfers regulatory responsibilities to local government.*

##### **Public service**

The public service is independent in the sense that it discharges its responsibilities impartially and adheres to the rule of law. It also has a duty to provide Ministers with professional policy advice without fear or favour. Some studies have raised concern about how well this duty is being fulfilled.

The NIS assessment interviews, and academic and media coverage, indicate that the public service has not come under undue influence from other branches of the state or from other institutions in society. The independence of the public service seems well established. The political neutrality of public servants has rarely been an issue. Public service culture tends to discourage political advocacy within the work place.<sup>523</sup> Concerns have sometimes been expressed about the role of political advisers in Ministers' offices, and a new code of conduct for ministerial advisers was introduced in 2017. In announcing the code, the State Services Commissioner, Peter Hughes said "Ministerial staff are a small group of public servants with a unique and very important role providing direct support and advice to Ministers. These staff work for the Government in roles that have a clear political dimension, and they are not required to operate in a politically neutral way. Until now that has been managed by not applying the political neutrality requirements of the State Services Code of Conduct to them. That is not ideal – for anyone".<sup>524</sup>

Such difficulties as there have been are in the policy advisory relationship between Ministers and chief executives. In a 2017 case, a department failed in its advice to discharge its responsibilities under the law.<sup>525</sup> There is also a solid body of evidence of public service advice

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<sup>521</sup> The Resource Management Amendment Act 2013 passed into law on 27 August 2013.

<sup>522</sup> See <https://www.productivity.govt.nz/news/new-inquiry-%E2%80%93-local-government-funding-and-financing>

<sup>523</sup> Public Service Association, "Post-election survey of PSA members: Analysis of the questions on political neutrality", 2007.

<sup>524</sup> <https://www.ssc.govt.nz/new-code-conduct-ministerial-staff>

<sup>525</sup> Parliamentary Services illegally released private information on a matter of high political sensitivity.

falling short of good professional standards. As the 2013 report was being finalised, the Prime Minister's Chief Science Advisor, Sir Peter Gluckman, released a report on the role of evidence in public policy formation.<sup>526</sup> Gluckman found that, while there was excellent practice in some parts of the public service, “some policy practitioners held the view that their primary role was to fulfil ministerial directives, rather than to provide an evidence-informed range of policy options on which Ministers could develop a position”.

The Scott Report in 2010 was critical of the state of the policy advisory system, noting:<sup>527</sup>

- a reluctance by some chief executives to bring big issues to ministerial attention
- weak leadership and management of policy development
- poor cross-government coordination
- a lack of attention to future policy needs and capacity
- a lack of experience among chief executives and senior management teams on policy content and the advisory process
- a failure to understand the particular management challenges of departments with a policy-intensive role.<sup>528</sup>

Other issues raised were the low quality of regulatory impact statements associated with draft legislation, poor public access to government-held data, limited public input to policy development, the desirability of more pre-emptive releases of information under the OIA, weak monitoring and evaluation, and the need for more published research.

These are matters for serious concern. The public service’s policy advisory role and capacity are crucial to maintaining public service professional independence.<sup>529</sup> Building institutional competencies, knowledge, and reputation in key areas of public policy is the work of decades not years. The Scott Report considered that Ministers and the public service share the blame for the poor state of policy advice.<sup>530</sup> A Better Public Services report talks of new policy demands, but does not address the incentives for the institutional competencies required.<sup>531</sup>

The 2013 NIS assessment included the comment that some politicians appeared to have an ideological (or managerial) objection to the public service’s advisory role, as if that role were at

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<sup>526</sup> Sir Peter Gluckman (Prime Minister's Chief Science Advisor), *Role of Evidence in Policy Formation* (Auckland: Office of the Prime Minister's Science Advisory Committee, 2011).

<sup>527</sup> Review of Expenditure on Policy Advice, 2010.

<sup>528</sup> See also the statement in Suzy Frankel and Debora Ryder, eds., *Recalibrating Behaviour: Smarter regulation in a changing world* (Wellington: Lexis Nexus, 2013) that “the strong impression is that over successive administrations over the past 15 years, free and frank advice has been under attack”.

<sup>529</sup> An article covering a trans-Tasman 2013 report on the state of the public service found, “Cohesion between the cabinet and the state sector was slipping”: Tracy Watkins, “Best, worst of our public service revealed”, *Stuff*, 4 June 2013, [www.stuff.co.nz/national/politics/8750749/Best-worst-of-our-public-service-revealed](http://www.stuff.co.nz/national/politics/8750749/Best-worst-of-our-public-service-revealed).

<sup>530</sup> Review of Expenditure on Policy Advice, 2010.

<sup>531</sup> Better Public Services Advisory Group, 2011.

odds with the government's right to govern. This was seen to be expressed in Ministers' reluctance to seek public service advice or fund its development.<sup>532</sup>

The issue of whether the public service is sufficiently meeting its obligations to the citizens and communities of Aotearoa/New Zealand as well as to the government of the day has been raised regularly since then. Dr Chris Eichbaum, in August 2016, recommended an independent Parliamentary Commissioner with oversight of the public service.<sup>533</sup> This followed the inquiry of the Chief Ombudsman in 2016 into the conduct of the SSC in one of its inquiries.

The Right Honourable Geoffrey Palmer also raised the issue of free and frank advice in 2016 during consultation on a proposed constitution, which he considered should embed public servants' obligations to give free and frank advice.<sup>534</sup>

Since 2013, there have been substantial efforts to improve the quality of policy and to strengthen the public sector workforce and leadership. During the development of that work, public sector leaders have regularly advocated for, and described, free and frank advice.

The coalition government has initiated a review of the State Sector Act, and this includes clarification of the role of the public service. At the launch of the consultation process on public service reform, Hon Chris Hipkins, Minister for State Services, affirmed his desire to see the public service imbued with the spirit of service, and operating with very high standards of professionalism and integrity.<sup>535</sup>

In New Zealand and the United Kingdom, the responsibility to provide independent policy advice to Ministers is described in similar terms, but operates differently. In 2013 a United Kingdom observer highlighted the direct, hands-on role that some New Zealand Ministers then took on policy matters.<sup>536</sup> He characterised this as exhibiting "ministerial entrepreneurship" compared with the United Kingdom's more "deliberative" approach. This difference was highlighted when the Minister of State Services, in a speech in London, presented the New Zealand system as allowing for more direction from Ministers, so a model the United Kingdom government might benefit from emulating.<sup>537</sup>

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<sup>532</sup> Interview with Neil Walter, former public service chief executive and former chair of two Crown entity boards, 3 December 2012.

<sup>533</sup> Chris Eichbaum: 'Two watchdogs better than one', Stuff, 23 Aug 2016,  
<https://www.stuff.co.nz/national/politics/opinion/83426111/chris-eichbaum-two-watchdogs-better-than-one?rm=m>

<sup>534</sup> Geoffrey Palmer "The public service in a "Post Truth" age", Speech to the Public Service Association introducing "A Constitution for Aotearoa New Zealand" 28 November 2016, <https://www.psa.org.nz/assets/Uploads/The-Constitution-and-the-Public-Service.pdf>.

<sup>535</sup> Hon Chris Hipkins, Launch of the consultation process on public service reform Speech to the Institute of Public Administration 4 September 2018.

<sup>536</sup> Martin Stanley, *New Zealand and UK Compared*, February 2013,  
[https://www.civilservant.org.uk/library/2013\\_new\\_zealand\\_and\\_uk\\_compared.pdf](https://www.civilservant.org.uk/library/2013_new_zealand_and_uk_compared.pdf)

<sup>537</sup> Jonathan Coleman, "Taking a results approach to delivering Better Public Services," 26 February 2013.  
[www.beehive.govt.nz/speech/taking-results-approach-delivering-better-public-services](http://www.beehive.govt.nz/speech/taking-results-approach-delivering-better-public-services)

The law and administrative process give individual portfolio Ministers a powerful role in the appointment of chief executives.<sup>538</sup> The State Services Commissioner has a statutory obligation to ask Ministers to advise him of matters that should be taken into account in making a chief executive appointment.

In practice this means that the Commissioner asks Ministers for their views on the position and on the composition of an interview panel. This consultation with Ministers does not amount to giving Ministers the power to direct the Commissioner in the exercise of his statutory function.

In 2018, at a time when the government is trying to strengthen the public service from a collective interest perspective, it is timely to consider whether the existing chief executive selection process has been one of the drivers of fragmentation. For instance, the nature of chief executive appointments has also become an important means of effecting macro-managerial change.

Under arrangements current in 2013, the policy advisory process is unclear when a portfolio Minister plays a leading role in specifying that a new chief executive should be committed to fundamentally reorganising a department and its staff.<sup>539</sup> The structure and capability of any major policy-oriented public service department is a matter of collective interest because it has implications for coordination with other policies and affects the interests of future governments. As discussed under “Accountability”, despite the importance of machinery-of-government policy in New Zealand public sector governance, from the public perspective it lacks quality assurance, transparency, and accountability.

The Scott report, and then the Gluckman report, showed that some chief executives had adapted to the implied simple principal-agent relationship with their Minister, by reducing their role and capacity for policy advice. These tendencies appear more marked in New Zealand than in the United Kingdom. New Zealand ministerial-chief executive relationships are one on one whereas the UK Permanent Secretaries are more collegial and under active oversight and guidance from the head of the civil service.<sup>540</sup> Contributing factors are that New Zealand has had many departments, some quite small, and, in contrast to the United Kingdom, has tended not to appoint new chief executives from within the department involved.<sup>541</sup>

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<sup>538</sup> In addition to their effective veto on the commissioner's recommendation.

<sup>539</sup> In most cases of departmental restructuring, there has been a collective interest requirement for a budget and staff reduction. In principle, this does not require major structural change.<sup>539</sup> Restructuring is sometimes necessary. The integrity problem is that while restructuring has been a very heavily used tool in New Zealand's public management, there has been no credible process of evaluating its effectiveness, so no public assurance on risks of politicisation or poor policy design.

<sup>540</sup> Interview with Len Cook, former Chief Statistician in New Zealand and the United Kingdom, 8 March 2013: “the collegiality at the top in the [United Kingdom] is greater as a result of structurally different processes. These include the annual Sunningdale conference, an annual Cambridge visit, the Civil Service Management Board, cross government heads of profession groupings, whole of government fast stream recruitment and weekly Permanent Secretaries meetings. The head of the Civil Service is also active in ensuring the system works, for instance in ensuring Permanent Secretaries are prepared for [Public Accounts Committee] hearings if it is their first time. There is also a lot more structured development of top level people – the UK cabinet office every year asked me about up and comers – that happened once in 8 years when I was a CE in New Zealand.”

<sup>541</sup> Stanley, 2013, reports that only one New Zealand chief executive in seven was from within the department involved.

The 2013 situation, in part, reflected New Zealand’s public service management policy at the time. In a significant number of cases, chief executives had been appointed from outside the public service. Chief executives, especially if new in the policy area, can find themselves in a situation of co-dependency with their Minister and with little capacity to give independent advice. A Performance Improvement Framework overview at that time found that individual Ministers tended to be happier with agencies with a weak strategy and sense of purpose.<sup>542</sup> By 2018, appointments were much more likely to be made from within the public service.

Another difference is that the collective interest in the quality and independence of departmental policy advice in the United Kingdom system is reinforced by intense scrutiny of senior officials by the Public Accounts Committee of the House of Commons. Any shortcomings result in public criticism of the department in question. New Zealand’s parliamentary scrutiny is not as well informed or independent in this regard.<sup>543, 544</sup>

It appears that the fragmentation of government action that the Better Public Service reforms were designed to rectify also unintentionally impaired the collective public interest in the independence of the policy advisory capacity of the public service.<sup>545</sup> It remains to be seen whether the 2018 discontinuation of the Better Public Services programme and review of the State Sector Act results in strengthening departmental policy stewardship.

### Crown entities

Crown entities have checks and balances (boards, monitoring departments, external watchdog agencies) to protect them from external interference. Operating independently requires a fine balance, as some entities must give effect to or have regard for government policy and are subject, in some circumstances, to whole-of-government direction and to SSC integrity and conduct expectations. The SSC provides guidance to monitoring departments on inducting board members and on integrity and conduct issues,<sup>546</sup> and, in 2018, the State Services Commissioner’s mandate to issue standards of integrity and conduct was extended to Crown entity board members.

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<sup>542</sup> The State Services Commission, the Treasury, and the Department of the Prime Minister and Cabinet, *Core Guide 3: Getting to great – Lead reviewer insights for the from the Performance Improvement Framework* (Wellington: New Zealand Government, 2013).

<sup>543</sup> Stanley, 2013; interview with Len Cook, former Chief Statistician in New Zealand and the United Kingdom, 8 March 2013.

<sup>544</sup> The legislature pillar report (pillar 1) supports recommendations to strengthen select committee scrutiny of the public sector, and recent amendments to the Public Finance Act 1989 (covered later in this report) make the chief executive more individually accountable.

<sup>545</sup> On the risk of unintentional change in constitutional arrangements, Matthew Palmer in “New Zealand constitutional culture”, *New Zealand Universities Law Review* vol. 22, p. 565, 2007, says, “While I am comfortable with ... an unwritten constitution I am very concerned that we pay attention to what it is. It may be harder to change aspects of an unwritten constitution if they exist only in implicit practices which are not articulated as ‘constitutionally’ important. More importantly having our constitution located in many different elements is that it is easier for those elements to change, and for some groups of people to consciously change them, without serious public discussion, or even awareness, that a change is contemplated”.

<sup>546</sup> State Services Commission, *Board Appointment and Induction Guidelines* (Wellington: State Services Commission, 2012).

The 2003 NIS assessment report noted public perceptions that ministerial board appointments were, in some instances, politically motivated or seeking to influence a Crown entity's independence.<sup>547</sup> Independent research on the relations between government and boards (in this case, for state-owned enterprises)<sup>548</sup> found that two-thirds of directors considered that "the process for appointing board members is too politically influenced". Despite amendments to the appointment procedures in the State-Owned Enterprises Act 1986,<sup>549</sup> perceptions continue that some government appointments to Crown entity boards (which are not subject to that Act, but to the Crown Entities Act 2004) are unduly influenced by party political factors.<sup>550</sup> In 2012, concerns were expressed about appointments to the boards of the Accident Compensation Commission, New Zealand on Air, and the Health Promotion Agency.<sup>551</sup>

Such controversy may be associated with only a small proportion of appointments, but given the importance of Crown entities, and the arm's-length principle on which they are founded, something is needed to convince the public that these processes are trustworthy. Many countries have addressed the maintenance of public confidence in senior state sector appointments. Processes need to recognise that candidates with overt political associations may also have the skills and experience required for a particular role. The United Kingdom, after public concern about political cronyism, adopted rules devised by Lord Nolan,<sup>552</sup> which provide for a combination of ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality. The current (2017) New Zealand guidelines cover only a few of these factors.<sup>553</sup>

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<sup>547</sup> Transparency International, *National Integrity Systems: Transparency International Country Study Report: New Zealand 2003* (Berlin: Transparency International, 2003), p. 27.

<sup>548</sup> Richard Norman, "How should state-owned enterprises be governed?" *Public Sector* vol. 30(4), 2008, p. 37.

<sup>549</sup> State Services Commission "Crown Entities and Other Bodies", , 1 October 2013. Crown Entities Act 2004, section 29. For reasons that are not clear, the government did not use the term "merit" in its amendments of this Act, but the terminology used is similar in meaning.

<sup>550</sup> The following articles refer to appointments to boards of the Accident Compensation Corporation, New Zealand on Air, and the Health Promotion Agency. One article noted that three of seven appointees to the board of the Health Promotion Agency had close political affiliations with the National party. One appointee was the chief executive of a lobbying group the interests of which appear to conflict with those of the board: Kate Shuttleworth, "New ACC board chair gets mixed reception", *New Zealand Herald*, 4 September 2012, [www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10831727](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10831727)

"Editorial: ACC culture must be more fair and open", *New Zealand Herald*, 7 September 2012, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10832252](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10832252)

Isaac Davision, "Lobbyist appointment no conflict: Key", *New Zealand Herald*, 25 June 2012, [www.nzherald.co.nz/politics/news/article.cfm?c\\_id=280&objectid=10815422](http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10815422)

Isaac Davision, "Nats accused of health agency cronyism", *New Zealand Herald*, 28 June 2012, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10815974](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10815974)

Derek Cheng, "Key bats away talk of cronyism", *New Zealand Herald*, 4 February 2012, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10783229](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10783229)

<sup>551</sup> Shuttleworth, 2012; "Editorial: ACC culture must be more fair and open", 2012; Davision, "Lobbyist appointment no conflict: Key", 2012; Davision, 'Nats accused of health agency cronyism', 2012; Cheng, 2012.

<sup>552</sup> UK Parliament, "Select Committee on Public Administration Fourth Report , Chapter 1 Principles of Public Appointment" 2003

<sup>553</sup> See <https://dpmc.govt.nz/publications/appointments-process>

### **Local government (territorial and local authorities)**

The 2013 NIS assessment referred to a Productivity Commission finding that central government mistakenly treats local government as its operational arm. It concluded “the lack of effective interaction between central and local government is having a detrimental effect on New Zealand’s regulatory system. The uneasy relationship between the two spheres of government is rooted in divergent views and understandings of their respective roles, obligations and accountabilities.”<sup>554</sup>

The integrity issue here was not about whether central government has good reason for overriding local government decision-making in individual cases. As exemplified in the Environment Canterbury case, it was rather the apparent absence of clear and agreed principles to govern relationships between the two spheres of government in terms of the legitimacy and sustainability of local democracy. The principle in action seemed to be that local government was free to take decisions – as long as central government does not disagree. This was seen as a shaky foundation for the future, especially since the creation of the Auckland “super-city”<sup>555</sup> and the possibility of further local government aggregations, which could, because of their size and significance, have a greater need for some constitutional protection.

As at December 2018, no further aggregation has occurred. Moreover, in 2018, a set of principles for ministerial intervention was published as a “list of matters relevant to determining what action, if any, to take under subpart 1 of Part 10 of the Act, which relates to Ministerial powers of assistance and intervention in relation to local authorities”<sup>556</sup>.

#### **4.2.1 Transparency (law)**

**To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?**

Score: 4

*The legal provisions for public sector transparency, especially fiscal transparency, have been adequate. Recent changes to the legal requirements for reporting on public sector effectiveness and stewardship should, when implemented, bring the legal framework for public sector transparency up to a high standard.*

#### **Official Information Act 1982**

The OIA has been in place for 31 years. It is deeply imbedded in the administrative system, is widely complied with, and has contributed to a high public expectation of government transparency. However, the problems with the political-administrative interface appear to be impacting on the willingness of some Ministers and some public sector chief executives to comply with the OIA on issues of potential political sensitivity. This is creating tension between

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<sup>554</sup> Productivity Commission, 2013.

<sup>555</sup> A single large local authority for the Auckland region, formed by the amalgamation of 8 previous regional and local authorities

<sup>556</sup> See <https://gazette.govt.nz/notice/id/2018-go1558>

some Ministers and public servants, and, in some cases, public service compliance appears to the public as grudging and slow.<sup>557</sup> By 2013, the point had been reached where the Chief Ombudsman announced an “own motion” investigation of the handling of OIA requests.<sup>558</sup> This resulted in a 2015 report “Not a Game of Hide and Seek”<sup>559</sup> that confirmed some of the concerns previously expressed and made a number of recommendations for improvements. In 2016 the State Services Commission established an official information programme to improve practice in relation to the handling and disclosure of official information.<sup>560</sup> From January 2019, Cabinet papers will be released within 30 business days of the Cabinet decision unless there is good reason not to publish.<sup>561</sup>

In 2012, the Law Commission reviewed the official information legislation and recommended a new and reformed Act (covering local government as well). Recommendations included extending OIA coverage to the administration of Parliament, the courts, and the officers of Parliament, and a new information agency or an expanded role for the Office of the Ombudsman. In March 2013, the government responded, rejecting all the major recommendations apart from extending the OIA to the administration of the courts. More recent governments have not revisited the recommendations, but increased funding for the Office of the Ombudsman has allowed it to be more active in advice and training for government departments (see pillar report 7).

The OGP’s independent reviews of New Zealand’s first two OGP National Action Plans recommended reform of the OIA, including extending its scope to officers of Parliament. New Zealand’s 2018-20 OGP National Action Plan, released in December 2018, includes a commitment to provide advice to the government on whether to initiate a formal review of official information legislation or whether the focus should instead remain on achieving practice improvements.<sup>562</sup>

### Fiscal transparency

New Zealand has been a pioneer in fiscal transparency and continues to exhibit international best practice in many respects.<sup>563</sup> It was the first country to publish a full balance sheet of the government, and the approach to mandating transparency in the Fiscal Responsibility Act 1994 (mirrored in the Local Government Act since 1996) influenced the development of international

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<sup>557</sup> These matters are described in the Ombudsman pillar report (pillar 7).

<sup>558</sup> Office of the Ombudsman, media release 18 December 2012.

<sup>559</sup> Office of the Ombudsman “Not a Game of Hide and Seek” December 2015,  
[http://www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/1573/original/not\\_a\\_game\\_of\\_hide\\_and\\_seek\\_-\\_review\\_of\\_government\\_oia\\_practices.pdf?1466555782](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1573/original/not_a_game_of_hide_and_seek_-_review_of_government_oia_practices.pdf?1466555782)

<sup>560</sup> See <http://www.ssc.govt.nz/official-information>

<sup>561</sup> Cabinet papers will be released within 30 business days of the Cabinet decision unless there is good reason not to publish

<sup>562</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 7: Official information. (Wellington: State Services Commission, 2018)

<sup>563</sup> Fiscal policies are government taxation, borrowing, spending, and the investment and management of public resources – sometimes referred to simply as budget transparency. In technical terms, fiscal policies are public policies implemented through the provision of non-market services, and the redistribution of income and wealth, financed primarily by taxes and other compulsory levies on non-government sectors.

fiscal transparency standards. The success of these measures is reflected in New Zealand's continued top ranking out of 100 countries in the Open Budget Index 2017.<sup>564</sup>

Roles for fiscal management are clearly allocated between the executive and the legislature, central and local governments, and within the public sector. Parliament has imposed a high degree of budget transparency on local government. As noted, New Zealand ranks first in the Open Budget Index. However, global fiscal transparency standards are evolving and increasingly emphasise the importance of legislative oversight of the executive's management of fiscal policy and the need for direct public engagement to improve the quality and legitimacy of fiscal management.

### **Public service**

The framework for public service operational financial transparency is the Public Finance Act 1989, which requires departmental plans and reports to be organised around outputs and include non-financial as well as financial measures of departmental performance. Departments routinely release corporate documents such as Statements of Intent, briefings for the incoming Minister, and annual reports. In addition, departments publish a variety of managerial and professional papers, including planning documents, statistics, evaluation and monitoring reports, articles in journals and other publications, research, regulatory or impact statements, and operational guidelines. The depth and variety of such publications varies across departments and according to their different areas of business. In general, detailed information about departments' operational decisions is not proactively made available to the public, but is usually subject to disclosure under the OIA. There has been a recent (2018) trend towards more proactive release of information of public interest that could be expected to generate OIA requests.

In the last two or three years, central agencies have produced reports on aspects of the management and performance of government departments. Performance Improvement Framework reports are led by SSC and assessments of regulatory regimes are produced by the Treasury. These provide a new level of transparency about public sector management and are available on departmental websites.

The 2013 NIS assessment noted that the effectiveness of public management policy had, as discussed below, been less transparent than other policy areas, despite being of high public interest. It was hoped that this situation would change with the then recent changes to the Public Finance Act 1989,<sup>565</sup> making chief executives directly accountable for departmental capacity and effectiveness, and the recently approved expectations for regulatory stewardship,<sup>566</sup> which should impose a new discipline on the regulation of the public service.

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<sup>564</sup> See <https://www.internationalbudget.org/open-budget-survey/open-budget-index-rankings/>

<sup>565</sup> Public Finance Amendment Act 2013.

<sup>566</sup> Treasury, *Regulatory System Report 2013: Guidance for departments*, 2013.  
<https://treasury.govt.nz/sites/default/files/2015-09/rsr-guide-apr13.pdf>

The aim was to support the Better Public Services programme by providing for a range of changes including:

- changes to chief executives' responsibilities for financial matters
- greater financial flexibility for resources to be shared between departments
- more meaningful reporting information from agencies in accountability documents such as Estimates and annual reports so that Parliament and the public could more easily see what taxpayers' money was intended to achieve and had achieved.
- tying the principal responsibilities of chief executives to the purpose of the State Sector Act
- allowing Statement of Intent to last for up to three years

These changes also enabled implementation of Better Public Services, a public investment approach towards long-term issues such as reducing long-term welfare dependency, supporting vulnerable children, boosting skills and employment and reducing crime.<sup>567</sup>

### **Public Records Act 2005**

The Public Records Act 2005 sets out information management requirements for the public sector.<sup>568</sup> The Act, and the record-keeping audits it prescribes, are an important part of the legal framework for public sector transparency and accountability. It supports the OIA by requiring records to be created and maintained. Under the Public Records Act, every public office and local authority must have full and accurate records of its affairs until their disposal is authorised, including records of any matter that is contracted out. The Chief Archivist acts independently and is not subject to direction from either the Minister or the chief executive. Visibility of the operation of the system is provided through an annual report to Parliament on the state of record-keeping in public offices, and a programme of independent audits of record-keeping practices, which is also reported annually to Parliament.

### **Crown entities**

Clear provisions support Crown entities' transparency in financial, human resources, and information management. Legislation governs the setting of board members' fees. Crown entities must publish an annual report on their affairs, including content prescribed by legislation. Legislation also requires Crown entities to disclose board members' and employees' remuneration over NZ\$100,000, to subject annual reports to scrutiny by the OAG, to have their annual report tabled in Parliament by the responsible Minister, and to report compliance in their annual reports.

Crown entities are subject to information management provisions set out in the OIA, the Privacy Act 1993, and the Public Records Act 2005. Crown entities' actions are subject to review under the Ombudsmen Act 1975. A Crown entity may have its own independent review and appeal

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<sup>567</sup> See <http://www.ssc.govt.nz/sites/all/files/statesectoract2013amendments.pdf>

<sup>568</sup> The full scope of this Act is "the legislative, executive and judicial branches of the Government of New Zealand": Public Records Act 2005, section 4.

authority, so there are circumstances in which an Ombudsman cannot investigate a complaint.<sup>569</sup> Where such an authority exists, however, there is often the right of appeal to the courts.

### **Local government**

The Local Government Official Information and Meetings Act 1987 has, according to the recent Law Commission report on official information,<sup>570</sup> done much to strengthen the trust of citizens in local government. Territorial local authorities share the positive characteristics of central government in terms of transparency and are, by law, comparatively more open to engagement with citizens through the requirements for local level long-term planning and the Resource Management Act 1991.

#### **4.2.2 Transparency (practice)**

**To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?**

Score: 4

*In practice, public sector transparency is slipping behind international best practice. The quality of national reporting on the environment has been a significant area of weakness.*

### **Fiscal transparency**

A high degree of transparency exists in practice, reflected in New Zealand's top ranking out of 100 countries on the Open Budget Index 2012 (maintained in 2017).<sup>571</sup><sup>572</sup> The index measures in detail the information in eight key Budget documents (2012 figures in brackets).<sup>573</sup><sup>574</sup> In the 2017 index, New Zealand's scores out of 100 were Pre-Budget Statement – 95 (100), Executive's Budget Proposal – 91 (93), Enacted Budget – 100 (100), Citizens Budget – 75 (67), In-Year Reports – 78 (96), Mid-Year Review – 93 (92), Year-End Report – 86 (97), and Audit Report – 91 (95).

Nevertheless, there are areas of concern in terms of disclosure of fiscal information.

- Non-financial data on performance and outcomes: considerable scope exists to further improve the information and data in Budget and departmental documents and in fiscal reports on the expected and actual impacts and outcomes of government spending.

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<sup>569</sup> Ombudsmen Act 1975, section 17(7)(a).

<sup>570</sup> Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012).

<sup>571</sup> See <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=nz>

<sup>572</sup> The full Open Budget Survey 2012 of New Zealand, consisting of 125 questions, together with a New Zealand country summary produced by the International Budget Partnership, is available at "<http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=nz>". The survey contains links to all the New Zealand budget documents cited.

<sup>573</sup> These documents contain details of where New Zealand does not achieve the top mark on specific questions in the survey. The Open Budget Index 2012 is based on data and information released up to 31 December 2011.

<sup>574</sup> See <https://www.internationalbudget.org/wp-content/uploads/new-zealand-open-budget-survey-2017-summary.pdf>

- Related to the point above is the need for more comprehensive, regular, and technically independent reporting and commentary on “state of the nation” environmental and social indicators. This has partially been addressed by the Environmental Reporting Act 2015.
- Transparency of tax expenditures: the tax expenditure statement needs further deepening.
- The desirability of a single, simplified “citizens’ guide” to the Budget: there is no single, short, non-technical, user-friendly guide to the annual Budget aimed at the average citizen – although much of the information that such a guide might contain is scattered across the different Budget documents. Since 2013 there have been some improvements such as the introduction of a Budget webpage providing a selection of infographics including a “My Tax Dollars” feature allowing users to see how their taxes are allocated across and within functions, sectors and Votes. Budgets 2017 and 2018 included Budget at a Glance Documents, and a Plain Language Basics series. However these initiatives still fall considerably short of providing a "Citizens Budget", which would be a short self-contained and politically neutral document aimed at the average citizen that provides a simple explanation of the decision-making processes and context, and an accessible overview and visualisations of the main elements of fiscal policy, performance, outlook, and budget priorities and policies.

The Open Budget Survey 2012 had an expanded focus on public participation compared with previous surveys. Also, the recently adopted High Level Principles on Fiscal Transparency, Participation and Accountability promulgated by the Global Initiative on Fiscal Transparency assert a citizen right to direct participation in public debate on fiscal policy.<sup>575</sup> While New Zealand has not, overall, been innovative in this area, the public outreach during preparation of the 2013 Long-Term Fiscal Position and of the deliberations of the Tax Working Group in 2009 are important improvements. The Open Budget Survey 2012 concluded that the strength of legislative oversight of fiscal policy in New Zealand was only moderate, although it rose to “adequate” in the 2017 survey, as was the level of public engagement in fiscal policy (still rated as “limited” in 2017).<sup>576</sup>

The 2013 report noted public concern about the transparency of the then proposed SkyCity Entertainment Group project,<sup>577</sup> in which a casino operator proposed to finance the construction of a new public national convention centre in return for a relaxation of gambling regulation to allow the operator to recoup construction costs. The centre would, in effect, be financed by gamblers. Government support for a public facility is most transparently financed through some combination of compulsory taxes, rates, or user charges. The policy trade-off

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<sup>575</sup> The UN General Assembly endorsed the Global Initiative on Fiscal Transparency high-level principles in December 2012. The Global Initiative on Fiscal Transparency is a multi-stakeholder initiative led by the International Monetary Fund, the World Bank, the International Budget Partnership, the governments of Brazil and the Philippines, and other official sector and civil society entities. The principles are available at <http://fiscaltransparency.net>.

<sup>576</sup> Covered in more detail in the legislature pillar report (pillar 1, section 1.3.1).

<sup>577</sup> Office of the Auditor-General, *Inquiry into the Government’s Decision to Negotiate with Sky City Entertainment Group Ltd for an International Convention Centre*, 2013.

between the social costs and benefits of gambling is best decided on its own merits, rather than by an individual operator being provided with a relaxed regulatory framework in return for providing an unrelated public benefit. This is a disguised fiscal activity that shifts the immediate cost off the government’s budget. While concern focused on the compromised public procurement process in the SkyCity project, the proposal also raised concerns from both fiscal transparency and regulatory perspectives.

No principles, objective criteria, or robust management framework are published for such “hybrid procurements” involving government contracts or arrangements with non-government entities in which regulations or other public policy settings to be applied to an individual entity are negotiated as part of the package of terms and conditions.

The subsequent report from the OAG<sup>578</sup> found a range of deficiencies in the advice that the Ministry provided and the steps that officials and Ministers took leading up to that decision. The quality of support that was provided fell short of what the OAG would have expected from the lead government agency on commercial and procurement matters. The report emphasised the need to respect the underlying principles that established processes aim to protect

### **Public service**

The OIA governs disclosure of publicly held information on request, but proactive disclosure is variable.

A step towards making more public service data and information available is the New Zealand Declaration on Open and Transparent Government that departments adopted in 2011 to monitor their promotion of the private sector’s re-use of “high-value” public data “to grow the economy, strengthen our social and cultural fabric, and sustain our environment”.<sup>579</sup> Twenty-seven departments have so far released new kinds of information.

Similar energy needs to be applied to making public service information more proactively available in the interests of good governance. Some departments are already proactive in releasing material, but commentators such as the Ombudsmen have recommended that the public sector now be more systematic in moving towards more proactive disclosure. The Scott review recommends that “the government should be more proactive about the release of Cabinet papers, minutes and decisions. The decision to release a Cabinet paper and other material such as briefings, under the OIA, or what should be withheld, should be made at the time of writing, should be routine and, once the decision has been taken, the paper should be made publicly available, not just to the requestor”.<sup>580</sup> Progress has been made on these issues and in 2018 the SSC advised “In August 2017 the Cabinet Office issued guidance to agencies on the proactive release of Cabinet material, which provides that: *“It is generally expected that Cabinet material on significant policy decisions will be released proactively once decisions have been taken, most often through publication online. Where possible, papers and their relevant*

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<sup>578</sup> See <https://oag.govt.nz/2013/skycity>

<sup>579</sup> “Declaration on Open and Transparent Government”, Government ICT Update, December 2012.

<sup>580</sup> Review of Expenditure on Policy Advice, 2010.

minutes should be proactively released together to ensure context for readers.”<sup>581</sup> In September 2018 the coalition Government announced that, from 1 January 2019, Cabinet papers will be released within 30 business days of the Cabinet decision unless there is good reason not to publish.<sup>582</sup>

### **International development**

New Zealand has signed the International Aid Transparency Initiative (IATI), and in IATI’s 2012 Transparency Index, was ranked 16th out of 72 donors. This was a big improvement on its 2011 ranking of 30th. Internationally, the standard of transparency of official development assistance expenditure is not high. New Zealand’s current transparency performance, though improved, is classified as “moderate”. IATI advised New Zealand to produce “a revised implementation schedule that sets out an ambitious timetable for publication to the IATI Registry in 2013, aiming for full implementation by 2015”.<sup>583</sup> As a first step, it could improve the existing data on its website and make it compatible with the IATI standard.<sup>584</sup> Performance in this area has not been good, and in 2017 New Zealand was ranked at 42 out of 45 donor countries and classified as “poor”.<sup>585</sup>

### **Environment policy**

In 2010, the Parliamentary Commissioner for the Environment reported that New Zealand lacked reliable and independent state of the environment reporting. The Ministry for the Environment had produced only two national environment reports, in 1997 and 2007.<sup>586</sup> The Commissioner criticised the 2007 report for lack of independence and for fundamental technical errors. Despite its “clean and green” marketing pitch, New Zealand was then the only OECD country without a legal requirement for regular independent reporting on the state of the environment or for consistent reporting across local authorities.

In 2011/12, the government consulted on an environmental reporting bill to improve consistent, independent environmental reporting in New Zealand. This became the Environmental Reporting Act 2015 which requires the Ministry for the Environment and Statistics New Zealand to publish a report every six months on one of five domains – land, air, fresh water, marine, and atmosphere and climate – and a synthesis report every three years.

*Environment Aotearoa 2015* – the first national state of the environment report, was produced by the Secretary for the Environment and the Government Statistician in 2015.<sup>587</sup>

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<sup>581</sup> 2018 update to response to the 2013 NIS report

<sup>582</sup> See <https://www.beehive.govt.nz/release/government-proactively-release-cabinet-papers-%E2%80%93-and-open-government-action-plan-be-issued>

<sup>583</sup> International Aid Transparency Initiative, Annual Report 2013, *Signatory Programme Reports “New Zealand Aid Programme”*

<sup>584</sup> MFAT published three datasets in March 2017. First published date: 31 July 2013, <https://www.iatiregistry.org/publisher>

<sup>585</sup> 2018: <http://www.publishwhatyoufund.org/the-index/2018/>

<sup>586</sup> Parliamentary Commissioner for the Environment, 2010.

<sup>587</sup> See <http://www.mfe.govt.nz/sites/default/files/media/Environmental%20reporting/Environment-Aotearoa-2015.pdf>

While this is an advance on the position in 2013, the Act has been criticised for failing to meet international good practice for national environmental reporting.<sup>588</sup>

### Crown entities

Existing transparency provisions concerning financial, human resources, and information management in Crown entities are implemented effectively. As part of the Better Public Services programme, the government expected Crown entities to disclose non-sensitive performance information more frequently on their websites. Chief executives of statutory Crown entities comply with the State Service Commissioner's disclosure regime for expenses, gifts, and hospitality. This information is freely available on the internet.

Crown entities are subject to public information provisions. Agencies responsible for investigating complaints under these provisions publish opinions and case notes. A small number of these concern Crown entities. Processes for managing board member interests are not subject to routine external review. This places increased emphasis on integrity provisions and guidance for board members. Some board appointments are publicly advertised, although this is not a legislative requirement.<sup>589</sup>

#### 4.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions, and how do they work in practice?**

Score: 5

*The legal provisions for public sector accountability are comprehensive.*

In this section and the following one, accountability is addressed from two perspectives: the vertical accountability of public officials as agents to political decision-makers as principals, and democratic policy accountability whereby governments are accountable to Parliament and indirectly to citizens for the impacts and consequences of the use of the powers with which they are entrusted.

The public service, Crown entities, and territorial local authorities are all subject to scrutiny by the Ombudsmen (under the official information legislation and the Ombudsmen Act 1975) and by the OAG. In addition, they are subject to the Protected Disclosures Act 2000.

### Public service

As covered under “transparency” above, public service officials are held accountable for performance under the Public Finance Act 1989 and the State Sector Act 1988. These Acts have been amended to strengthen accountability for departmental policy stewardship, including

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<sup>588</sup> See, for example “Environmental management requires transparency and accountability” by M Petrie Transparency Times May 2018, <https://www.transparency.org.nz/newsletter/transparency-times-may-2018/#environmental-management-requires-transparency-and-accountability>

<sup>589</sup> The Treasury’s Crown Organisations Management Unit has a dedicated website for board appointments: [www.boardappointments.co.nz](http://www.boardappointments.co.nz)

giving more attention to effectiveness. This has been an area of systemic weakness despite New Zealand being a pioneer in the use of outcomes-focused reporting from the Reserve Bank in its role of targeting inflation<sup>590</sup> (used as a model for the legislation of many other countries) and in the setting of quotas for fisheries management.<sup>591</sup>

### Crown entities

Crown entity boards are required by law to be answerable to the Minister (or Ministers) and through the Minister to Parliament. Ministers are responsible to Parliament for overseeing and managing the Crown's interests in and relationships with the entities within their portfolios. Boards are the primary monitor of an entity's performance and governance. The governance of non-public service entities provides for the participation of Ministers (with differing rights and restrictions) in setting strategies, requesting information, and monitoring performance. Entities also operate under scrutiny from the OAG, the Ombudsman, and regulatory bodies as appropriate (for example, the Commerce Commission).<sup>592</sup>

The Crown Entities Act 2004 describes boards' responsibilities and roles and spells out the accountability of members to the responsible Minister for performing their duties.<sup>593</sup> The Minister can remove board members with just cause (including misconduct, an inability to perform the functions of office, neglect of duty, and breach of collective or individual duties). Dismissal of a board or board member must comply with the principles of natural justice.<sup>594</sup>

Crown entities are legally required to report to the legislature and account for their actions through Statements of Intent and annual reporting mechanisms. This system also provides for scrutiny through select committee financial reviews. Corrupt use of official information and bribery of officials are offences under the Crimes Act 1961. Boards and their members are held to account for their actions through various accountability mechanisms.

### Local government

There is comprehensive legal provision for oversight of local authorities' activities by communities, Ministers, and independent statutory bodies. These bodies include the Parliamentary Commissioner for the Environment, the Local Government Commission, the Remuneration Authority, and the Department of Internal Affairs (in a monitoring capacity).

All local authorities are audited on the basis of their performance, stewardship, and compliance. Elected members' pecuniary interests are overseen through the Local Authorities (Members' Interests) Act 1968. The government and independent authorities oversee the performance of territorial local authorities in meeting the requirements of the law on these as well as on anti-corruption standards.

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<sup>590</sup> Reserve Bank of New Zealand Act 1989.

<sup>591</sup> Fisheries Act 1996.

<sup>592</sup> Crown Ownership Monitoring Unit, "Our role". [www.comu.govt.nz/about-comu/our-role](http://www.comu.govt.nz/about-comu/our-role)

<sup>593</sup> Crown Entities Act 2004, sections 25 and 26.

<sup>594</sup> Crown Entities Act 2004, sections 36–41.

#### 4.2.4 Accountability (practice)

**To what extent do public sector employees have to report and be answerable for their actions in practice?**

Score: 4

##### Public service

*In practice, hierarchical public sector operational accountability has been applied more effectively than democratic and policy accountability. Until very recently there has been no system-wide accountability for evaluating the impact of policies. Accountability for the effectiveness of public management policies, including regulation and the machinery of government, has been particularly weak.*

The public service has three vertical accountability arrangements. First, senior public servants are under formal performance agreements to deliver specified outputs with the resources granted. (Over the years, there have been refinements and elaborations in the internal accountability to Ministers through agreements, plans, budgets, financial reports, and key indicators.) Second, departmental activities are subject to regulation and guidance by the three central agencies to maintain collective standards of financial and human resource management, regulatory quality, and policy coordination. Third, the executive's vertical accountability to Parliament is based on the presentation of budgets, estimates, plans, and annual reports as required under the Public Finance Act 1989 and the discharge of the range of departments' legislated responsibilities.

These arrangements are subject to scrutiny, investigation, and reporting by the OAG and the Ombudsman, and are subject to the OIA and the Protected Disclosures Act 2000.

The Better Public Services reforms included specific, measurable, and time-bound outcome targets in 10 high-priority cross-cutting policy areas. While previous governments had set up programmes of strategic goals to drive public sector priorities, the Better Public Services provisions went further in terms of measurable indicators for such goals and in providing for state services resources to be applied more flexibly in pursuit of these goals. In discontinuing the programme, the incoming government made it clear that there would still be goals and targets to be met, but the details are not yet clear<sup>595</sup>. At the time of the 2013 NIS assessment, many aspects of the Better Public Services reforms, as discussed below, were in their early days and fell short of being an impact feedback system for the full range of government activities.<sup>596</sup> It was already clear, however, that their effectiveness also depended on significant investment in evaluation capacity both of the impact of existing interventions and of the appropriateness of the indicators.<sup>597</sup>

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<sup>595</sup> See [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11980625](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11980625)

<sup>596</sup> Paul McBeth, "Public service falling short on evaluating policy, Treasury boss says" *National Business Review*, 15 April 2013, [www.nbr.co.nz/article/public-service-falling-short-evaluating-policy-treasurys-makhlouf-says-bd-138685](http://www.nbr.co.nz/article/public-service-falling-short-evaluating-policy-treasurys-makhlouf-says-bd-138685)

<sup>597</sup> Jacqueline Cuming and Sharleen Forbes, "Better public service: The case for monitoring and evaluation", *Policy Quarterly* vol. 8(3), 2012, p. 49.

Prior to the ending of the Better Public Services programme in January 2018 the SSC reported on the outcome measures of several of the target programmes.<sup>598</sup> This noted:

- reductions in working age MSD client numbers;
- a steady increase in the percentage children who have attended early childhood education before starting school
- an increase in the number of 18-year-olds achieving NCEA Level 2 or an equivalent qualification
- a decrease in general crime and youth crime (though increase in violent crime).

### **Policy impact evaluation**

A 2013 comparative study of New Zealand's fiscal transparency observes "there is considerable scope for further improving the information and data in budget documents and fiscal reports on the anticipated and actual impacts and outcomes of government spending".<sup>599</sup> This is particularly so for the social and environmental impacts of fiscal policies, which are now more prominent in international fiscal transparency standards.<sup>600</sup>

A growing volume of local academic research (for example by Bill Ryan and Derek Gill<sup>601</sup>) points out that the lack of evaluation inhibits the adaptation of national policies as society changes. It also lays government open to the unthinking perpetuation of policies, pushing problems on to future generations.<sup>602</sup> The problem was highlighted in a report by the then Prime Minister's Chief Science Advisor, who concluded "the quality of assessment and evaluation of policy implementation is quite variable. The required scrutiny can be devalued by agencies that assume their primary mandate is to implement political decisions. As a result, funding for evaluation is frequently trimmed or diverted."<sup>603</sup> This systemic deficiency has been periodically recognised, but various attempts to improve the situation have come to little.<sup>604</sup>

The resistance to independent evaluation seems entrenched in the incentives of the public management system. Possible explanations are that chief executives' incentives are too strongly focused on output delivery, and that Ministers have in general become less tolerant of departments producing reports with the potential for political embarrassment. In 2013, the

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<sup>598</sup> See <http://www.ssc.govt.nz/bps-results-for-nz>

<sup>599</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>600</sup> For example, Principle 4 of the High-Level Principles on Fiscal Transparency, Participation and Accountability promulgated by the Global Initiative for Fiscal Transparency, which states, "Governments should communicate the objectives they are pursuing and the outputs they are producing with the resources entrusted to them, and endeavour to assess and disclose the anticipated and actual social, economic and environmental outcomes."

<sup>601</sup> See, for example Bill Ryan and Derek Gill, eds., *Future State: Directions for public management in New Zealand* (Wellington: Victoria University Press, 2011).

<sup>602</sup> The lack of evaluative activity is also noted by Martin Stanley (Stanley, 2013) and the Scott Report (Review of Expenditure on Policy Advice, 2010).

<sup>603</sup> Gluckman, 2013: 3.

<sup>604</sup> Bill Ryan and Derek Gill, "Past present and the promise: Rekindling the spirit of reform", in Ryan and Gill, 2011.

Secretary to the Treasury said that “policy stewardship” should be a goal for the Better Public Services reforms in that the state sector “should understand the impact that policy is having over the medium and long term, and test spending in existing areas to see if it’s delivering the results we need”.<sup>605</sup> This approach is now included in the Public Finance Act 1989 and in the recently approved expectations for regulatory stewardship. If successfully institutionalised, these measures will represent real progress towards improved impact monitoring and evaluation across the public sector.

### Public service restructuring

An SSC survey of state services employees in 2010<sup>606</sup> found that 65 per cent of the 8238 staff surveyed had been involved in a restructure or merger in the previous two years.<sup>607</sup> This same group reported significantly less trust in departmental management than those not involved in a restructure or merger. This compares with 18 per cent affected by structural change for a similar survey of federal government in the United States.<sup>608</sup> For most overseas organisations, major structural changes that unsettle a large proportion of their staff tend to be undertaken only in quite extreme circumstances. In the New Zealand public service on the other hand, such restructurings have become what a chief executive recently described as “standard operating procedure”. In the United Kingdom, most structural changes are politically driven. In New Zealand, more than half are driven by chief executives, often within a short time of taking up their job.<sup>609</sup>

Any public service organisation may be required to reduce spending and/or staff numbers. This does not require a deep reorganisation unless the organisation is dysfunctional or has to meet quite new demands. The frequency with which public service chief executives restructure departments is difficult to justify in the absence of transparency about the reasons for dissatisfaction with the present organisational structure and about accountability for the costs in reduced morale, productivity, and unplanned exits of staff.<sup>610</sup> There are also risks from interruptions of institutional memory and services. Accountability for the ultimate success or failure of restructuring decisions is obscure. No central agency undertakes an *ex post* review, and by the time the outcome is evident, the chief executive involved may have gone to another job.

The restructuring of the Ministry of Foreign Affairs and Trade initiated in 2012 is a case in point. A new chief executive introduced a fundamental change to the *modus operandi* of the ministry, transforming it from a career diplomatic service to one based on term contracts. The changes resulted in a loss of experienced staff and a high degree of concern in the “international relations

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<sup>605</sup> Secretary to the Treasury Gabriel Makhlouf quoted in McBeth, 2013.

<sup>606</sup> Research New Zealand, *State Services Commission: Integrity and Conduct Survey 2010* (Wellington: State Services Commission, 2010), [www.ssc.govt.nz/2010-survey-report](http://www.ssc.govt.nz/2010-survey-report). There was a further survey in 2013, but changes to the questionnaire mean that results are not comparable

<sup>607</sup> Richard Norman and Derek Gill, *Restructuring: An overused lever for change in New Zealand's state sector*, IPS11/06 (Wellington: Institute for Governance and Policy Studies, Victoria University of Wellington, 2011).

<sup>608</sup> Norman and Gill, 2011.

<sup>609</sup> Norman and Gill, 2011.

<sup>610</sup> In the Integrity and Conduct Survey 2010, SSC found increasing mistrust of managers among staff involved in restructuring – despite that these would have been the “survivors”: Research New Zealand, 2010.

community” about the reasons for the change and the negative impacts it was having and could continue to have on institutional capacity. There has been a lack of transparency around the public policy justification for this major change, the analysis of the shortcomings of the career service model, the various options for addressing the concerns, and the justification for the particular change strategy that was decided on. In the public debate, it was unclear who was the architect of the changes – the chief executive, the Minister, or central agencies – and who should be accountable for publicly defending the strategy and explaining the changes. In the absence of a detailed *ex ante* analysis of the costs and benefits of different options for reform it is difficult to evaluate the success or otherwise of the changes.<sup>611, 612</sup>

The use of structural change to improve departmental performance is such a prominent feature of the New Zealand public management system that the public service must carry the burden of proof that the public interest has been served by this approach.<sup>613</sup> In the absence of independent evaluation, it is difficult to escape the conclusion that, over and above necessary restructurings, the phenomenon has been unduly driven by the short-term interests of chief executives, ministerial preconceptions, and, possibly, central agencies lacking better means of influencing public service behaviour. The institutional health of the public service is a matter of collective rather than departmental concern. Departmental reforms should be initiated on the basis of robust evidence-informed analysis and, from now on at least, should demonstrate that they meet the expectations for regulatory stewardship.

### Crown entities

The legal accountability framework for board members appears to be effective in practice. In several examples in the past 10 years the activities of boards and their members have been subject to external scrutiny and investigation.<sup>614</sup>

### Local government

In 2012, the Auditor-General, in reporting on local government’s ability to meet its future needs, expressed general satisfaction with local authorities’ efforts (under the long-term plan provisions) to deliver services in prudent and sustainable ways and to plan prudentially without raising rates to unreasonable levels.

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<sup>611</sup> “Neil Walter notes for address at the launch of ‘New Flags Flying’ ”, 27 November 2012; Stuart McMillan, “Changed MFAT leaves sorry mess”, *National Business Review*, 5 April 2012; Terence O’Brien, “Culture of MFAT under threat”, *Dominion Post*, 2 April 2012; Winston Peters, address at launch of *Persona Non Grata* written by Michael Green, 27 June 2013. (MFAT stands for the Ministry of Foreign Affairs and Trade.)

<sup>612</sup> Foreign services require “tacit” knowledge and devolved tactical decision-making. OECD countries have similar systems for career-based socialisation and development of diplomats. What makes New Zealand different has not been explained.

<sup>613</sup> In the recent Performance Improvement Framework report, SSC is criticised for relying only on Ministers’ feedback as the performance measure for success of machinery of government policy: State Services Commission, the Treasury and the Department of the Prime Minister and Cabinet, *Review of the State Services Commission (SSC)* (Wellington: New Zealand Government, 2013).

<sup>614</sup> These include OAG inquiries and performance audits, Ministers using powers to remove boards or board chairs or members, board member resignations following privacy breaches at the Accident Compensation Corporation, Privacy Commissioner investigations, and Police and SFO investigations.

## Regulatory governance

In modern government, the public sector's regulatory role has become of equal, if not greater, importance than its roles in public services and transfers. In the last two or three decades, New Zealand governments have been innovative in regulatory design, but the associated accountability has been lacking.

In recent years, lives were lost in the collapse of the CTV building in the Christchurch earthquake and in a gas explosion in the Pike River mine near Greymouth. The collapse of non-bank financial institutions and inadequate weather-proofing of tens of thousands of private dwellings caused the loss of billions of dollars to citizens. The investigations of these events revealed major deficiencies in accountability for the design, implementation and oversight, of regulation by both central and local government.

The Royal Commission on the Pike River Coal Mine Tragedy concluded that “New Zealand has a poor overall health and safety record compared with other advanced countries ... This time the lessons must be remembered. Legislative, structural and attitudinal change is needed if future tragedies are to be avoided. Government, industry and workers need to work together.”<sup>615</sup> The commission found that the Department of Labour’s “main public accountability documents ... did not reveal any concern about [the department’s] ability to administer the health and safety legislation” or “provide much insight into the performance of the mining inspectorate, or the health and safety inspectors as a whole”.<sup>616, 617</sup>

The Royal Commission report on the collapse of the CTV building in the Christchurch earthquakes, which caused the death of 115 people, attributes most blame to engineering issues, but observes that the building “should never have been issued with a building permit by the Christchurch City Council in 1986 because it was not built to the standards of the time”.<sup>618</sup>

About 40,000 houses and apartment buildings built between 1994 and 2005 were found to suffer from severe weather-tightness problems, contributing to the ill health of occupants and rapid deterioration of structures. The repair and replacement costs were estimated at NZ\$11.3 billion.<sup>619</sup> Several court decisions held local authorities liable for compensation claims because of inadequate regulation. Other inquiries queried central government policy-making as regards the appropriateness of the Building Act standards for New Zealand conditions. Peter Mumford doubts whether government departments understood the risks and uncertainties

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<sup>615</sup> Royal Commission on the Pike River Coal Mine Tragedy, *Royal Commission on the Pike River Coal Mine Tragedy*, 2012, p. 35

<sup>616</sup> Royal Commission on the Pike River Coal Mine Tragedy, 2012: 30.

<sup>617</sup> Commenting on the Health and Safety in Employment Act 1992, the Royal Commission says, “The move towards more self-management by the employer was appropriate but the necessary support for the legislation, through detailed regulations and codes of practice did not appear ... The special rules and safeguards applicable to mining contained in the old law, based on many years of hard-won experience from past tragedies, were swept away by the new legislation, leaving mining operators and the mining inspectors in limbo”: Royal Commission on the Pike River Coal Mine Tragedy, 2012: 32.

<sup>618</sup> Canterbury Earthquakes Royal Commission, *Final Report: Volume 6: Canterbury Television Building (CTV)*, 2012, para. 9.3.

<sup>619</sup> “Leaky homes will cost \$11.3b to fix – report”, *New Zealand Herald*, 22 December 2009.

related to new regulatory regimes.<sup>620</sup> He maintains that regulatory regimes should always be considered experimental and subjected to regular review.

The government has responded to the recommendations arising out of the inquiries relating to the major regulatory failures, including, in the aftermath of the Pike River mine disaster, the creation of a new Crown entity to focus solely on the development, administration, and enforcement of the Health and Safety in Employment Act 1992, and the workplace enforcement of the Hazardous Substances and New Organisms Act 1996. The Treasury uses a “best practice regulation model” for biennial assessments of regulatory capacity for the 56 main regulatory regimes in the public sector.<sup>621</sup> The capacity of the regulatory bodies for 22 of these regimes is conservatively identified by the Treasury as “possible areas of material concern”.

As covered above, the Treasury now has approval for establishing expectations for regulatory stewardship. These stewardship expectations represent an important new step towards the wider goal of strengthening policy advice across government. Stewardship is defined to include monitoring, evaluation, and implementation planning as well as good policy advice in relation to regulation both inside and outside government.<sup>622</sup>

That New Zealand’s regulatory problems have not yet been solved is made evident in the 2013 Productivity Commission inquiry into local regulation. The commission observed that “30 pieces of primary legislation … confer regulatory responsibilities on local government, and many regulations in secondary instruments”, and identified several shortcomings in the way that regulations are made at the central level, including a lack of implementation analysis, poor consultation, and weak lines of accountability.<sup>623</sup> The commission concludes “there is evidence to suggest that implementation analysis is a generic weakness of regulatory policy analysis in New Zealand. This weakness impacts on local government because local government is often the implementer of government policy.”<sup>624</sup>

Over many years, governments, the public sector, and Parliament have been insufficiently accountable to citizens for the quality of the regulations they have designed, enacted, and implemented. Many failures arose from deep-seated institutional values and incentives. The 2013 NIS assessment concluded that although major progress had been made, other regulation-related accidents may be waiting to happen and that the quality of regulation must remain high on any integrity watch list for this country.<sup>625</sup> A recent (2018) example of such an “accident” is

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<sup>620</sup> Mumford, 2011.

<sup>621</sup> The Treasury, *The Best Practice Regulation Model: Principles and assessments* (Wellington: New Zealand Government, 2012).

<sup>622</sup> The Treasury, *Government Expectations of Regulatory Stewardship*, updated September 2015

<sup>623</sup> Productivity Commission, 2013: 5.

<sup>624</sup> Productivity Commission, 2013: 90.

<sup>625</sup> Many of New Zealand’s regulatory reforms followed an approach first articulated in 1972 by Lord Robens in the United Kingdom, that prescriptive regulation creates moral hazard for the regulatee. Part of the philosophy of the revised New Zealand Building Act 2004, for example, was that house buyers and owners were themselves responsible for ensuring houses were sound. This perspective was overturned in the subsequent legal judgments on leaky homes (presentation by Luke Cunningham, law firm, March 2013).

the failure in the regulatory compliance enforcement practices of the New Zealand Transport Authority relating to inspecting organisations that issue warrants of fitness for motor vehicles.<sup>626</sup>

#### 4.2.5 Integrity mechanisms (law)

**To what extent are there provisions in place to ensure the integrity of public sector employees?**

Score: 5

*Formal responsibilities and accountabilities for staff integrity rest primarily on the chief executives and board members of individual entities. Central agency assurance of these arrangements is light-handed, with the SSC's Integrity and Conduct Survey being the main feedback mechanism.*

#### Public service and Crown entities

The SSC sets standards of integrity and conduct for most state services agencies and provides advice and guidance to state services employees on matters of integrity and conduct.

Integrity standards are set out in a code of conduct, *Standards of Integrity and Conduct*.<sup>627</sup> The code consists of a one-page document that sets out high-level goals and criteria for state services employees to be fair, impartial, responsible, and trustworthy. It is applied to public service departments and the Crown entities within the State Services Commissioner's mandate. Staff in these organisations must comply with the code. As part of complying with the code, state services organisations must maintain policies that are consistent with it. The code was re-issued in 2017 along with specific guidance on election-related integrity and conduct.<sup>628</sup>

In 2007, 2010, and 2013, the SSC ran an integrity and conduct survey that measured state servants' perceptions of trustworthiness and compliance with standards of integrity and conduct within their agencies. The survey is structured around the main elements of the code. The SSC also provides advice and guidance to agencies on how to interpret and implement the code in their organisations, and advice on specific matters of integrity and conduct, such as safeguarding the political neutrality of the state services or state servants' interaction with social media.

The State Services Commissioner may conduct investigations and report on matters of integrity and conduct across most of the state services in order to provide assurance that the activities of agencies and individual state servants are being carried out within the law and within the bounds of proper conduct. The SSC states, "there is a relatively high threshold for the involvement of the Commissioner in individual matters of misconduct. In the first instance, individual chief executives are responsible for behaviour within their own organisations."<sup>629</sup>

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<sup>626</sup> See <https://www.nzta.govt.nz/media-releases/nz-transport-agency-welcomes-findings-of-independent-report-on-regulatory-compliance/>

<sup>627</sup> Issued by the State Services Commissioner under section 57 of the State Sector Act 1988.

<sup>628</sup> See <http://www.ssc.govt.nz/resources/10457/all-pages>

<sup>629</sup> State Services Commission, <http://www.ssc.govt.nz/appendix-1-standards-integrity-and-conduct-state-services>

In the context where individual chief executives carry the main responsibility for the integrity of their organisations, the ability of staff to speak out about wrongdoing is an important safeguard. But the key legal instrument for this purpose is not working well. The Protected Disclosures Act 2000 seems to have had little impact. SSC Integrity and Conduct Surveys show that awareness about this Act is low (although rising).<sup>630</sup> Few people seek the Act's protection. A significant number of whistle-blowers encounter inaction, and believe they are at risk of retaliation.<sup>631</sup>

It is possible that other changes to the public management system are required if the Protected Disclosures Act 2000 is to be effective, and certainly it needs to maintain policies and procedures that include support for those who speak up and positive and prompt organisational, cultural, and management engagement to support the reporting of wrongdoing. As things stand, this Act falls short of international good practice standards. Important issues seem to be the definitions of reportable wrongdoing, the high threshold for the seriousness of wrongdoing, the effectiveness of the reporting paths established by the legislation, the means of prompting the management of agencies or companies to recognise disclosures once made, central monitoring and oversight systems, incentives prompting agencies or companies to establish internal whistle-blower support and protection strategies, and effective remedies and compensation.<sup>632</sup> In February 2018, the government announced a review of the Protected Disclosures Act, and work on the review has begun.<sup>633</sup>

Crown entity employees are subject to the integrity and conduct standards set by the State Services Commissioner. Legislative provisions in this area align with *Cabinet Manual* expectations covering key areas such as the need for impartiality, acting legally and honestly, observing a duty not to disclose information, and acting in good faith without pursuing personal interests. Board members' fees are set through independent mechanisms and within frameworks designed to ensure consistency of remuneration in keeping with reasonable spending of public money. Standards of behaviour expected of Crown entity boards are set out in legislation, which gives boards responsibility "for ensuring the entity acts in a manner consistent with the spirit of public service".<sup>634</sup>

Legislation requires board members to declare interests before (and during) their appointment and to alert the board to any interests of other board members that may be in conflict. The responsible Minister must be satisfied that the interest is manageable.<sup>635</sup>

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<sup>630</sup> The 2010 survey reported that only a third of staff were aware of the Protected Disclosures Act 2000 despite a statutory requirement that agencies have a protected disclosures policy that is published widely in the agency.

<sup>631</sup> Research New Zealand, 2010.

<sup>632</sup> Including presentations from and discussions with Professor A. J. Brown.

<sup>633</sup> See <https://www.beehive.govt.nz/release/government-review-law-protection-whistle-blowers>

<sup>634</sup> Crown Entities Act 2004, section 47. Cabinet Office, "Fees framework for members appointed to bodies in which the Crown has an interest", Cabinet Office Circular CO (12) 6, 3 July 2009, <https://dpmc.govt.nz/publications/co-12-6-fees-framework-members-appointed-bodies-which-crown-has-interest>

<sup>635</sup> The Crown Entities Act 2004 provides guidance on how to manage interests and what must be disclosed. The legislation also provides for the ongoing management of interests.

## Local government

Comprehensive mechanisms within local government and the Local Government Act ensure integrity. The Act sets out governance principles covering democracy, transparency, accountability, being a good employer, and relations between elected and appointed officers. It also requires each council to produce at each triennial general election a “Governance Statement” that describes in detail its governance arrangements. Local authorities also fall under the ambit of the Office of the Ombudsman, OIA, and Local Government Official Information and Meetings Act 1987. In addition:

- The Parliamentary Commissioner for the Environment hears and investigates complaints about local authority decisions on environmental issues.
- The Remuneration Authority sets elected members’ remuneration.
- The Local Government Act 2002 requires councils to consult and give account to communities concerning planning, revenue raising, and expenditure.
- The Resource Management Act 1991 covers councils’ preparation and enforcement of regional policy statements, regional plans, and district plans and the integrity of elected members and employees in undertaking their own duties.
- The Environment Court has roles in mediation and alternative dispute resolution and exists as an appellate authority when there are disputes on council decisions made under the Resource Management Act 1991 and related statutes.

Professional institutions (planning, engineering, architecture) also have codes of conduct or practice and disciplinary sanctions for professional employees of local authorities.

### 4.2.6 Integrity mechanisms (practice)

#### To what extent is the integrity of public sector employees ensured in practice?

Score: 4

*Overall, the responsibilities for departments and agencies to maintain and promote integrity are actively discharged. However, departmental integrity systems are not centrally monitored and have been found to be weak in areas relating to administrative justice for citizens and staff (such as client appeal systems, privacy, OIA compliance, procurement record keeping, and protected disclosure measures). Surveys show significant differences in integrity between the public service and Crown entities and between the health sector and other sectors.*

## State services

The results of the Auditor-General’s 2012 survey on fraud awareness, prevention, and detection in the state sector show<sup>636</sup> a strong commitment to protecting public resources against fraud.<sup>637</sup>

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<sup>636</sup> OAG, *Fraud Awareness, Prevention, and Detection in the Public Sector*, 2012, [www.oag.govt.nz/2012/fraud-awareness](http://www.oag.govt.nz/2012/fraud-awareness). There does not appear to have been any further survey since 2012.

<sup>637</sup> OAG, “Part 1: Overview: Summary of our fraud survey results for government departments”,

There is no requirement for regular department or agency feedback on compliance with the Standards of Integrity and Conduct.<sup>638</sup> Since 2010, state services chief executives have agreed, on the suggestion of the State Services Commissioner, to be more transparent about their expenses and receipt of gifts and hospitality by publishing this information on their websites regularly. The SSC also publishes the chief executive remuneration tables,<sup>639</sup> which were previously included in the SSC annual report. Publishing this information as a stand-alone document puts it in the public domain in a more timely fashion.

There are no centralised rules on the promotion of values and ethical training. The promotional strategy is to strengthen the ethical culture within the public service by publishing standards and policy and leadership documents, sharing responsibilities, declaring real or potential conflicts of interest, reporting on conflicts of interest, producing various annual reports, and fulfilling the obligation to justify administrative decisions. The SSC undertakes some integrity-promoting activities across the state services. For example, in 2012, the SSC ran a series of events focused on whistle-blowing, led by international expert Professor A. J. Brown.

The departmental or agency emphasis of the public management system has worked well, with most chief executives appearing to have been active in ensuring staff receive ethical training and implementing integrity and conduct standards.<sup>640</sup> Nevertheless, the 2013 NIS assessment noted several security breaches resulting in the release of private information about citizens (contravening the Privacy Act 1993) and, in the case of the Accident Compensation Corporation, revealing that appeal processes were being adjudicated by agents under incentives to support the corporation. In 2018, there was publicity around the release of information about the Hon Winston Peters' superannuation<sup>641</sup> and about the Leader of the Opposition's travel expenses,<sup>642</sup> although in these two cases the leak may not have been from a public sector agency.

There is a real need for policies to enhance and support tone at the top, with leadership committed to integrity and, especially, to ethical leadership. Codes of conduct (with less emphasis on conduct prescription and more on ethics) and guidelines should be embedded, used and continuously improved, moving towards strong staff engagement. The SSC undertook Integrity and Conduct Surveys in 2007, 2010, and 2013. The 2013 survey is not directly comparable with the two earlier ones but produced similar results. Compared to the findings of the 2007 survey, in 2010 there were fewer cases of observed sexual harassment, more staff reporting of misconduct, more collegial support for ethical behaviour, more managerial action against breaches, and more attention to integrity matters in performance appraisal processes.

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<https://www.oag.govt.nz/2012/fraud-summary-govt-departments/part3.htm>; OAG, “Part 2: Detailed results for these entities.” [www.oag.govt.nz/2012/fraud-summary-crown-entities/part2.htm](http://www.oag.govt.nz/2012/fraud-summary-crown-entities/part2.htm)

<sup>638</sup> State Services Commission, *State Services Commission Annual Report for Year Ended 30 June 2011* (Wellington: State Services Commission, 2011).

<sup>639</sup> SSC, *Remuneration of Public Service and State Sector Senior Staff as at 30 June 2012* (Wellington: State Services Commission, 2012), [www.ssc.govt.nz/sites/all/files/rem-senior-statesector-staff-30june12.pdf](http://www.ssc.govt.nz/sites/all/files/rem-senior-statesector-staff-30june12.pdf)

<sup>640</sup> Interview with SSC.

<sup>641</sup> See <http://www.scoop.co.nz/stories/HL1808/S00042/taxpayers-to-fork-out-20k-to-defend-peters-lawsuit.htm>

<sup>642</sup> See <http://www.scoop.co.nz/stories/HL1808/S00090/inquiry-launched-into-leak-on-simon-bridges-expenses.htm>

Areas of weakness noted in 2007 and continued in 2010 and 2013 include low awareness of ethics training; low awareness of the Protected Disclosures Act; high levels of observed ethical misconduct, especially abusive or intimidating behaviour towards other staff; improper use of the internet or email; and lying to other employees. In addition, some aspects of senior managers' behaviour were perceived poorly. More state servants in 2010 than in 2007 said they did not trust middle and senior management to keep promises and commitments.<sup>643</sup>

In 2010, 65 per cent of staff reported their organisation had been through a restructure in the last two years compared with 55 per cent of state servants in 2007. These staff recorded higher levels of dissatisfaction with the information from senior managers about what was going on in their organisation and less trust that senior and middle managers in their organisation would keep their promises and commitments. State servants think managers are less likely to be held accountable for misconduct than are non-managers. Sixteen per cent of state servants who reported a breach or misconduct said they experienced retaliation as a result.

The Integrity and Trust Surveys also revealed significant attitudinal and behavioural differences between state services governance systems and, in some cases, sectors. These differences reveal that different governance regimes have distinctive integrity risk profiles. For example:

- Public servants feel better prepared to handle situations that invite misconduct than do other state servants.
- Although Crown entity employees see misconduct at similar levels as other state servants, those who see misconduct are less inclined to report it.
- Where Crown entity staff report misconduct but are dissatisfied with the outcome, more than half (53 per cent) say they feel “there was a cover up”.
- District health board staff see more misconduct than do other state servants, in particular abusive or intimidating behaviour towards other staff.
- Where district health board staff report misconduct but are dissatisfied with the result, substantially more in 2010 than in 2007 say it was because corrective action was not severe or complete enough (93 per cent compared with 50 per cent).
- Public service employees are more likely than Crown entity employees to agree that their manager disciplines integrity breaches.

### Crown entities

The integrity and conduct of boards comes under scrutiny from time to time as evidenced by Auditor-General inquiries into various aspects of board operations. Board chairs have a responsibility to ensure board member conflicts of interest are managed effectively. It is difficult to know how well integrity provisions for board members are ensured in practice.

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<sup>643</sup> As discussed above, this finding reflects the negative impact of restructuring.

#### 4.3.1 Public education

**To what extent does the public sector inform and educate the public on its role in fighting corruption?**

Score: 3

*The public sector has an active, targeted, and sector-specific approach to combating corruption, but the system as a whole lacks a body clearly responsible for identifying and promoting action to combat new corruption risks as they emerge. This lack of overview has been manifested in the tardiness of the country's response to international standard setting in the fight against corruption.*

In the New Zealand context, domestic corruption has not been such a problem that there has been a strong domestic constituency for making it a high cross-government policy priority. Where public sector agencies do engage the public on matters relating to corruption, it tends to be in relation to specific policies for which they are responsible. Thus, the Ministry of Business, Innovation and Employment addresses specific matters relating to banking regulation and company governance, the SFO and the Police investigate and prosecute instances of corruption, and so on.

Those departments and agencies involved in dealing with bribery and corruption (the SFO, Ministry of Justice, the OAG, and the SSC) maintain a reasonably high public profile in integrity-promoting activities, and the public sector organisations most involved in international trade (the Ministry of Foreign Affairs and Trade, the New Zealand Export Credit Office, and, albeit to a more limited extent, New Zealand Trade and Enterprise) inform and advise the business community involved in international trade about New Zealand's international anti-bribery and corruption obligations.

This generally satisfactory situation has its risks. One is a tendency to be inactive in cooperating on international anti-corruption activities. As covered in the legislature and political executive pillar reports, New Zealand signed but took a considerable time to ratify UNCAC<sup>644</sup> and has been slow in implementing the requirements of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions. Secondly, while the public sector's targeted and sector-specific approach to combating bribery and corruption seems appropriate given its relatively low incidence, the public sector system as a whole appears to lack a body clearly responsible for identifying and promoting action to combat new corruption risks as they emerge.

As active participants in the global economy, New Zealanders are increasingly exposed to pressures to engage in corruption in other countries.<sup>645</sup> In recent revelations about fraud involving shell companies and tax havens, it appears that some New Zealand citizens have

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<sup>644</sup> The UN General Assembly adopted the Convention against Corruption on 31 October 2003 by Resolution 58/4. It was opened for signature from December 2003 and signed by 140 countries. As of June 2013, there are 167 parties to the convention, including the European Union. New Zealand ratified the Convention in 2015.

<sup>645</sup> "New Zealand Tops anti-corruption index – but our off-shore dealings more dubious", *National Business Review*, 27 October 2010 [www.nbr.co.nz/article/nz-shares-top-spot-anti-corruption-index-132133](http://www.nbr.co.nz/article/nz-shares-top-spot-anti-corruption-index-132133)

promoted such activities.<sup>646</sup> However the development of a national anti-corruption programme now (2018) appears to be under way. The SSC reports “The Hon Andrew Little has been appointed by the coalition government as Minister with specific responsibilities for leading their Anti-Corruption Strategy. The Hon Andrew Little is also responsible for progressing the anti-corruption pledges identified at the London Anti-Corruption Summit in May 2016.”<sup>647</sup>

The SFO has led a cross-agency project to develop an anti-corruption work programme to strengthen New Zealand’s anti-corruption framework. The proposed work programme, developed in consultation with the Ministry of Justice, SSC, Police and other agencies, aims to meet many of the objectives of an anti-corruption strategy.<sup>648</sup> There is certainly a case for corruption prevention training programmes in the public sector as part of induction and staff development frameworks, along with refresher opportunities.

#### **4.3.2 Public procurement<sup>649</sup>**

**To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?**

Score: 4

*Strong modern formal processes are in place for public procurement, and compliance appears to be high. The processes reflect international good practice, with open access for goods and service providers, and a proactive approach to building and assessing client procurement capacity Transparency through disclosure is moderate but variable and is reliant on formal requests. The sanctions and review mechanisms are functional and appear effective. There have been improvements since 2013 and an increase in score to 4.5 or 5 in 2018 is probably warranted*

Effective institutional arrangements for public procurement are crucial in minimising corruption. The government spends about NZ\$41 billion a year (50 per cent of total appropriations) in procuring works, goods, and services to build and maintain infrastructure and support public programmes.<sup>650</sup> The 2013 NIS report found that public procurement was lightly regulated through a framework comprising guiding principles (updated in 2012) and a set of rules (2007) that were about to be updated with a wider reach.<sup>651</sup> The process and framework for public procurement has undergone substantial reform since then with the establishment of a

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<sup>646</sup> For example, Nicky Hager, “Money trail leads home to New Zealand” Stuff, 7 April 2013, [www.stuff.co.nz/business/money/8515361/Money-trail-leads-home-to-New-Zealand](http://www.stuff.co.nz/business/money/8515361/Money-trail-leads-home-to-New-Zealand)

<sup>647</sup> See <https://www.transparency.org.nz/newsletter/transparency-times-february-2018/>

<sup>648</sup> See <https://www.justice.govt.nz/assets/Documents/Publications/cab-an-anti-corruption-work-programme-for-new-zealand.pdf>

<sup>649</sup>A more detailed assessment of public procurement is in the supplementary papers. 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>650</sup> Government of New Zealand. Budget 2018 Data from the Estimates of Appropriations 2018/19 at: <https://treasury.govt.nz/publications/ise/budget-2018-data-estimates-appropriations-2018-19>

<sup>651</sup> Revisions to the *Mandatory Rules for Procurement by Departments* (2006) have resulted in *Government Rules of Sourcing*, which Cabinet approved in April 2013 and which come into effect on 1 October 2013. These rules align to the World Trade Organization Agreement on Government Procurement, which is considered to represent best international practice.

procurement functional leadership role in 2012<sup>652</sup> and a framework of guiding principles and rules of sourcing, currently in its third edition (2015).<sup>653</sup> The rules address the specific function of sourcing goods and services from third party suppliers, with principles that focus on purpose, integrity, fairness, value and accountability<sup>654</sup>. The new rules of sourcing align with regional commitments and international trade treaties, including the World Trade Organization.<sup>655</sup>

The rules are mandatory for Public Service departments, the police and defence forces and most Crown Entities and Public Finance Act Schedule 4A companies – currently about 135 agencies – and they apply as guidance to about 3,000 other public entities.<sup>656</sup> Each entity, through its chief executive, is responsible for tailoring procurement policies and procedures to the business need and for conducting and administering procurement contracts. The Ministry of Business, Innovation and Employment, in addition to promulgating policy, rules, and guidance, is responsible for building capacity, monitoring implementation of the policy, and investigating complaints.<sup>657</sup> Guidance on planning and managing the procurement process aims to improve the quality and implementation of procurement across government agencies, and is freely available and accessible for practitioners on the NZGPP website. A Procurement Academy provides access to training and expertise, and tools such as a Procurement Capability Index allow agencies to self-assess their capacity and training needs.

The rules require open tendering as the norm (subject to reasonable exceptions), objective evaluation of tenders against published criteria, and documentation of the process. Guidelines and model documents are available to promote consistency across entities. There is also increasing implementation of All-of-Government (AoG) contracts for collective purchasing of goods and services that are common across multiple entities and which use collective purchasing

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<sup>652</sup> The Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) provides functional leadership on procurement policy and practice, supported by New Zealand Government Procurement and Property, a branch of MBIE.

<sup>653</sup> The *Mandatory Rules for Procurement by Departments* (2006) were succeeded by *Government Rules of Sourcing (Rules for planning your procurement, approaching the market and contracting)*, which first came into effect on 1 October 2013 and is currently in its 3<sup>rd</sup> edition (2015). These rules now align with the World Trade Organization Agreement on Government Procurement, which is considered to represent best international practice.

<sup>654</sup> Five principles - regarding planning, fair process, value for money and accountability – apply to all public procurement and all agencies, promoting open fair competition, innovation, a productive supply base, a reputation for integrity and high-performing public services. A series of 66 rules specify how those are to be applied in planning the procurement, approaching the market and contracting. The Rules are mandated for, are expected to be applied by a further 2,620 entities, and are encouraged for another 250 agencies.

<sup>655</sup> The Rules implement New Zealand commitments in international trade, including: the Australia New Zealand Government Procurement Agreement; Closer Economic Partnership Agreement with Singapore; and Trans-Pacific Strategic Economic Partnership (P4) Agreement. They also now align with the World Trade Organization Agreement on Government Procurement (GPA), which required a greater degree of reporting on the procurement activities of agencies.

<sup>656</sup> State Sector Act 1988, Schedule 1. See also <https://www.procurement.govt.nz/procurement/principles-and-rules/government-rules-of-sourcing/getting-started/who-the-rules-apply-to/>

<sup>657</sup> Ministry of Economic Development, Government Procurement in New Zealand: Policy Guidance for Purchasers, August 2007, Appendix 1.

power to deliver savings, improve engagement with suppliers and improve overall service quality – these are particularly useful for small entities.

There is currently inadequate public release of details of contracts awarded, but New Zealand's 2018-20 OGP National Action Plan, released in December 2018, includes a commitment to publish the open data on government-awarded contracts that is currently available on the Government Electronic Tenders Service (GETS).<sup>658</sup> This is a first step towards better public release.

Large and high-risk projects are subject to the Treasury's Better Business Case and Investor Confidence rating processes, and independent review at key milestones through the Gateway review process<sup>659</sup>. The rules require clarifications during tendering to be shared equally with all participants, but recourse on the process or award decision can follow multiple avenues without explicit requirements to be followed. A supplier feedback system in the Ministry of Business, Innovation and Employment handles general concerns about process. General rights and protection for whistle-blowing, provided under the Protected Disclosures Act 2000, apply also to procurement.

Accountability for procurement performance has been exercised through entity internal audits, but formal accountability at a central level has been essentially discretionary. In the wake of concerns raised by some entity audits, the OAG is embarking on a performance audit of the procurement functional leadership and procurement implementation in 2019.<sup>660</sup>

In practice, compliance with the main processes of open tendering, objective evaluation, and required disclosure appears high, especially for medium to large procurements that must be tendered through an electronic tendering system. Transparency is improving, with disclosure of more projects on the central platform, Government Electronic Tenders Service (GETS) and broad voluntary disclosure by some entities<sup>661</sup>, but the extent of information disclosed still falls short of good international practice<sup>662</sup>. In 2017, despite posting in the order of a thousand activities annually, the publicly disclosed procurement on GETS appears to account for only about a quarter of the total value<sup>663</sup>. The extent of compliance of procurement activities with the Rules or of the use of other forms of sourcing is not readily evident. Such information may be included in entity reports to Ministers and would be publicly available only through an OIA request.

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<sup>658</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 12: Open procurement. (Wellington: State Services Commission, 2018)

<sup>659</sup> See: <https://treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/review-investment-reviews/gateway-reviews>

<sup>660</sup> The OAG is conducting a performance audit in 2019 of MBIE and the NZGPP and a selection of six agencies of different sizes (Ministry of Social development, Fire and Emergency NZ, Ministry of Foreign Affairs and Trade, Ministry for Culture and Heritage, NZ Antarctic Institute and Ministry of Education) to evaluate the effectiveness of the functional leadership, <https://oag.govt.nz/blog/2019/procurement-functional-leadership>

<sup>661</sup> The Auckland Council publishes details of awarded contracts and supplier spending on the contracts quarterly, <https://www.aucklandcouncil.govt.nz/about-auckland-council/working-with-us/Pages/awarded-contracts.aspx>

<sup>662</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 12: Open procurement. (Wellington: State Services Commission, 2018)

<sup>663</sup> The 2018 procurement plan shows 747 activities with a total value in the order of \$7-\$10 billion, including 3%, 11% and 17% under \$1 million, \$10 million and \$100 million respectively and about 69% over \$100 million.

Integrity would be strengthened by expanding systematic proactive disclosure to include key statistical and implementation information that reflects practice.<sup>664</sup>

The quality of outcomes appears to be an ongoing concern. There are also signs that unbalanced risk-sharing between client and supplier may undermine contract performance, the firms or even ultimately the market itself<sup>665</sup> – an indication that contractual incentives within such a flexible framework need to be monitored and managed carefully.

The wide range of entities undertaking procurement means that staff capacity and capabilities are areas of discernible risk. Each entity is responsible and accountable for the resourcing, administration, and qualification of its staff, and for the separation of functions from procurement. Large entities such as the New Zealand Transport Agency, which accounts for nearly 10 per cent of total government procurement, have strong systems and capacity, but smaller entities such as certain Crown entities and various boards are particularly exposed to these risks, especially potential conflicts of interest and contract administration. The Ministry of Business, Innovation and Employment (MBIE) capacity-building programme provides world-class training and qualifications through the Procurement Academy (cited by the OECD as good practice) and special expertise through the Commercial Pool to address such needs. These areas will be a key focus in the 2019 OAG performance audit.

The administrative sanctions on staff regarding public procurement are limited. A supplier may be excluded for false declarations or previous performance deficiencies, and other reasons.<sup>666</sup> In practice, formal audits and inquiries have been effective in achieving accountability without unduly suppressing efficiency, and findings from the OAG have served as a leading guide on good practice in procurement. Parliamentary select committee reports also support accountability because they typically include a selective review of procuring entity practice.

#### 4.4.1 Te Tiriti o Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the public sector 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 the public sector has 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?**

*The public sector complies with its legal responsibilities under the Treaty of Waitangi, but little priority is given to oversight and policy development in this constitutionally important area. The comparatively low level of employment of Māori by Crown entities warrants attention.*

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<sup>664</sup> See, for example, the Construction Sector Transparency Initiative at [www.infrastructuretransparency.org](http://www.infrastructuretransparency.org)

<sup>665</sup> Failures of some major construction contracts and firms have reportedly involved risk sharing issues. A major bus service contract has shown signs of employment issues that may have resulted from price and performance pressures. On the other hand, alliance contracts in transport projects and especially emergency recovery projects, have been successful in managing risk-sharing.

<sup>666</sup> Rule 41 *Government Rules of Sourcing*, 2015

Departments and Crown entities are not required to report regularly on Treaty observance. However, the legislation for the functions of some public service departments and Crown entities has specific Treaty requirements that are covered in their overall performance reporting. In addition, Te Puni Kōkiri (the Ministry of Māori Development) provides general guidance for the public sector<sup>667</sup> and periodically reports and advises on specific policy areas from the perspective of the welfare of Māori.<sup>668</sup>

The SSC does not have ongoing statutory responsibilities for the Treaty of Waitangi and, where it has undertaken wider activities related to the Treaty, it has been in response to the policies of the government of the day. The SSC's personnel management obligations overlap with Treaty interests in the regular monitoring of the employment of Māori.

The good employer provisions of the Crown Entities Act 2004 include the expectation that personnel policies will recognise the aims and aspirations of Māori, their employment requirements, and the need for the involvement of Māori as employees of the entity.<sup>669</sup> SSC's latest Human Resources Capability Survey of public service departments showed 16.4 per cent staff are Māori, of whom 9.2 per cent are tier 1–3 managers.<sup>670</sup> This had fallen slightly (to 16.0 per cent) in 2018, with Māori still under-represented in management.<sup>671</sup> On the other hand, only 6.36 per cent of Crown entity employees are Māori, a quarter of respondent entities have no Māori staff, and only two chief executives and very few senior managers are Māori.

Local governments by contrast have clearly stated Treaty-related obligations under the Local Government Act 2002 and Resource Management Act 1991. Treaty issues may also arise in the implementation by local government of a wide range of statutes. The Resource Management Act requires the principles of the Treaty to be taken into account in decisions made under it. In practice, this has meant a duty to consult local Māori who might be affected. Practice across councils is variable.<sup>672</sup> How far consultation under the Resource Management Act results in Treaty principles being taken into account is unclear. The Productivity Commission in its report on local-level regulation, observes, “on the available evidence, the current system for involving Māori in resource consent decisions, does not appear to be working well for anyone, largely due to the costs and timeframes involved”.<sup>673</sup>

Treaty responsiveness information at the agency level is not consolidated. Also, respect for the Treaty is not just about equal employment opportunities, cultural awareness, and consultation processes. The interests of Māori are deeply engaged in the most difficult policy challenges facing government at national and local levels. The Better Public Services reform programme,

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<sup>667</sup> For example, Good Practice Participate website, “Related resources for working with Māori Good Practice Participate, <https://www.dia.govt.nz/Good-Practice-Participate#4>

<sup>668</sup> Te Puni Kōkiri, *Treaty of Waitangi and the Ministry for Social Development*, no date.

<sup>669</sup> Crown Entities Act 2004, section 118(2)(d).

<sup>670</sup> Human Rights Commission, “Crown entities monitoring report reveals low numbers of Māori employees”, 3 April 2012, [www.hrc.co.nz/2012/crown-entities-monitoring-report-reveals-low-numbers-of-maori-employees](http://www.hrc.co.nz/2012/crown-entities-monitoring-report-reveals-low-numbers-of-maori-employees) (2018 Link broken, summary at <http://good-employer.hrc.co.nz/#2018/report/all-entities>

<sup>671</sup> See <http://www.ssc.govt.nz/sites/all/files/public-service-workforce-data-2017-v2.pdf>

<sup>672</sup> For example, “Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison”, Otago Regional Council, January 2003.

<sup>673</sup> Productivity Commission, 2013.

discontinued in 2018,<sup>674</sup> was an attempt at a historical recentralisation of some aspects of state services management. Under the programme, the SSC had its management mandate broadened and deepened, and the Treasury sought to strengthen the quality and public service accountability for policy advice through the expectations for regulatory stewardship.

Given the constitutional standing of the Treaty and the enduring importance of Māori issues across the policy agenda, central agencies could see the monitoring and evaluation of public sector policy advice and services from a Treaty perspective as part of their stewardship responsibilities. How such stewardship information should impact on policies would, of course, remain the prerogative of the government of the day.

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<sup>674</sup> See [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11980625](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11980625)

## Annex to pillar 4

### Misconduct in public office: An integrity-plus approach

In line with the integrity-plus approach, the introduction of an offence of misconduct in public office would prove valuable. It would enable prosecution for a broader range of breaches of integrity, such as improper acts involving varying degrees of abuse of authority or conflict of interest, than is possible under standard bribery laws alone. Good examples are found in the UK and Hong Kong where the law provides for an offence of misconduct in public office, and there are similarities with the US approach to malfeasance in public office.

The Hong Kong Court of Final Appeal defined the elements of the offence of misconduct in public office as:

The offence would be committed where –

- (1) a public official;
- (2) in the course of or in relation to his public office;
- (3) wilfully misconducts himself; by act or omission (for example, by wilfully neglecting or failing to perform his duty);
- (4) without reasonable excuse or justification; and
- (5) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

This definition reinforces provisions of the Hong Kong Civil Service Code under which public officials must show commitment to the rule of law; honesty and integrity; objectivity and impartiality; political neutrality; accountability for decisions and actions; and dedication, professionalism, and diligence.<sup>675</sup>

The definition of the elements of the offence in UK law is similar:<sup>676</sup>

1. A public officer acting as such ...
2. Wilfully neglects to perform his duty and/or wilfully misconducts himself ...
3. To such a degree as to amount to an abuse of the public's trust in the office holder ...
4. Without reasonable excuse or justification ...

However, UK law omits the proviso that the misconduct must be serious, not trivial. Penalties in the UK can also be more severe than in Hong Kong.

Commentary on the UK law explains: "The essential feature of the offence is an abuse by the public official of the powers, discretions or duties exercisable by virtue of his official position

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<sup>675</sup> Civil Service Bureau, *Misconduct in Public Office*, 2012. Link broken, alternative 2018 is [https://www.csb.gov.hk/english/info/files/common/Overview\\_disciplinary\\_matters\\_eng.pdf](https://www.csb.gov.hk/english/info/files/common/Overview_disciplinary_matters_eng.pdf)

<sup>676</sup> UK Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868, para. 61.

conferred on him for the public benefit. It does not require the presence of bribery or pecuniary gain, and thus covers a wider range of misbehaviour than corruption narrowly defined.”

The judicial authorities that apply the UK law also recognise that the holder of a public office should not be defined in a narrow or technical sense, and suggest that it is the nature of the duties and the level of public trust involved that are relevant, rather than the manner or nature of appointment. “A public office holder is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public.”<sup>677</sup>

A person may fall within the meaning of a public officer where one or more of the following characteristics apply to a role or function that they exercise with respect to the public at large: judicial or quasi-judicial, regulatory, punitive, coercive, investigative, representative (of the public at large), or responsibility for public funds.

An offence of misconduct in public office in New Zealand would reinforce the requirement for ethical behaviour in the public service and state services, form a legal adjunct to the SSC Code of Conduct, support chief executives of public agencies, and lend strength to a national anti-corruption strategy. Along with other laws, codes, and conventions governing integrity in public service, it would need to be supported by a broader educational strategy for public officials in New Zealand.

In addition, the restoration of the annual central record of criminal offences by state servants, such as the SSC used to publish before 1988, could be an integral part of an anti-corruption strategy.

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<sup>677</sup> In *R v Whitaker* [1914] KB 1,283.

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## Law enforcement agencies (pillar 5)

### Summary

*This pillar report has been quite substantially updated to reflect changes in the law and increased anti-corruption activity, particularly on the part of the SFO, which, along with the Ministry of Justice leads a Cabinet-mandated Anti-Corruption Work Programme. The formal announcement of the new anti-corruption work programme came just after the end of 2018, although its commencement followed Cabinet direction in mid-2018. For this reason, while there is mention of it in the report, there has been insufficient time for detailed analysis. Other data has been updated where more recent figures are available. Updated material should be easily identified from its context.*

New Zealand's law enforcement agencies maintain high standards of transparency and, integrity, and are generally adequately resourced, independent, and accountable. On occasions when they fail to meet good standards, the failures are quickly identified and these failures and controversies provide impetus for improvement. Compared to many countries, they appear to have low levels of internal corruption.

Prior to the publication of the 2013 NIS assessment, the New Zealand government had been slow to implement international policies and laws for deterring and combating bribery and corruption. In several key areas, legislation, resources, and government policy were inadequate for addressing bribery and corruption, and there was little in the way of risk monitoring, preventative, or educational activity. In the five years since then, much progress has been made to address bribery and corruption through the increased focus of the SFO and the Ministry of Justice in this area, the increase in the police force including its Financial Intelligence Unit,<sup>678</sup> and the development of a unit within the DPMC initially led by former Police Commissioner, Howard Broad, to address cybersecurity. Concern is on-going, however, about the extent of the over-representation of Māori in the criminal justice system.

Gaps in anti-corruption frameworks, particularly in relation to the implementation of international conventions were identified in 2013 as an on-going risk in New Zealand; this was taken up as part of a wider theme in Chapter 6 of the 2013 NIS assessment. There were government commitments to progress in these areas, culminating in the launch of omnibus anti-corruption legislation passed by the government in 2015, followed by the unanimous vote in Parliament to ratify UNCAC. More recently, an anti-corruption work programme has been drawn up with the development led by the Ministry of Justice and the SFO<sup>679</sup>.

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<sup>678</sup> See <https://www.police.govt.nz/about-us/structure/teams-units/financial-crime>

<sup>679</sup> See <https://www.justice.govt.nz/assets/Documents/Publications/cab-an-anti-corruption-work-programme-for-new-zealand.pdf>

Reporting in 2007, a commission of inquiry addressed integrity issues arising from police conduct,<sup>680</sup> and NZ Police has been reporting regularly on the implementation of the commission's recommendations.<sup>681</sup> The monitoring period required after the report is now over and some improvements are noted. While the commission's observations led to a more accountable police force, the stories that emerged through the media, have ensured that it worked harder to improve internal culture and conduct.

NZ Police, as the largest of New Zealand's law enforcement agencies, has a dedicated independent oversight body created under statute and headed by a retired judge to investigate misconduct and neglect of duty – the Independent Police Conduct Authority (IPCA). The other main law enforcement agency, the SFO is not covered by the IPCA but is subject to the Ombudsman.

The OIA applies to NZ Police and the SFO, but includes withholding provisions that protect information where disclosure could prejudice the maintenance of the law. While the two agencies generally comply with transparency obligations, the 2013 NIS report noted concerns about a lack of transparency around surveillance activities and the use of information obtained through such activities. A house break-in and investigation of the bank records of an investigative journalist without a warrant (eventually resulting in the payment of substantial damages in 2018) is evidence that these concerns are valid.<sup>682</sup>

Greater priority still needs to be given to the prevention, detection, investigation, and prosecution of bribery and corruption. In particular, there is an absence of reliable information about actual and potential levels of corruption and insufficient monitoring of risk areas and of educational and awareness activities. For example, there should be more training programmes and more thorough preparation for the triennial responsibility of thoroughly and rapidly investigating electoral offences.

The development of New Zealand bribery and corruption policy (see Chapters 3 and 4 for more detail) has been driven in the last decade by external pressures that have come from UNCAC, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the multilateral Financial Action Task Force. Despite these pressures, the New Zealand response was been slow, although considerable progress was made in 2013-15 culminating in Parliament's unanimous support for the ratification of UNCAC in December 2015, and the new anti-corruption work programme is a welcome development.

The new impetus was brought about, in part, through a reprioritisation of anti-corruption legislation in line with New Zealand's bid to be an independent member of the UN Security Council and led to proposals for a series of legislative changes. These changes are now complete and UNCAC has been ratified. New Zealand's bribery and corruption legislation now provides a

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<sup>680</sup> Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct* (Wellington: Commission of Inquiry into Police Conduct, 2007); "Commission of Inquiry into Police Conduct." <https://www.parliament.nz/resource/0000055162>

<sup>681</sup> New Zealand Police, "Commission of Inquiry Quarterly reports", [www.police.govt.nz/about-us/publications/corporate/commission-of-inquiry](http://www.police.govt.nz/about-us/publications/corporate/commission-of-inquiry)

<sup>682</sup> See [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12068928](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12068928)

basic framework for the criminalisation of corrupt behaviours but there remain overseas examples that could usefully be adopted in New Zealand.<sup>683</sup>

Another weakness derives from the difficulty of making corrupt activities visible. Making organisations and individuals within them individually responsible for proper risk management practice, along with monitoring processes, is a settled approach in respect of health and safety and has similar applicability in respect of bribery and corruption. Measures used overseas could be adopted here.<sup>684</sup>

Although there has been some action taken by agencies in New Zealand, the belief that corruption is not a significant feature of New Zealand society has militated against stronger policy and action by the government. The 2013 NIS assessment found that there seemed to be little recognition of the principle that because of the closed nature of corrupt transactions and the self-interest in non-disclosure by all parties, there is a need to investigate potential areas of corruption instead of waiting until complaints are made. The very recent (2018) development of a national anti-corruption programme may be the beginning of a trend away from this attitude.<sup>685</sup>

The recommendations in Chapter 6 of the 2013 NIS assessment relating to anti-corruption are part of an overarching proposal for a national anti-corruption strategy. As well as direct enhancement of anti-corruption legislation, the strategy includes measures to improve the disclosure of beneficial interests in companies and trusts and the pecuniary interests of office-holders, to get more transparency in political party finances, and to take a broad approach to boost anti-corruption and integrity-focused education, training, and research.

The anti-corruption work programme that commenced in 2018 is a useful first step towards a comprehensive anti-corruption strategy. The SFO's strategic objectives for the programme are:

- understand New Zealand's corruption landscape and vulnerabilities
- enhance New Zealand's capability to prevent corruption
- proactively detect, disrupt and enforce law against corrupt conduct
- reform New Zealand's corruption offence framework.<sup>686</sup>

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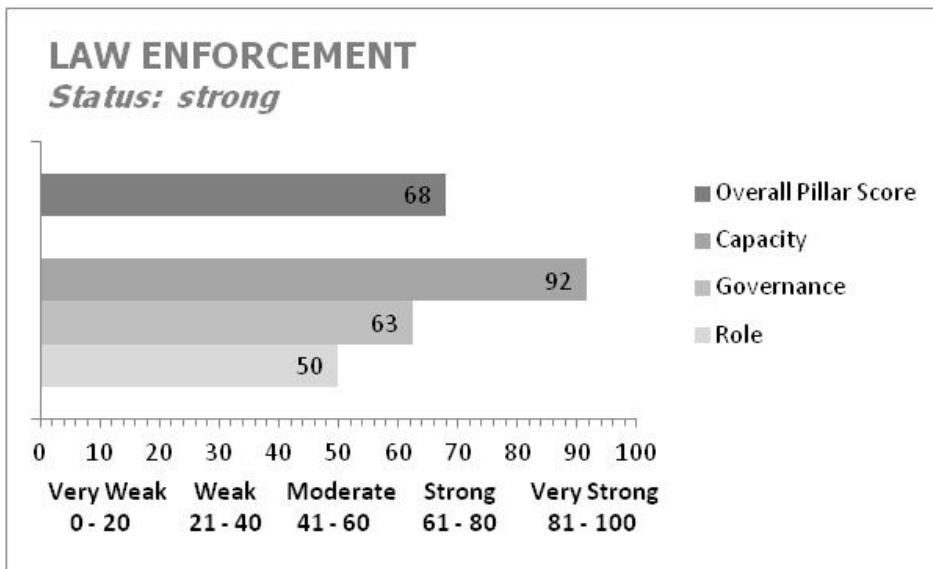
<sup>683</sup> Bribery Act 2010 (UK), section 6.

<sup>684</sup> Bribery Act 2010 (UK), section 7.

<sup>685</sup> Serious Fraud Office, *Annual Report 2018*, p.5, [https://www.parliament.nz/resource/en-NZ/PAP\\_80777/70be57ec1309746dd9169df97d5c1f5e14280fcb](https://www.parliament.nz/resource/en-NZ/PAP_80777/70be57ec1309746dd9169df97d5c1f5e14280fcb).

<sup>686</sup> Serious Fraud Office, *Annual Report 2018*, 2018.

**Figure 7: Law enforcement scores**



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

The main law enforcement agencies combating bribery and corruption are the SFO<sup>687</sup> and NZ Police.<sup>688</sup> Other organisations have a law enforcement function, sometimes together with regulatory activities, for example, the New Zealand Customs Service, the Ministry for Primary Industries, the Financial Markets Authority,<sup>689</sup> Maritime New Zealand, and the Immigration Service in the Ministry of Business, Innovation and Employment. By its nature, the Inland Revenue Department sometimes encounters issues of bribery and corruption and has some law enforcement functions. On occasion the New Zealand Defence Force works with NZ Police. The DPMC has led in deterring and mitigating cyber -corruption. Within DPMC, the National Cyber Security Office is responsible for New Zealand's cybersecurity action plan, refreshed in 2018.<sup>690</sup>

The SFO is a specialist law enforcement agency the purpose of which is to detect, investigate, and prosecute New Zealand's most serious and complex financial crimes. It operates under the Serious Fraud Office Act 1990. In 2013, its two investigation units (since combined) were the Financial Markets and Corporate Fraud unit and the Fraud, Bribery and Corruption unit.<sup>691, 692</sup> The SFO has primary responsibility for liaising with foreign anti-corruption agencies and has strong relationships with those agencies. It has, for example, had active corruption

<sup>687</sup> See [www.sfo.govt.nz](http://www.sfo.govt.nz)

<sup>688</sup> See [www.police.govt.nz](http://www.police.govt.nz)

<sup>689</sup> Financial Markets Authority Act 2011.

<sup>690</sup> See <https://dpmc.govt.nz/our-business-units/national-security-group/national-security-policy/national-cyber-policy-office>

<sup>691</sup> In 2018 the SFO appears to consist of three teams: Evaluation and Intelligence, Investigations, and Business Services, <https://www.sfo.govt.nz/our-organisation-and-our-people>

<sup>692</sup> Serious Fraud Office, "Our purpose and role", <https://www.sfo.govt.nz/our-vision>

investigations or prosecutions with the United Kingdom SFO and the Hong Kong Independent Commission against Corruption.<sup>693</sup> Under a memorandum of understanding with NZ Police, the SFO is the lead agency for bribery and corruption, so complaints on those matters are referred there in the first instance. Currently, SFO prioritises bribery and corruption cases. One of its strategic outcomes in 2013 was “a just society that is largely free of fraud, corruption and bribery”, and the 2016-20 strategic plan vision is “a productive and prosperous New Zealand, safe from financial crime, bribery and corruption”.<sup>694</sup>

While recent SFO directors have made a discretionary decision to allocate resources to this area, and it is being given increasing attention, there is no statutory obligation for SFO to prioritise corruption and bribery.

NZ Police is the lead agency for reducing crime and enhancing community safety. It conducts a variety of corruption and bribery investigations, and one of its 2013 goals was a “corruption-free public service”.<sup>695</sup>

The National Organised Crime Group (formerly the Organised and Financial Crime Agency New Zealand) has the function of preventing and disrupting organised crime through multi-agency action. It is responsible to the Commissioner of Police for its enforcement actions.<sup>696</sup> The agency is guided by, and reports to, a committee of senior officials drawn from other enforcement agencies. It was created to develop a “whole-of-government” approach to organised and financial crime and to be able to scale rapidly to meet the needs of particular investigations.

The New Zealand Financial Intelligence Unit (within NZ Police) provides financial intelligence relating to suspicious transactions/activity, money laundering, the financing of terrorism and other serious offences. In particular, the FIU collects and collates information provided by external parties and reporting entities, banks, and other financial institutions. After analysis, intelligence products are sent to other investigative and intelligence units within the New Zealand Police, other government agencies, sector supervisors, domestic partner agencies and to relevant international agencies.<sup>697</sup>

New Zealand anti-corruption and bribery legislation is described in Chapter 4. Various international instruments are relevant to the operations of law enforcement agencies in New Zealand, and these are also covered in Chapter 4.

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<sup>693</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>694</sup> Serious Fraud Office *Annual Report 2018* p. 5.

<sup>695</sup> New Zealand Police, *2011/12 Annual Report*, 2012, [www.police.govt.nz/about-us/publication/annual-report-2012](http://www.police.govt.nz/about-us/publication/annual-report-2012)

<sup>696</sup> Organised and Financial Crime Agency New Zealand, “About OFCANZ: Background”. [www.ofcanz.govt.nz/about-ofcanz/background](http://www.ofcanz.govt.nz/about-ofcanz/background).

<sup>697</sup> See [https://www.police.govt.nz/advice/businesses-and-organisations/fiu/about](http://www.police.govt.nz/advice/businesses-and-organisations/fiu/about)

### 5.1.1 Resources (practice)

**To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?**

Score: 4

*Resourcing is generally adequate, but resource limitations may affect the prioritisation of anti-corruption activities.*

In 2012, the SFO had a staff of 52 (50.5 full-time equivalents) and a budget of NZ\$10.7 million.<sup>698</sup> <sup>699</sup> This has not increased substantially since then, with a workforce of 52 in 2018.<sup>700</sup> The current (2018) budget is \$9.340 million with an additional \$2.28 million over 4 years for new systems.<sup>701</sup> The SFO handles serious corruption and bribery cases. However, the limited resources of the agency restricts its activities. Notably, it has neither the legislative authority nor the funding to monitor the economy actively in high-risk areas or to conduct education and raise the profile of bribery and corruption issues. In practice, it makes staff available for public-speaking engagements but not for systematic training and publicity activities. The SFO has a low level of foreign-based bribery investigations or prosecutions, a reflection of the difficulty of detection but also of the low profile of the problem and limited education and publicity. In 2017, it reported on assistance given to Cook Islands and Tongan authorities in fraud and corruption cases,<sup>702</sup> but there was no other mention of specific foreign-based activity, although clearly there has been co-operation with equivalent overseas agencies. It also relies on other agencies, particularly Police, for some support capability. The SFO has limited ability to upscale investigations for long periods, but would look to Police to provide further resources as appropriate. Where it does require support, it activates this through a memorandum of understanding with NZ Police.<sup>703</sup> The SFO has a similar memorandum with the Financial Markets Authority.<sup>704</sup>

NZ Police had 12,000 staff as at 30 June 2012 and this had increased somewhat by 2018 to 12,467. by 6 June 2018,<sup>705</sup> with a policing ratio of about 280 per 100,000 population. However, the 2018 budget included funding for 920 new officers and 240 support staff<sup>706</sup>.

It is not clear how New Zealand's policing ratio compares with the ratio in other countries, and it appears to include, for example, road safety officers. In 2017, the workforce was described as

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<sup>698</sup> Serious Fraud Office, *Annual Report 2012*, 2012, [www.sfo.govt.nz/f55,18661/SFO\\_Annual\\_Report\\_2012.pdf](http://www.sfo.govt.nz/f55,18661/SFO_Annual_Report_2012.pdf)

<sup>699</sup> Staffing and budget have not increased substantially since 2012. See SFO *Annual Report 2017*

<sup>700</sup> Serious Fraud Office *Annual Report 2018*, 2018 <https://annualreport2018.sfo.govt.nz/>

<sup>701</sup> Vote Serious Fraud budget: 2017/18

<sup>702</sup> At p 14

<sup>703</sup> Serious Fraud Office and New Zealand Police, *Memorandum of Understanding between New Zealand Police and Serious Fraud*, 2011. <https://www.sfo.govt.nz/file/189>

<sup>704</sup> Financial Markets Authority and Serious Fraud Office (updated in 2014), <https://www.fma.govt.nz/assets/MOU/140701-mou-serious-fraud-office-sfo-2014.pdf>, <https://www.sfo.govt.nz/file/189>

<sup>705</sup> See <https://www.police.govt.nz/sites/default/files/publications/annual-report-2017-2018.pdf> p 122

<sup>706</sup> See [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12053452](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12053452)

constabulary 9017, non-constabulary 3185 and recruits 265.<sup>707</sup> Research in 2011 found a ratio of one constabulary officer to 498 people, which compares with 1 to 388 in England and Wales, and 1 to 435 in Queensland, which has a similar total population and urban-rural population split to New Zealand.<sup>708</sup>

NZ Police's 2017/18 operating budget was NZ\$1.76 billion.<sup>709</sup> There are no specifically dedicated anti-corruption and bribery staff apart from the internal investigation staff who deal with complaints about police officers, including allegations of bribery and corruption, that are conducted under the oversight of the IPCA. However the increase in Police numbers in 2018 included 500 national-level investigators to focus on organised criminal networks, national security, and financial and cyber crime, along with 146 investigators to make up serious and organised crime taskforces in every district – supporting local and national-level colleagues.<sup>710</sup>

NZ Police distributes its resources in accordance with assessed needs. Responsibility for allocating resources within local areas (Police districts) is highly delegated. However, centralised direction, particularly allocation to preventive activity, ensures local districts comply with broad strategies. NZ Police has strong internal operational performance management with regular reporting. This includes a significant focus on the local leadership's understanding of policing needs (crime and problems) and the actions taken in response. Engagement with local communities is expected to inform these decisions. In addition, a case-prioritisation system allocates investigative resources and allows for national oversight to ensure that high-priority crime reports (for example, child abuse) are managed similarly nationally.<sup>711</sup>

Both the SFO and NZ Police have some discretion over the deployment of their funding, and there is no legal barrier to funding activities directed at prevention, education, and information about corruption and bribery. However, neither agency is specifically funded to oversee and assist central and local government, or private companies and organisations, to put in place processes and mechanisms to detect and deter bribery and corruption or to provide education and publicity about corruption and bribery.

Resource limitations reinforce the need, already discussed, for New Zealand to establish better processes for handling matters to do with bribery and corruption.

### **5.1.2 Independence (law)**

#### **To what extent are law enforcement agencies independent by law?**

Score: 5

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<sup>707</sup> <https://www.police.govt.nz/sites/default/files/publications/annual-report-2017-2018.pdf> . P122

<sup>708</sup> New Zealand Police Association, *Towards a Safer New Zealand: Police and law & order policies for the future*, October 2011.,

<sup>709</sup> See <https://www.budget.govt.nz/budget/pdfs/estimates/v7/est18-v7-police.pdf>

<sup>710</sup> See <https://www.police.govt.nz/news/release/commissioner-details-allocation-1800-police>

<sup>711</sup> In accordance with the recommendations of the IPCA in its *Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part 1*, 2010; IPCA, *Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part 2*, 2011, [www.ipca.govt.nz/Site/Child-Abuse-Inquiry/default.aspx](http://www.ipca.govt.nz/Site/Child-Abuse-Inquiry/default.aspx)

*Law enforcement agencies have full legal independence.*

The SFO operates under the Serious Fraud Office Act 1990, which provides that the Director of the SFO has complete independence in operational decisions: “in any matter relating to any decision to investigate any suspected case of serious or complex fraud, or to take proceedings relating to any such case or any offence against this Act, the Director shall not be responsible to the Attorney-General, but shall act independently”.<sup>712</sup> The Act provides guidance to the Director when making a decision on what matters to investigate. He or she should consider the suspected nature and consequences of the fraud, the scale of the fraud, and any relevant public interest considerations. The investigation of bribery and corruption is not specifically identified in the Act, although on the current Director’s instructions it has been made a priority.

Despite the provisions for independence in the Serious Fraud Office Act 1990, the consent of the Attorney-General is required before the SFO starts a prosecution for bribery or corruption under the Secret Commissions Act 1910<sup>713</sup> or under most of the provisions of the Crimes Act 1961.<sup>714</sup> Provision for such consent is found in some other legislation and is seen as some protection against vexatious prosecutions, given that New Zealand law permits private prosecutions. However the removal of the provision was recommended in the Phase 3 report on New Zealand’s implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the March 2016 follow-up noted non-compliance with the recommendation.<sup>715</sup>

The SFO Director is appointed in accordance with processes set out in the State Sector Act 1988 and is subject to normal performance management processes conducted by the State Services Commissioner in his or her role as employer. These processes would not include reviewing matters on which the Director is authorised by statute to act independently (for example, operational decision-making).<sup>716</sup>

The organisation and governance arrangements for NZ Police are prescribed by the Policing Act 2008 and, like the SFO’s arrangements, they are subject to standard public management legislation such as the Public Finance Act 1989, the State Sector Act 1988, and the OIA.

The Governor-General, on the recommendation of the Prime Minister, appoints the Commissioner of Police.<sup>717</sup> Under the Policing Act 2008, the State Services Commissioner is responsible for the conduct of the selection process through to but not including the final decision to appoint.

The Policing Act 2008 sets out the relationship between the Minister of Police and the Commissioner of Police with the Commissioner responsible to the Minister for carrying out the functions and duties of NZ Police, the general conduct and management of NZ Police, and

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<sup>712</sup> Serious Fraud Office Act 1990, section 30(1).

<sup>713</sup> Secret Commissions Act 1910, section 12.

<sup>714</sup> Crimes Act 1961, section 106. Prosecutions of ministers or members of Parliament do not require the Attorney-General’s consent, but do require the consent of a High Court judge.

<sup>715</sup> See <http://www.oecd.org/daf/anti-bribery/New-Zealand-Phase-3-Written-Follow-Up-Report-ENG.pdf>

<sup>716</sup> See the public sector pillar report (pillar 4).

<sup>717</sup> Policing Act 2008, section 12.

tendering advice to the Crown. However, the Commissioner “is not responsible to, and must act independently of, any Minister of the Crown (including any person acting on the instruction of a Minister of the Crown) regarding .... enforcement of the law ... and the investigation and prosecution of offences”.<sup>718</sup>

Further, the Crown Law 2010 Prosecution Guidelines state that the “universally central tenet of a prosecution system under the rule of law in a democratic society is the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process... In practice in New Zealand the independence of the prosecutor refers to freedom from political or public pressure. All Government agencies should ensure wherever it is reasonably practicable to do so, that the initial decision to prosecute is made by legal officers independently from other branches of the agency and acting in accordance with these Guidelines.”<sup>719</sup>

### **5.1.3 Independence (practice)**

#### **To what extent are law enforcement agencies independent in practice?**

Score: 5

*There is no reason to believe law enforcement agencies are other than independent in practice, including in corruption and bribery investigations.*

Research for the 2013 report and the 2018 update did not identify any substantiated allegations of political interference in the activities of law enforcement agencies. Police staff also appeared to be properly guided and controlled in the relationship between law enforcement duties and political activities, in that the Police Code of Conduct contains sufficiently clear rules about political neutrality for staff. In 2013 there had been no cases that would indicate deficiencies in the rules or systemic undermining or breaches of them. Since then, however, there has been the case of Nicky Hager – whose property was raided and seized when he was no more than a witness in a police investigation into some of the events behind his book “*Dirty Politics*” and who as a result was eventually awarded substantial damages in 2018.<sup>720</sup>

An enduring risk is the perception of political bias that arises when investigations of allegations of electoral impropriety are not conducted with sufficient vigour. The 2013 NIS assessment found, for example, that political parties in New Zealand had expressed concerns based on perceptions that NZ Police had failed to investigate electoral incidents and allegations in a sufficiently timely and thorough manner.<sup>721</sup> In a strongly partisan environment such as politics, a perception based on a lack of vigour can easily become a perception of bias. It was said that

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<sup>718</sup> Policing Act 2008, section 16.

<sup>719</sup> Crown Law, *Prosecution Guidelines* (Wellington: Crown Law, 2010), paras. 4.1 and 4.2, updated 2013, <http://www.crownlaw.govt.nz/publications/prosecution-guidelines/>

<sup>720</sup> [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12068928](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12068928)

<sup>721</sup> Communication with Howard Broad, former Commissioner of Police, 10 October 2013 in relation to the political dispute over the 2005 election and whether the Labour party pledge card was properly and fully accounted for in election spending returns, and further in relation to whether a religious organisation’s advertising was more connected to a political party’s election campaign than was publicly admitted.

NZ Police appeared reluctant to investigate electoral cases because of the risk that to do so might be perceived as a willingness to engage politically.<sup>722</sup> The apparently minor nature of many allegations of electoral offending contributed to this reluctance. The reluctance to engage extended, perhaps unfortunately, to the training that would not only result in improvements to investigation technique (and therefore competence to investigate electoral cases without a perception of bias), but also would increase the likelihood that NZ Police would address these allegations with more effort and urgency.<sup>723</sup>

### **5.2.1 Transparency (law)**

**To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?**

Score: 4

*The public generally has good access to information, but some law enforcement information is exempt from the OIA.*

The law enforcement agencies are governed by and have to comply with New Zealand legislation on disclosure of information. They must adhere to the OIA, the Privacy Act 1993, the Criminal Records (Clean Slate) Act 2004, the New Zealand Bill of Rights Act 1990, and the Criminal Disclosure Act 2008. The OIA and the Privacy Act are described and assessed in other pillar reports. There are often exceptions within this legislation for the protection of information held by law enforcement agencies. A key provision of the OIA protects information where disclosure would prejudice the maintenance of the law, including the prevention, detection, and investigation of offences and the right to a fair trial, and, unlike some of the other withholding provisions of the OIA, there is no counterbalancing public interest test.<sup>724</sup>

Victims of crime have rights to information about the prosecution proceedings relevant to their case. This information includes the progress of the investigation, the charges laid or reasons for charges not being laid, and the outcome of proceedings (including decisions to grant bail).<sup>725</sup>

There are no special provisions relevant to anti-corruption activities or the investigation and prosecution of corruption offences, and research has failed to find any person or group advocating for such special provisions. This also applies to the provisions that relate to the collection of evidence and protection of witnesses.

Specific confidentiality provisions in the Serious Fraud Office Act 1990 protect information obtained during an investigation, but the Director may waive this confidentiality in some circumstances, for example, when the person supplying the information consents to disclosure or for the purposes of a prosecution.<sup>726</sup>

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<sup>722</sup> Communication with Howard Broad, former Commissioner of Police, 19 October 2013.

<sup>723</sup> Communication with Howard Broad, former Commissioner of Police, 19 October 2013.

<sup>724</sup> Official Information Act 1982, section 6(c).

<sup>725</sup> Victims' Rights Act 2002, section 12.

<sup>726</sup> Victims' Rights Act 2002, section 36.

### 5.2.2 Transparency (practice)

**To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?**

Score: 3

*Law enforcement agencies generally comply with their legal obligations, but there are concerns about the transparency of processes in relation to surveillance activities.*

The primary means by which those accused of a crime are able to obtain details of the case that is made out against them by the state is through “disclosure”. In this process, the evidence and the means by which it has been collected are communicated in writing to the accused according to rules derived from the OIA and Privacy Act 1993. Almost all of the detail of this process has been determined by case law precedent.

All citizens<sup>727</sup> have rights under the OIA and the Privacy Act 1993 to information held by law enforcement agencies, although such information may be withheld if its disclosure would prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.<sup>728</sup>

The limitations of the OIA can be seen most when agencies are slow or reluctant to provide information on contentious subjects. In 2017/18, the Ombudsmen noted 186 OIA complaints against NZ Police.<sup>729</sup> There is no evidence that NZ Police fails to cooperate with an Ombudsman’s investigation, although, as with many other government agencies, delay can be an issue.

Select committee reviews of law enforcement agencies (see below) are open to the public.

Problems and weaknesses in the system sometimes come to light only as a result of the activities of the media, politicians, or the courts. For instance, the 2012/13 Kim Dotcom extradition case<sup>730</sup> revealed undisclosed and illegal (although not deliberately illegal) cooperation between NZ Police and the Government Communications Security Bureau (GCSB). It subsequently became apparent the GCSB had routinely provided such illegal assistance to law enforcement agencies.<sup>731</sup> The practice has since been legalised.<sup>732</sup>

GCSB activities, which evolved in a national security rather than a policing context, are protected by strict secrecy rules that preclude normal cross-examination and testing of evidence in the course of a court case. The result is that using the GCSB to assist law enforcement agencies has the potential to undermine transparency, due process, and the checks and balances of good policing. There are grounds for arguing that unless GCSB evidence provided to domestic law

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<sup>727</sup> And also any person in New Zealand: Official Information Act 1982, section 12.

<sup>728</sup> Official Information Act 1982, section 6(c); Privacy Act 1993, section 27(1)(c).

<sup>729</sup> Office of the Ombudsman, *Annual Report 2017/18*, 2017, p. 106

<sup>730</sup> *Dotcom v Attorney-General* [2012] NZHC 1,494.

<sup>731</sup> Prime Minister, press release, 3 October 2012. [www.beehive.govt.nz/release/pm-releases-results-gcsb-file-review](http://www.beehive.govt.nz/release/pm-releases-results-gcsb-file-review)

<sup>732</sup> The Government Communications Security Bureau Amendment Act 2013 amended the Government Communications Security Bureau Act 2003.

enforcement agencies can be treated in court like any other evidence, it should be excluded. A 2017 Law Commission review of the Search and Surveillance Act 2012 found no grounds to extend the current law to allow greater use of the capabilities of the GCSB and the New Zealand Security Intelligence Service in the performance of Police functions.<sup>733</sup>

There are also concerns about the case of the Urewera Four<sup>734</sup> where NZ Police executed a large number of search warrants in the Ruatoki Valley, seeking evidence of offences under the Arms Act 1983 and, more significantly, the Terrorism Suppression Act 2002. Questions arose about the lawfulness of evidence collected under some warrants, the manner in which some search warrants were carried out (in particular the lack of sensitivity to the presence of children), and the manner in which the Ngāi Tūhoe rohe (district) was controlled with roadblocks. Four of those arrested were eventually convicted of Arms Act offences, but there was a series of failures to progress elements of the case through to court and questions were asked about the decision-making involved.

In a review of the case, having had full access to police records and personnel, the IPCA found that the operation itself and its termination were lawful, reasonable, and justified, but it also found that there were serious failures in the execution of the investigation and some police actions were described as “unlawful, unjustified and unreasonable”.<sup>735</sup>

The question about process endures because whether police actions were proportionate to the risk has never been satisfactorily established; nor has it been possible for citizens to form their own views on the issues because insufficient information has been made public. NZ Police is, however, to some extent limited by legislation designed to protect the rights of those under surveillance.<sup>736</sup>

Broad, continuous police surveillance of groups of citizens who are not involved in serious criminal activities is undesirable and cannot be justified, although in certain exceptional circumstances, specific and lawful surveillance of individual citizens can be justified if it is proportionate and reviewable. Police intelligence information of this kind can rarely be accessed and checked by the people concerned, either under the OIA or the Privacy Act 1993 or in court. The lack of transparency facilitates operations that lack integrity and undermine accountability.

Implementation of the Law Commission’s recommendations in its 2017 review of the Search and Surveillance Act 2012 would go some way towards establishing appropriate principles and increasing transparency about the use of surveillance powers.<sup>737</sup>

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<sup>733</sup> Law Commission *Review of the Search and Surveillance Act 2012* 2018 p. 315,  
<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R141-Review-of-the-Search-and-Surveillance-Act-2012-final.pdf>

<sup>734</sup> Extensive litigation includes *R v Iti* HC Auckland CRI-2008-004-20749, 24 May 2012, and *Hamed v R* [2011] NZSC 101.

<sup>735</sup> IPCA, *Operation Eight: The Report of the Independent Police Conduct Authority*, May 2013.

<sup>736</sup> Such as sections 312J, 312K, and 312P of the Crimes Act 1961, now transferred into the recently enacted Search and Surveillance Act 2012.

<sup>737</sup> Law Commission *Review of the Search and Surveillance Act 2012* 2018 pp 17-31,  
<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R141-Review-of-the-Search-and-Surveillance-Act-2012-final.pdf>

### 5.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?**

Score: 4

*In general, provision for the accountability of law enforcement agencies is adequate, but weaknesses exist.*

Law enforcement agencies have reporting responsibilities to their Minister, Parliament, and select committees.<sup>738</sup> Both the SFO and NZ Police are audited by the OAG.<sup>739</sup>

NZ Police and the SFO are subject to significant levels of oversight along the continuum of a criminal case. While the SFO has a broad statutory discretion in making decisions to investigate a case, NZ Police may be subject to a complaint to the IPCA alleging a neglect of duty for failing to receive or pursue a complaint. Complaints may also be made about a decision to investigate or about an investigation that does not result in a prosecution.<sup>740</sup>

A police or SFO investigation that proceeds to prosecution is subject to the oversight of a court. The decisions relevant to the case may be questioned in court, and consequences to the case and the officials involved may follow, for example, the case may be dismissed because of the manner in which evidence was collected.<sup>741</sup>

Procedures that override normal human rights in a police case generally attract additional supervision, for example, a search of a property in most circumstances requires judicial authority.<sup>742</sup> An arrest without warrant is subject to a court hearing and if there is no hearing the IPCA may investigate a complaint. Where specific authority to search without warrant exists, there is generally a requirement to report the circumstances to a higher authority within NZ Police, and the action is always amenable to IPCA oversight.

Officials from NZ Police hand their investigations over to another official for the purposes of prosecution. In serious cases (including all SFO cases), the prosecutor is a barrister or solicitor drawn from a list overseen by the Solicitor-General, New Zealand's senior professional law officer (not a member of the judiciary). For minor police cases the prosecutor is drawn from NZ Police staff who serve in a semi-autonomous police prosecutions service. In each of these cases, the primary duty of the prosecutor is to the court.

Police actions and decisions can also be reviewed and challenged by the IPCA and, ultimately, when a case is before the courts.

The IPCA's main function is to receive and investigate complaints alleging misconduct or neglect of duty by any member of NZ Police or concerning any police practice, policy, or procedure

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<sup>738</sup> For example, under section 43 of the Public Finance Act 1989 and section 101 of the Policing Act 2008.

<sup>739</sup> Public Finance Act 1989, section 45D.

<sup>740</sup> Independent Police Conduct Authority Act 1988, section 12.

<sup>741</sup> See the discussion of the Kim Dotcom and Urewera Four cases.

<sup>742</sup> There is general protection against unreasonable search in the New Zealand Bill of Rights Act 1990.

affecting a complainant.<sup>743</sup> It has statutory independence,<sup>744</sup> and emphasises on its website that it is “fully independent – it is not part of the Police”.<sup>745</sup> It says, “‘Independence’ means that the [IPCA] makes its findings based on the facts and the law. It does not answer to the Police or anyone else over those findings. In this way, its independence is similar to that of a Court.”<sup>746</sup> The chair of the IPCA must be a judge or retired judge.<sup>747</sup>

The main weakness of the IPCA under its current legislation is that, unlike the Ombudsman, it cannot initiate “own motion” reviews. The IPCA can receive and take action on complaints<sup>748</sup> or initiate its own inquiries into incidents involving death or serious bodily harm,<sup>749</sup> but it is limited in its inquiry to that which relates to the complaint or incident.<sup>750</sup> This precludes it from conducting wide-ranging, thematic, or issues-based inquiries.

NZ Police is subject to other inquiry and accountability authorities. For example, the Privacy Commissioner has powers to inquire into, and report on, breaches of the Privacy Act 1993<sup>751</sup> and could take proceedings through the Human Rights Review Tribunal. The Human Rights Commission may investigate allegations of breaches of the Human Rights Act 1993 and proceedings may follow.<sup>752</sup>

The SFO is not covered by the IPCA, but is subject to the jurisdiction of the Ombudsman.<sup>753</sup>

Independence and accountability can conflict in practice. This is the case with the SFO. The SFO Director has independence in decisions about investigations and prosecutions, protecting him or her from political or other influences. However, the Director is not required to report his or her decisions on whether to open an investigation or take a prosecution, and these decisions cannot be challenged in court<sup>754</sup> (although there is no apparent reason why they should not be subject to investigation by the Ombudsman). In the view of the SFO, this protects it from a well-resourced criminal or politician attempting to shut down an investigation.<sup>755</sup>

The Serious Fraud Office Act 1990 states, “Any decision by the Director ... to investigate any case which the Director suspects may involve serious or complex fraud; or to take proceedings relating to any such case ... shall not be challenged, reviewed, quashed, or called in question in any court.”<sup>756</sup>

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<sup>743</sup> Independent Police Conduct Authority Act 1988, section 12(1)(a).

<sup>744</sup> Independent Police Conduct Authority Act 1988, section 4AB.

<sup>745</sup> IPCA, “Independence”, [www.ipca.govt.nz/Site/about/Independence.aspx](http://www.ipca.govt.nz/Site/about/Independence.aspx)

<sup>746</sup> IPCA, “Independence”. [www.ipca.govt.nz/Site/about/Independence.aspx](http://www.ipca.govt.nz/Site/about/Independence.aspx)

<sup>747</sup> Independent Police Conduct Authority Act 1988, section 5A(2).

<sup>748</sup> Independent Police Conduct Authority Act 1988, section 12(1)(a) and (c).

<sup>749</sup> Independent Police Conduct Authority Act 1988, section 12(1)(b).

<sup>750</sup> Independent Police Conduct Authority Act 1988, section 12(2).

<sup>751</sup> Privacy Act 1993, Part 8.

<sup>752</sup> Human Rights Act 1993, Part 3.

<sup>753</sup> Ombudsmen Act 1975, Schedule 1, Part 1.

<sup>754</sup> Serious Fraud Office Act 1990 section 20.

<sup>755</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>756</sup> Serious Fraud Office Act 1990, section 20.

#### 5.2.4 Accountability (practice)

**To what extent do law enforcement agencies have to report and be answerable for their actions in practice?**

Score: 3

*In most respects, law enforcement agencies are accountable in practice, but gaps and weaknesses exist.*

The Kim Dotcom case (described under question 5.2.2), involved multiple failures in lawful processes by NZ Police and the GCSB, demonstrating how a lack of transparency leads to a lack of accountability. These and similar previous failures were not picked up as part of normal police or GCSB reporting and accountability. The systems did not work. Without the judicial review case brought by Dotcom's lawyers, it is likely the actions in question would not have come to light and no accountability would have been possible.

Parliament's Law and Order Committee regularly reviews each law enforcement agency as part of the mid-year Review of the Estimates and end-of-year Finance Review.<sup>757</sup> Select committee members submit written questions, and senior law enforcement agency officials appear in person to answer questions.<sup>758</sup> The quality of the scrutiny depends on the experience, priorities, and focus of the select committee members. Ministers are also probed and challenged about law enforcement agencies in oral and written parliamentary questions.<sup>759</sup>

The IPCA appears to be operating effectively, save for the restriction on its mandate described above. In 2011/12, it made 74 recommendations for improvements to police conduct, 32 of which had been accepted by the end of the reporting year.<sup>760</sup> However, this number has dropped significantly since then. In 2016/17, the comparable numbers were 11 and 10,<sup>761</sup> while in 2017-18 only three recommendations were made, all of which were accepted.<sup>762</sup> Neither in 2013 nor in 2018 did the Ombudsman report a significant number of complaints about the SFO under either the Ombudsmen Act 1975 or the OIA.<sup>763</sup>

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<sup>757</sup> For an example, see New Zealand Parliament, *2011/12 Financial Review of the New Zealand Police*, [www.parliament.nz/en-nz/pb/sc/business-summary/00DBSCH\\_FIN\\_11763\\_1/201112-financial-review-of-the-new-zealand-police](http://www.parliament.nz/en-nz/pb/sc/business-summary/00DBSCH_FIN_11763_1/201112-financial-review-of-the-new-zealand-police)

<sup>758</sup> Appendix C: 2012/13 Estimates for Vote Serious Fraud – Law and Order Committee – Additional questions, [www.parliament.nz/resource/0000238943](http://www.parliament.nz/resource/0000238943)

<sup>759</sup> New Zealand Parliament, "Questions for oral answer", [www.parliament.nz/en-nz/pb/business/qoa](http://www.parliament.nz/en-nz/pb/business/qoa)  
New Zealand Parliament, "Questions for written answer". [www.parliament.nz/en-nz/pb/business/qwa](http://www.parliament.nz/en-nz/pb/business/qwa)

<sup>760</sup> IPCA, *Annual Report 2011/12*, 2012, p. 2, [www.ipca.govt.nz/Site/publications/Accountability/2011-Annual-Report.aspx](http://www.ipca.govt.nz/Site/publications/Accountability/2011-Annual-Report.aspx) (a large number of recommendations were made during the last three months of the year and were still under consideration).

<sup>761</sup> Source IPCA 2016 - 2017 Annual Report, <https://www.ipca.govt.nz/Site/publications-and-media/Corporate-publications.aspx>

<sup>762</sup> IPCA 2017 - 2018 Annual Report 2018 p3. <https://www.ipca.govt.nz/Site/publications-and-media/>

<sup>763</sup> Office of the Ombudsman, 2012: 39, 50. Office of the Ombudsman 2017-8 p90, 97

### 5.2.5 Integrity mechanisms (law)

#### To what extent is the integrity of law enforcement agencies ensured by law?

Score: 4

*Integrity mechanisms are generally adequate and have improved in recent years.*

The public service must adhere to several codes and standards. The SSC produced the Standards of Integrity and Conduct in 2007 to cover all public sector organisations.<sup>764</sup> The State Services Act 1988 provides guidance on matters of integrity and conduct of employees within the public service. The OAG also overviews all state sector organisations in matters relating to conflict of interest, impartiality, and transparency.

The one-page Standards of Integrity and Conduct sets out the core standards to be upheld by all public sector employees and officials. Standards include the need to be fair, impartial, responsible, and trustworthy. Being trustworthy includes “declin[ing] gifts or benefits that place [the organisation] under any obligation or perceived influence”.<sup>765</sup> The SFO is covered by this code of conduct. It has detailed internal policies and gift and hospitality records to ensure transparency, and regularly publishes details of the Director’s expenses.<sup>766</sup>

NZ Police has its own code of conduct.<sup>767</sup> There is explicit reference to conduct in relation to gifts and hospitality in the Police policy manual<sup>768</sup>, and the code covers such conduct through broad principles of “honesty and integrity”, stating that employees must avoid any activities, either work-related or non-work-related, that may bring NZ Police into disrepute, or damage public confidence in NZ Police and government.

Neither NZ Police nor the SFO has post-employment restrictions, and these are not common in New Zealand’s public sector.

One result of the Commission of Inquiry into New Zealand Police Conduct was the Policing Act 2008, which replaced the Police Act 1958. The 2008 Act is based on the following principles.

- Principled, effective, and efficient policing services are a cornerstone of a free and democratic society under rule of law.
- Effective policing relies on a wide measure of public support and confidence.
- Policing services are provided under a national framework but also have a local community focus.
- Policing services are provided in a manner that respects human rights.

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<sup>764</sup> State Services Commission, *Standards of Integrity and Conduct* (Wellington: State Services Commission, 2007), [www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf)

<sup>765</sup> State Services Commission, 2007.

<sup>766</sup> Serious Fraud Office, “Chief Executive expense disclosure”, (updated 2018) <http://www.crownlaw.govt.nz/publications/prosecution-guidelines/>

<sup>767</sup> New Zealand Police, *New Zealand Police Code of Conduct*, 2008, <http://www.victimsinfo.govt.nz/assets/Guidelines-and-standards/Police-code-of-conduct.pdf>.

<sup>768</sup> See <http://www.police.govt.nz/sites/default/files/publications/gifts-discounts-and-hospitality-policy.pdf>

- Policing services are provided independently and impartially.
- In providing policing services, every Police employee is required to act professionally, ethically, and with integrity.

The Serious Fraud Office Act 1990 includes an unusual section that removes a person's right to decline to answer questions on the ground that to do so would or might incriminate or tend to incriminate that person.<sup>769</sup> Self-incriminating evidence is not generally admissible in court, and the limited usefulness of this power raises the question whether the exception from the normal protections is justified.

#### 5.2.6 Integrity mechanisms (practice)

##### To what extent is the integrity of members of law enforcement agencies ensured in practice?

Score: 3

*Progress is being made towards improved integrity, but the position is not yet satisfactory.*

In 2004, the government ordered the Commission of Inquiry into New Zealand Police Conduct after allegations of police mishandling of historic rape complaints.<sup>770</sup>

The commission's terms of reference included an examination of police standards and procedures for handling complaints of sexual assault and the adequacy of policing in the investigation of those complaints.<sup>771</sup>

The commission concluded that public trust and confidence are fundamental to providing good quality services to the public and that any behaviour that shows lack of integrity is a risk to this trust and confidence. It produced a 600-page report that outlined evidence of police misconduct involving the protection of other police officers but concluded there was no concerted attempt across NZ Police as a whole to cover up the unacceptable behaviour. However, it said the risk of that misconduct was significant, and Cabinet subsequently directed NZ Police to give high priority to ensuring the risk was minimised by changing attitudes and behaviour within the organisation.<sup>772</sup>

The commission's 60 recommendations included integrity training and a new code of conduct.<sup>773</sup> Subsequent initiatives by NZ Police include training courses about the code of conduct, leadership and ethical policing, Policing Excellence initiatives; and the Prevention First initiative that has a strong victim focus.<sup>774</sup> In 2017 NZ Police completed the 47 Police-specific recommendations, thus signing off ten years of reforms.<sup>775</sup>

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<sup>769</sup> Serious Fraud Office Act 1990, section 27.

<sup>770</sup> Order in Council, 18 February 2004; Order in Council, 2 May 2005.

<sup>771</sup> Bazley, 2007: Appendix 1.1'.

<sup>772</sup> See generally, New Zealand Police, "Commission of Inquiry into Police Conduct". [www.police.govt.nz/about-us/nz-police/commission-inquiry](http://www.police.govt.nz/about-us/nz-police/commission-inquiry)

<sup>773</sup> Bazley, 2007: 15–23.

<sup>774</sup> See [www.police.govt.nz/sites/default/files/publications/prevention-first-strategy-2011-2015.pdf](http://www.police.govt.nz/sites/default/files/publications/prevention-first-strategy-2011-2015.pdf)

<sup>775</sup> See <http://www.police.govt.nz/about-us/publication/annual-report-2017>

The Auditor-General was charged with monitoring for ten years the progress NZ Police was making towards implementing the commission's recommendations. This process has now (2018) been completed.<sup>776</sup>

In 2017, the Auditor-General produced a final monitoring report. It was generally positive and noted that NZ Police had complied with all the Auditor-General's recommendations, but it also noted areas where improvements still needed to be made, specifically in employing and retaining more women and people from minority groups, improving the consistency of service for adult victims of sexual assault, and further reducing instances of inappropriate behaviour by Police staff.<sup>777</sup>

NZ Police commissions an independent annual survey – the Citizens' Satisfaction Survey. One survey question is about trust and confidence in the police. The survey for 2017/18 found 78 per cent of respondents felt full or "quite a lot" of confidence in NZ Police.<sup>778</sup> For a police agency, this is a significant level of public confidence, although the figures had not increased since 2012/13. The Global Corruption Barometer Survey 2013 showed that 24 per cent of New Zealand respondents believed NZ Police to be corrupt or very corrupt, thus ranking it around the mid point of the institutions surveyed.<sup>779</sup> New Zealand was not included in the 2017 survey.<sup>780</sup>

In 2011 the public made 1,814 complaints to NZ Police against Police employees. Of the 1,814 complaints, NZ Police found 94 to involve breaches of the code of conduct.<sup>781</sup> In 2017, 2161 complaints were made<sup>782</sup> and 259 were upheld<sup>783</sup>

In 2017/18 a total of 2592 complaints were made to the IPCA,<sup>784</sup> considerably more than the 1874 made in 2012/13, but fewer than in 2016/17. The IPCA conducted 71 (72 in 2017/8) investigations but referred less serious complaints back to NZ Police for investigation, and monitored those investigations.<sup>785</sup> The most common types of complaint were about: failure in an investigation, inadequate service, an officer's attitude or use of language and the use of force without a weapon.<sup>786</sup>

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<sup>776</sup> Office of the Auditor General, *Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: First monitoring report*, June 2009, *Second monitoring report*, June 2010, *Third monitoring report*, October 2012.

<sup>777</sup> See <https://oag.govt.nz/2017/police>

<sup>778</sup> <sup>779</sup> <https://www.police.govt.nz/sites/default/files/publications/annual-report-2017-2018.pdf> . P44

<sup>779</sup> See [www.transparency.org/gcb2013/country/?country=new\\_zealand](http://www.transparency.org/gcb2013/country/?country=new_zealand)

<sup>780</sup> New Zealand Police, response under the Official Information Act 1982, 15 June 2012.

<sup>781</sup> See <https://www.police.govt.nz/sites/default/files/publications/professional-conduct-statistics-table6-2018.pdf>

<sup>782</sup> See <https://www.police.govt.nz/sites/default/files/publications/annual-report-2017-2018.pdf> . P44

<sup>783</sup> IPCA Annual Report 2017, Annual Report 2018

<sup>784</sup> IPCA, 2012: 10.

<sup>785</sup> IPCA 2017 at p 13

### 5.3.1 Corruption prosecution and prevention

**To what extent do law enforcement agencies detect and investigate corruption cases in the country? To what extent do they engage in preventative activities? Do they engage in educational activities regarding corruption?**

Score: 3

*The SFO has a particular focus on corruption detection and prosecution. The 2013 NIS assessment found that little in the way of preventative or educational activity occurs, but the 2018 commencement of an anti-corruption programme indicates that there may be more activity in this area in the future.*

Corruption cases are routinely investigated and prosecuted in the same way as other criminal cases. Because of the low level of corruption in New Zealand, preventative and educational activities have not been a priority.

The SFO and NZ Police signed a memorandum of understanding in September 2011, agreeing that, in the first instance, all allegations of bribery and corruption would be referred to the SFO.<sup>786</sup> The two agencies then jointly decide whether an investigation is warranted and which of them should take the lead in the investigation. The overriding criterion for opening a domestic or overseas corruption investigation is the public interest.

As part of the SFO's particular focus on corruption it made public its intention to investigate and prosecute corruption related to the Christchurch earthquake rebuild.<sup>787</sup> It commenced investigations in the area of procurement and insurance fraud,<sup>788</sup> and Canterbury police developed an intelligence picture of potential fraud offending. However there have been no reports of convictions arising from widespread fraud or corruption in the course of the rebuild.

New Zealand law enforcement agencies have prosecuted several bribery and corruption cases in the recent past. These cases mostly involved offending in New Zealand but in 2017 there was a report of a successful prosecution for receiving secret commissions from Middle Eastern clients.<sup>789</sup>

In general, the Police Asset Recovery Unit has been active in ensuring bribery and corruption offenders forfeit their gains. All investigations have an element of asset recovery to ensure the total profits offenders gained are forfeited.

Prominent recent cases include the SFO successfully prosecuting senior managers at the former Rodney District Council and Auckland Transport for corruption and bribery offences.<sup>790</sup>

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<sup>786</sup> SFO and New Zealand Police, 2011.

<sup>787</sup> SFO, "Serious Fraud Office focus on Christchurch", 21 March 2013. [www.sfo.govt.nz/n345,24.html](http://www.sfo.govt.nz/n345,24.html)

<sup>788</sup> SFO, 2013.

<sup>789</sup> See <https://www.stuff.co.nz/business/93407836/former-fisher--paykel-employee-sentenced-for-corruption>

<sup>790</sup> R v Borlase and Noone [2016] NZHC 2970

NZ Police successfully prosecuted a former Minister of the Crown in *R v Field*.<sup>791</sup> In 2012, it prosecuted a police employee for corruption after the employee accessed the police computer for information on his criminal cohorts<sup>792</sup> and in 2013 succeeded in an electoral fraud prosecution of a political candidate.<sup>793</sup>

During 2017/8, the SFO received 1060 complaints, a very considerable increase over the 596 received in 2015/16, and 18 investigations were begun.

It is notable that the SFO's 2016/17 annual report said that, despite the low levels of corruption in New Zealand, there is now greater awareness of its existence and a willingness to address the offending when it occurs. "This year has seen an uplift in corruption-related complaints, including allegations within government departments."<sup>794</sup> The trend appears to have continued and accelerated with the development in 2018 of an anti-corruption work programme in collaboration with other government agencies.

The SFO's strategic objectives for the programme are:

- understand New Zealand's corruption landscape and vulnerabilities
- enhance New Zealand's capability to prevent corruption
- proactively detect, disrupt and enforce law against corrupt conduct
- reform New Zealand's corruption offence framework.<sup>795</sup>

In the recent years, the Department of Corrections,<sup>796</sup> Inland Revenue Department, and Accident Compensation Corporation<sup>797</sup> have referred cases to NZ Police that have resulted in prosecutions by NZ Police or the SFO. In December 2017, for example, a prison officer was convicted of corruption and bribery.<sup>798</sup> Other internal investigations by the Department of

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<sup>791</sup> *Field v R* [2010] NZCA 556; [2011] 1 NZLR 784.

<sup>792</sup> "Corrupt police employee sentenced", *Stuff*, 22 March 2012. [www.stuff.co.nz/national/crime/6619909/Corrupt-police-employee-sentenced](http://www.stuff.co.nz/national/crime/6619909/Corrupt-police-employee-sentenced)

<sup>793</sup> Ian Steward, "Eight face High Court over electoral fraud case", *Stuff*, 6 March 2013.

[www.stuff.co.nz/national/crime/8388381/Eight-face-High-Court-over-electoral-fraud-case](http://www.stuff.co.nz/national/crime/8388381/Eight-face-High-Court-over-electoral-fraud-case)

<sup>794</sup> At p 12

<sup>795</sup> SFO Annual Report 2018 2018

<sup>796</sup> For instance: "Prison guard arrested trying to leave NZ", *TVNZ*, 29 April 2011, [tvnz.co.nz/national-news/prison-guard-arrested-trying-leave-nz-4147051](http://tvnz.co.nz/national-news/prison-guard-arrested-trying-leave-nz-4147051)

Antonio Bradley, "Prison guard accused of smuggling drugs for sex" *Stuff*, 6 November 2010, [www.stuff.co.nz/national/crime/4315274/Prison-guard-accused-of-smuggling-drugs-for-sex](http://www.stuff.co.nz/national/crime/4315274/Prison-guard-accused-of-smuggling-drugs-for-sex)

Antonio Bradley, "Rimutaka Prison guard charged with corruption", *Dominion Post*, 15 April 2010, [www.stuff.co.nz/dominion-post/news/local-papers/upper-hutt-leader/3583472/Rimutaka-Prison-guard-charged-with-corruption](http://www.stuff.co.nz/dominion-post/news/local-papers/upper-hutt-leader/3583472/Rimutaka-Prison-guard-charged-with-corruption)

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<sup>797</sup> "Corrupt tax man spurs IRD probe", *Stuff*, 11 September 2008,

[www.stuff.co.nz/national/crime/622191/Corrupt-tax-man-spurs-IRD-probe](http://www.stuff.co.nz/national/crime/622191/Corrupt-tax-man-spurs-IRD-probe)

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<sup>798</sup> See [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11951121](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11951121)

Corrections have resulted in the dismissal of staff because of bribery or corruption allegations that could not be proven to the necessary evidential standard.<sup>799</sup>

NZ Police discharges the responsibility of “National Central Bureau” under the charter of the International Criminal Police Organization (Interpol). Interpol establishes a formal communication network for police agencies and operates a number of international databases (for example, an international wanted criminal list and stolen passport lists). The charter specifically excludes political crimes. In addition, NZ Police has strong bilateral operational relationships for criminal policing operations throughout the world.

Within the DPMC, the National Cyber Security Office is responsible for New Zealand’s cybersecurity action plan, refreshed in 2018<sup>800</sup>

A critical corruption and bribery risk in New Zealand is donations and other benefits to political parties and to local and national politicians. There have been criticisms of police investigations in this area and suggestions that NZ Police has avoided politically sensitive prosecutions, but the primary problem may be inadequate legislation. There is, for example, a time limit of only six months from the filing of a return for commencing a prosecution.<sup>801</sup> This should be a priority area for stronger legislation.

At present there is no legislatively-mandated anti-corruption agency unit in New Zealand. Following a Cabinet decision in 2010, the Director of the SFO adopted strategic objectives aimed at dealing with bribery and corruption cases, but this is not separately funded and has no legislative mandate. The unit’s continuing existence is unavoidably exposed to future administrative decisions, even if there is no present intention to change the current arrangement. The SFO itself is small, so resources are limited, particularly for prevention and education activities.

Neither the SFO nor NZ Police is specifically tasked with education or information on corruption, although their general authority is wide enough for them to undertake this work. SFO takes the view that, while there is no specific mandate or appropriation for prevention or for raising fraud awareness or education, it needs to support detection through reporting. It therefore considers it appropriate for the office to be involved in education and fraud awareness-raising, so that those who encounter financial crime can recognise it and thus report it. An involvement with the promotion of ethics is similarly aimed at promoting reporting and thus detection.<sup>802</sup> The SFO’s annual report for 2017-18 specifically describes one of its goals as preventing financial crime and corruption through education and advice,<sup>803</sup> and the development of the anti-corruption work programme in 2018 appears to be progress in that direction.

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<sup>799</sup> Shane Cowlishaw, “Rimutaka guards face employment inquiries”, *Stuff*, 7 March 2013, [www.stuff.co.nz/national/crime/8391838/Rimutaka-guards-face-employment-inquiries](http://www.stuff.co.nz/national/crime/8391838/Rimutaka-guards-face-employment-inquiries)

<sup>800</sup> <https://dpmc.govt.nz/our-business-units/national-security-group/national-security-policy/national-cyber-policy-office>

<sup>801</sup> Electoral Act 1993, section 226.

<sup>802</sup> Email communication with Simon McArley, former acting chief executive, SFO, 21 October 2013.

<sup>803</sup> Serious Fraud Office *Annual Report 2017/8* at p. 10, <https://annualreport2018.sfo.govt.nz/assets/SFO-Annual-Report-2018.pdf>

NZ Police does not conduct any substantial educational or informational activities in respect of bribery or corruption. The SFO provides the staff for public speaking and it has worked with TINZ to develop a training package on best practice for preventing or avoiding bribery, domestically and overseas. The SFO is developing a new corruption and bribery section for its website.

#### **5.4.1 Te Tiriti o Waitangi**

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What do law enforcement agencies 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 law enforcement agencies have legal rights and obligations in this respect given to it by the Crown, how well do they honour them, including any Treaty obligations passed on by the Crown?**

*Both NZ Police and SFO have taken action to improve their relationship with Māori, and NZ Police actively recruits Māori, but Māori remain over-represented in the criminal justice system.*

The 2013 NIS assessment found that the SFO had recently had training from the Human Rights Commission on its duties under the Treaty as a public service department and an introduction to basic tikanga Māori (law, rules, and practice).<sup>804</sup> Subsequent annual reports have little mention of similar training until 2018, when development opportunities for staff were reported to include cultural competence and awareness training.<sup>805</sup>

Future SFO planning identified in 2013<sup>806</sup> included building a relationship with Māori organisations and the Māori business community, directly or through the accountancy profession to educate on fraud and corruption. At that time, the SFO saw this as an important area for corruption education. Given the continuing fast growth of such organisations in New Zealand, and several SFO cases since 2013 involving Māori organisations and the alleged misuse of iwi funds<sup>807</sup> the need for such a relationship has grown.

The NZ Police code of conduct requires the Commissioner of Police to “value diversity and provide equity in employment, including recognition of the aims, aspirations and employment needs of Maori”.<sup>808</sup> All police staff must “avoid discriminating behaviour or language in accordance with the Human Rights Act 1993”.<sup>809</sup>

NZ Police has an active recruiting campaign to attract Māori into the organisation. In 2011 and 2012 the proportion of Māori police officers was 11 per cent, whereas Māori made up over 15 per cent of the population. In 2010, Māori comprised 15 per cent of the recruits graduating

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<sup>804</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>805</sup> See <https://annualreport2018.sfo.govt.nz/our-role-and-people/>

<sup>806</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>807</sup> See, for example, <https://www.sfo.govt.nz/guardian-of-far-north-m-ori-trust-sentenced-for-fraud>

<sup>808</sup> New Zealand Police, 2008: 2.

<sup>809</sup> New Zealand Police, 2008: 6.

from The Royal New Zealand Police College.<sup>810</sup> However in 2017, although the number of Māori police officers had increased by nearly 200, the proportion of Māori police officers was only 11.8 per cent.<sup>811</sup>

Since 1996, NZ Police has developed and implemented specific strategies to better respond to the Treaty of Waitangi. This includes the appointment of a senior adviser to the Commissioner of Police and the creation of a network of more than 35 iwi liaison officers nationally. This network has now extended to other ethnic groups.

The Commissioner of Police has a well-established Māori Focus Forum of senior Māori leaders who advise on strategy and policy and seek specific accountability for actions taken that affect Māori. Advisory committees of this nature are now a feature at district and area levels within NZ Police. Specific policies implemented to respect tikanga Māori (law, rules, and practice) include a new approach to the deaths of Māori, the approach to the finding of human remains, and the respect offered at scenes of death such as road crashes. Efforts to increase police understanding of the resources available within the Māori community were designed to open up alternatives to prosecution and to create avenues to carry messages about risk to that community.

Nonetheless, despite these progressive actions, the representation of Māori in criminal justice system statistics dramatically outweighs their representation in the population generally. NZ Police, as the “gatekeeper” to the system, in that decisions to proceed against adults and children are primarily the responsibility of police, is frequently asked whether there is a bias in police decision-making that results in the imbalance in the representation of Māori and Pasifika in the system. No such bias is evident in the representation of Asian peoples.

The Policy, Strategy and Research Group of the Department of Corrections published a study on this subject in September 2007. It endeavoured to answer this question: “when Māori make up just 14% of the national population, why do they feature so disproportionately in criminal justice statistics – 42% of all police apprehensions, and 50% of the prison population?”<sup>812</sup>

The study investigated two different explanations. The first explanation was that “bias operates within the criminal justice system, such that any suspected or actual offending by Māori has harsher consequences for those Māori, resulting in an accumulation of individuals within the system”. The second was that “a range of adverse early-life social and environmental factors result in Māori being at greater risk of ending up in patterns of adult criminal conduct”.<sup>813</sup>

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<sup>810</sup> “Percentage of Maori police officers static”, *Radio New Zealand News*, 18 October 2011. [www.radionz.co.nz/news/te-manu-korihia/88599/percentage-of-Māori-police-officers-static](http://www.radionz.co.nz/news/te-manu-korihia/88599/percentage-of-Māori-police-officers-static) (based on figures from New Zealand Police, *2010/11 Annual Report*, 2011).

<sup>811</sup> NZ Police annual report 2017/18, <http://www.police.govt.nz/sites/default/files/publications/annual-report-2017-2018.pdf> p 126

<sup>812</sup> Department of Corrections, *Over-representation of Māori in the Criminal Justice System: An exploratory report* (Wellington: Department of Corrections, 2007), p. 38

<sup>813</sup> Department of Corrections, 2007: 4.

The report concluded that both explanations could be, and probably were, correct at the same time.<sup>814</sup> A 2011 discussion paper, *Māori Over-representation in the Criminal Justice System: Does structural discrimination have anything to do with it?* dug deeper.<sup>815</sup> The paper presented statistics and examples of police discrimination against Māori. In December 2012, the Police Commissioner launched Turning the Tide: A Whānau Ora Crime and Crash Prevention Strategy, aimed at reducing “victimisation, offending, road fatalities and injuries among Māori”.<sup>816</sup>

No apparent change has occurred since 2013 – in September 2018 Māori made up 51% of the prison population (Māori women make up 66% of the female prison population)<sup>817</sup> However, the annual report of NZ Police for 2017/8 records a reduction of 15% in Māori offending,<sup>818</sup> which may indicate a reduction in the number of apprehensions.

In 2018 the incoming Labour led coalition government held a Criminal Justice Summit and set up a special advisory group as a first step towards addressing these statistics through radical changes to the New Zealand criminal justice system. There are grounds for continuing to make this a priority area for effort by law enforcement agencies.

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<sup>814</sup> Department of Corrections, 2007: 5.

<sup>815</sup> Kim Workman, *Māori Over-representation in the Criminal Justice System: Does structural discrimination have anything to do with it?*, discussion paper (Rethinking Crime and Punishment, 2011), <https://www.criminologycollective.nz/2018/02/20/structural-discrimination/>

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<sup>817</sup> See

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## Electoral management body (pillar 6)

### Summary

*The main updates to this pillar report reflect experience from the 2017 general election. Data has been updated where more recent figures are available.*

New Zealand’s electoral management body, the Electoral Commission, plays a strong role in the country’s national integrity system, and any concerns that exist about its performance are relatively minor. It has a reputation as an impartial and trustworthy institution, with particular credibility in administering general elections. As one expert interviewee told this study, “The Electoral Commission is about as independent as you can get.”<sup>819</sup>

General elections in New Zealand have full integrity, which reflects well on the country’s electoral management body. As an indication of this, one independent interviewee said the Commission “handles the task of running elections perfectly. I don’t think that anyone has got any real concerns that the vote tally that you get at the end is a genuine representation of the people who showed up to vote.”

The Electoral Commission was significantly reconfigured in 2012 as the result of a merger of three separate electoral agencies, and this appears to have made electoral management even stronger. The new Commission is generally a well-resourced and robust independent body. It is a highly respected agency that functions well within its competencies. The main concern that does exist is in terms of the agency’s role in distributing election broadcast advertising resources to political parties.

In some areas – particularly that of political finance regulation – the Commission has limited scope and tools at its disposal but nonetheless carries out its functions adequately. There are also still some problematic issues with elections, especially with declining faith in the efficacy of general elections and with distrust of the propriety of politicians in the area of political finance. In particular, in recent general elections, voter turnout has been very low, falling to the historic low of less than 70 per cent in 2011 before recovering somewhat in the last two elections. None of these factors necessarily reflects poorly on the role of the Electoral Commission itself.

General elections have full integrity, reflecting in part the independence and integrity of the Electoral Commission. The Commission has little effective ability to respond to concerns about political party finances, and there are concerns over its allocation of state funding to political parties for broadcast election advertising.

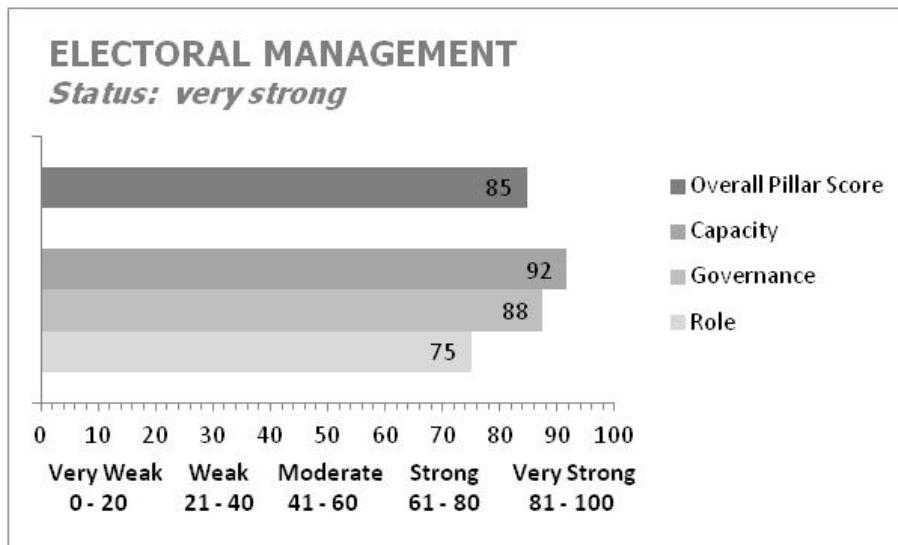
Recommendations in Chapter 6 of the 2013 NIS assessment that relate to the role of the Electoral Commission also emerge from the pillar report on political parties. They call for a

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<sup>819</sup> This pillar report is based on publicly available material, supplemented by interview with three experts: Professor Andrew Geddis (author of *Electoral Law in New Zealand: Practice and policy* 2nd ed. (Wellington: Lexis Nexis, 2013)), Graeme Edgeler (an expert in electoral law and administration and an employee of the former Electoral Commission), and Robert Peden (former chief executive of the Electoral Commission and Chief Electoral Officer).

review of the arrangements for the allocation of election broadcasting funds and time and for greater disclosure of political party finances to the Commission.

**Figure 8: Electoral management scores**



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

The Electoral Commission is an independent Crown entity that describes itself as “responsible for the administration of parliamentary elections and referenda, the delivery of enrolment services, the allocation of time and money for the broadcast of election programmes, conduct of the Māori Electoral Option, servicing the work of the Representation Commission, the provision of advice, reports and public education on electoral matters, and electoral enrolment services for both parliamentary and local elections.”<sup>820</sup>

The current Electoral Commission is a new agency created in 2010 and 2012 as a result of the merger of three previously existing agencies concerned with elections. The Electoral (Administration) Amendment Act 2010 (which amended the Electoral Act 1993) brought together the functions of the Chief Electoral Office and the former Electoral Commission, and the Electoral (Administration) Amendment Act 2011 (which also amended the Electoral Act 1993) transferred the functions of the Chief Registrar of Electors to the new body.

This pillar report, therefore, focuses on the role of the new body, but also draws on the historic performance and role carried out by the former Electoral Commission and the other electoral agencies.

<sup>820</sup> See Electoral Commission, “About the Electoral Commission”, [www.elections.org.nz/about-electoral-commission](http://www.elections.org.nz/about-electoral-commission)

The Electoral Commission operates under the mandate of two pieces of legislation: the Electoral Act 1993 and Crown Entities Act 2004. The Broadcasting Act 1989 confers some additional duties and powers on it with respect to the issue of election programmes. It is worth noting that the Electoral Act defines the objective of the Electoral Commission as “to administer the electoral system impartially, efficiently, effectively, and in a way that ... facilitates participation in parliamentary democracy; ... promotes understanding of the electoral system and associated matters; and ... maintains confidence in the administration of the electoral system”.<sup>821</sup>

The structure of the Electoral Commission is like many other electoral management bodies in comparable countries – it has a policy-oriented board of commissioners and a National Office secretariat that carries out the administration function of the Commission. In addition, the Enrolment Services division used to administer the electoral roll, but, in 2017, this role was re-absorbed into the Commission.

#### **6.1.1 Resources (practice)**

##### **To what extent does the electoral management body have adequate resources to achieve its goals in practice?**

Score: 5

*The Electoral Commission appears to be adequately resourced for most of its functions and there is no evidence to suggest its budget is insufficient for carrying out its duties.*

The 2013 NIS assessment found that the Electoral Commission is a highly professional body without obvious shortcomings in its resources. Both independent interviewees believed the Commission was adequately funded. Also, according to former Chief Electoral Officer Robert Peden, in 2013 the Commission had no complaints about its level of funding, especially given the then recent economic settings in which all government agencies were under funding pressures. There has always been some concern that annual appropriations mean some uncertainty in the funding of a three-year electoral cycle, and, by 2018, concerns had arisen about the cost of providing the more flexible voting arrangements required by voters. At the 2017 election, 47% of voters cast votes in advance of the election day, which meant additional resourcing was needed for that period.<sup>822</sup> Any reduction in election day voting facilities would risk disenfranchising large numbers of the population, including some vulnerable sectors.

For the financial year ending 30 June 2017 (an election year) the Commission spent about NZ\$35 million. Half of this figure was spent on personnel costs.<sup>823</sup> The Commission also allocated – not from its own operational funds, but from a dedicated line item in the government Budget – about NZ\$4.1 million to political parties for election broadcast advertising.<sup>824</sup>

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<sup>821</sup> Electoral Act 1993, section 4C.

<sup>822</sup> Interview Suzanne Snively and Julie Haggie (TINZ) with Alicia Wright Chief Electoral Officer and chief executive and Kristina Tempel Manager, Legal and Policy of the Electoral Commission 5 March 2019

<sup>823</sup> Electoral Commission, *Annual Report of the Electoral Commission for the year ended 30 June 2017*, 2017, [https://www.elections.org.nz/sites/default/files/bulk-upload/documents/electoral\\_commission\\_2017\\_annual\\_report.pdf](https://www.elections.org.nz/sites/default/files/bulk-upload/documents/electoral_commission_2017_annual_report.pdf)

<sup>824</sup> Electoral Commission, *Annual Report*, 2012: 15.

The Commission operates year-round with a permanent staff of about 100, of which half are based in the National Office, and the rest in regional enrolment centres. In addition, in general election years, significant numbers of temporary staff are also employed – in 2017, additional staff of 16,700 (required to help run 2238 election day voting places).<sup>825</sup> It is likely that a significant increase in staff, estimated at about 2500 employees, will be needed for the next general election (which will probably include three referenda, although these are separately funded).<sup>826</sup>

The Commission is responsible for some activities, such as voter education, that have in the past been seen as inadequately resourced.<sup>827</sup> In some elections, the former Electoral Commission complained of an inadequate budget for advertising the election. However, for the 2011 election, there is strong evidence of public satisfaction with the information received before the election: in a survey of voters in 2011, 88 per cent were satisfied with information the Commission provided before the election.<sup>828</sup> Similar results were obtained in 2017.<sup>829</sup>

### **6.1.2 Independence (law)**

#### **To what extent is the electoral management body independent by law?**

Score: 5

*The Electoral Commission is a statutory body, independent of government. There are no apparent concerns about its legal independence or impartiality.*

The legal framework under which the Electoral Commission operates requires and enables it to operate in a transparent and impartial manner – see the discussion of the different types of Crown entities in the public sector pillar report.

The Commission is not subject to ministerial direction in discharging its electoral functions, and the Electoral Act 1993 specifies that it must act independently.

The agency has three commissioners, who are appointed by Parliament. The appointment is seen as taking place with proper discussion between the parliamentary parties, and the expectation is that appointments are made on a cross-party, consensus basis. It is notable, however, that for the 2010 amendment legislation, the government of the day decided against the requirement of a supermajority (that is, 75 per cent of agreement among MPs) in the appointments. Nonetheless, voting on the issue takes place in a non-partisan manner. In theory, a majority in the House of Representatives could attempt to “stack” the Commission, but as one interviewee said, “There would be a political price to be paid if it was stacked ... it’s highly

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<sup>825</sup> Electoral Commission, *Annual Report*, 2017: 22.

<sup>826</sup> Interview Suzanne Snively and Julie Haggie (TINZ) with Alicia Wright Chief Electoral Officer and chief executive and Kristina Tempel Manager, Legal and Policy, of the Electoral Commission 5 March 2019

<sup>827</sup> Justice and Electoral Committee, *Inquiry into the 2011 General Election*, report of the Justice and Electoral Committee, 50th Parliament, April 2013, p. 48, [www.parliament.nz/resource/0000261500](http://www.parliament.nz/resource/0000261500)

<sup>828</sup> Electoral Commission, *Report of the Electoral Commission on the 2011 General Election and Referendum*, 2012, p. 21.

<sup>829</sup> See [https://www.elections.org.nz/sites/default/files/plain-page/attachments/voter\\_and\\_non-voter\\_satisfaction\\_survey\\_2017.pdf](https://www.elections.org.nz/sites/default/files/plain-page/attachments/voter_and_non-voter_satisfaction_survey_2017.pdf)

unlikely that it would happen”. Appointments to the Commission may be made for terms of up to five years, and terms can be renewed.

The modern Commission has greater legal independence than the former agency, as its structure is separated from the Ministry of Justice. Previously, the Commission’s members were appointed by the Minister of Justice, the Chief Electoral Office was part of the Ministry of Justice, and the Chief Electoral Officer was a public servant who (in theory) was under the direction of their Minister. As Andrew Geddis says, now, “It looks a lot more independent. So you don’t have that worry that the old Chief Electoral Officer used to be a civil servant answerable to the minister – which I always thought looked bad. Now that you’ve got one agency that has guaranteed independence and which operates separately from other government agencies.”<sup>830</sup>

There is a separation in the Electoral Commission between policy and administration with the commissioners being broadly responsible for policy, and the National Office and Enrolment Services division being responsible for administration. However, these branches are fused by virtue of the Chief Electoral Officer being both a commissioner and the head of the National Office. Geddis says in this regard, that for operational matters, “In practice the [Chief Electoral Officer] would wield the most influence on that board. For instance, if he says to them ‘We can or can’t do something’ then the others will have to agree. It’s just a reality.”<sup>831</sup>

In theory, the independence of the Commission might be constrained by its resourcing arrangements, as its funding is dependent on year-to-year negotiations with the government during the Budget process. The Commission’s Statement of Intent and its Estimates of Appropriations set out what is required to be delivered. Geddis says, “The minister can’t just tell them that they need to ‘do X’. But when you’re negotiating over budgets, then the minister might say, ‘wait before you get this money, I want to see improvements in these areas.’” Geddis says, “even with the statutory independent Crown-owned model that [the Electoral Commission] is set up under, the government still holds the purse strings. And this is a potential point of influence. Even the threat of it could be something to worry about.”

However, it is worth noting that Geddis does not support ring-fencing the Commission’s budget, as occurs in comparable countries such as Canada. He says such a mechanism risks creating a “fiefdom”. Geddis does not believe that, even under the previous less-independent arrangement, there have been any signs that the Commission has antagonised the government of the day, leading to funding cuts.

If the current funding model were deemed sufficiently problematic, the Electoral Commission could be given the status of a parliamentary office with funding being provided directly by Parliament. This is the arrangement in the United Kingdom. The government did, however, consider and reject this model when establishing the current Commission.<sup>832</sup>

Some theories of integrity and corruption suggest that public servants in electoral agencies need to be more than adequately remunerated for them to be resistant to the attraction of external

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<sup>830</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

<sup>831</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

<sup>832</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

resources. It is notable, therefore, that among Commission staff, 18 are paid more than NZ\$100,000 per year. Also, in the 2016 financial year, electoral commissioners were collectively paid NZ\$378,000, and this included NZ\$320,000 for the chief executive.<sup>833</sup> The independence of the modern Commission is also reflected in the fact that in practice the Chief Electoral Officer is in charge of appointing and dismissing the personnel of the agency. All staff enjoy adequate dismissal protection. Individual staff members of the administration are appointed by the Chief Electoral Officer of the Commission in the usual manner set out under the Crown Entities Act 2004. For more information on the terms of employment in independent Crown entities, see the public sector pillar report.

#### **6.1.3 Independence (practice)**

##### **To what extent does the electoral management body function independently in practice?**

Score: 4

*In general, the independence and impartiality of the Electoral Commission is assured, albeit with some concerns about the distribution model used when allocating election advertising funding to political parties.*

As one expert interviewee has said, “The Electoral Commission is about as independent as you can get”.<sup>834</sup> In terms of impartiality, it is notable that in previous years the Commission pursued, investigated, and referred most political parties to the NZ Police – often including the parties in government. This gives some, albeit limited, evidence that the Commission gives no favour in its application of the law. For further detail of these referrals to the Police, see the political parties pillar report.

There is little reason to believe that the Commission does not have the confidence of the government and citizens in terms of its independence, impartiality, or accountability. It is widely perceived as non-partisan and professional.<sup>835</sup>

Overall, the Commission does not get much attention in academic articles or public debate. There are no known incidents in which the impartiality or independence of the Commission or any Commissioners or staff has been challenged.

In one notable area is the Commission perceived as being less than fair. Every election year, the Electoral Commission has the statutory function of allocating broadcast advertising money to political parties. It is always a fraught process and inevitably results in dissatisfaction, particularly among smaller parties, because the money is not allocated equally among the parties competing in the election. Notably, the Commission has repeatedly expressed its dissatisfaction with the model with which it has to work.

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<sup>833</sup> Electoral Commission, *Annual Report*, 2017.

<sup>834</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

<sup>835</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013; interview of Graeme Edgeler with author, Wellington, 12 January 2013.

The governing legislation, the Broadcasting Act 1989, provides that the Commission must take into account the following criteria when allocating the money:

- the parties' most recent election and by-election performances,
- their numbers in Parliament,
- their number of members,
- recent opinion poll results,
- the need to give all nationwide parties a fair chance to promote their policies.<sup>836</sup>

Arguably, the Commission gives little weight to the final criterion of “fairness”, because the Commission invariably divides up the money in an unequal fashion. The lion’s share of the funding goes to the Labour and National parties, with much smaller amounts to minor parliamentary parties, and only minuscule amounts to those parties outside Parliament. This has been the case under both the first past the post and the MMP electoral systems. In the last first past the post election, of 1993, when the Broadcasting Standards Authority last made the allocations, 66.7 per cent of the total funds were allocated to Labour and National; in 2011, the Commission allocated 71.9 per cent of funds to the two major parties.<sup>837</sup>

A strong argument can be made that all parties contesting the list vote in New Zealand should receive exactly the same allocation of funding. Any other allocation is contrary to natural justice and notions of democracy and “level playing fields”. Electoral expert Alan McRobie supports this view, saying, “the differential allocations of state funding and broadcasting time appear to run counter to the long-standing objective of providing all who seek elective office with equality of opportunity”.<sup>838</sup>

It appears that the Commission’s allocation method is still based on the first past the post electoral system, when a cartel effectively operated in dividing up the broadcast allocation mostly between Labour and National. Historically, the overall effect of this system may have helped consolidate the present players in the party system, prevent the entry of new competitors, and make it more difficult for small parties to grow.

Many countries allocate direct access broadcasting time on the basis of equality between the different political parties or candidates. Of course, it is not clear that the Electoral Commission can move to significantly more equality under the existing Broadcasting Act provisions. The Commission does, however, have substantial discretion as to how much weight it gives to the criterion of “fairness” in its allocation model. At the moment, the fairness criterion appears to be afforded the least weight of all the criteria the Commission considers.

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<sup>836</sup> Broadcasting Act 1989, section 75(2).

<sup>837</sup> Bryce Edwards, “The inequitable allocation of TV advertising”, *liberation* blogsite, 12 October 2008, [liberation.typepad.com/liberation/2008/10/political-financ.html](http://liberation.typepad.com/liberation/2008/10/political-financ.html)

<sup>838</sup> Alan McRobie, “Elections and the electoral system”, in Raymond Miller, ed., *New Zealand Government and Politics* (Auckland: Oxford University Press, 2001).

In the 2017 general election, there was a substantial increase (to \$4,145,750) in the funds made available for broadcasting, and the Commission consulted with parties about the application of the criteria.<sup>839</sup>

#### **6.2.1 Transparency (law)**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the electoral management body?**

Score: 4

*Comprehensive provisions allow the public to obtain most information on the organisation and functioning of the Electoral Commission.*

The Electoral Commission has a statutory obligation to produce publicly available annual reports, Statements of Intent to the government, post-election reports, and advice on election advertising. Furthermore, as a public authority, the Commission is subject to the OIA, so must comply with requests for information (unless a defined exemption applies).

Despite provision for making much of its information freely available, most meetings of the Commission are closed to the public. Whereas in many countries observers are permitted at the sittings of the commissioners, this does not occur in New Zealand as there are no requirements for meetings to be open or for minutes to be regularly released; instead, all significant decisions are simply publicised through media releases.<sup>840</sup>

Of course there is not necessarily any public, political, or media demand for open meetings. Nonetheless, this lack of transparency naturally raises questions about the integrity of the Commission. The public might have less faith in this institution as a result of its secrecy – regardless of whether the secrecy is deliberate.

The Commission has a role in making available the information that it collects about political finance. The public can expect to find information on the Commission’s website about the campaigning expenditure of political parties, candidates, and parallel campaigners. It can also expect to find information about donations (over a certain threshold) received by parties and candidates. The details of these requirements are complex – for more information, see the political parties pillar report.

When it comes to decisions about the electoral behaviour and political finance that it regulates, there is less onus on the Commission to publicise these. For example, nothing in the law requires the Commission to release information about referrals to the police for breaches of the electoral law.

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<sup>839</sup> Interview Suzanne Snively and Julie Haggie (TINZ) with Alicia Wright Chief Electoral Officer and chief executive and Kristina Tempel Manager, Legal and Policy of the Electoral Commission 5 March 2019

<sup>840</sup> Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

### 6.2.2 Transparency (practice)

**To what extent are reports and decisions of the electoral management body made public in practice?**

Score: 4

*The public can readily obtain information about the activities of the Electoral Commission. However, not all information about referrals to the police is being put on the website.*

The Commission produces annual reports, corporate plans and annual accounts, all of which are available on its comprehensive website.<sup>841</sup> It also produces news releases, statements, and responses. In addition, the National Office publicises its 0800 free-phone number and has a contact and enquiry form on its website. The Enrolment Services division also has user-friendly contact details.

In general, the public can readily obtain relevant information on the organisation and functioning of the Commission and on decisions that concern them. In addition, the Commission is transparent about the advice it gives to government and Parliament. Prior to the 2017 election, the Commission published on its website the criteria for the allocation of broadcasting advertising funds and its decisions on allocation.<sup>842</sup>

The public may not always be able to easily access electoral information through the Commission. For example, there is little public information about how the Commission has made decisions. And, as mentioned above, commission board meetings are not open to the public or media, and public records of the meetings are limited. Instead the public is served by the media seeking out this information.<sup>843</sup>

In addition, there is an absence of information about referrals to the Police for breaches of electoral law. Electoral law specialist Graeme Edgeler commented, “This is one area where the [commission] is less transparent under the new regime. The old small [commission] was very open with police referrals, including giving issuing reasons for its doing so. The old [Chief Electoral Officer] didn’t do that. When they combined, they basically went with the old [Chief Electoral Officer] practice”. As a result, he says, “There seems to be a lot less made public under the new [commission] model. As a general rule, the referrals to the Police are not being put online. They still put out their guidance documents, but they don’t put out their decisions (which they did during the [Electoral Finance Act 2007] period).”<sup>844</sup>

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<sup>841</sup> Electoral Commission website, [www.elections.org.nz](http://www.elections.org.nz) [accessed 22 October 2013].

<sup>842</sup> See <https://www.elections.org.nz/parties-candidates/broadcasting/broadcasting-allocations>

<sup>843</sup> For example, at least one of the *New Zealand Herald*'s parliamentary press gallery journalists makes a monthly request for this information under the Official Information Act 1982.

<sup>844</sup> Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

### 6.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that the electoral management body has to report and be answerable for its actions?**

Score: 5

*Extensive provisions ensure the Electoral Commission has to report and be answerable for its actions.*

As an independent Crown entity under the Crown Entities Act 2004, the Electoral Commission is subject to the standard accountability requirements. For example, it is subject to the Official Information Act 1982, its decisions are subject to Ombudsman review, and its accounts must be independently audited by Audit New Zealand.

The most obvious public accountability provision is the requirement for the Commission to publish its annual report, which is comprehensive, to the Minister of Justice. The Commission is also accountable to Parliament and must appear before the Justice and Electoral Law Committee when required. This committee of MPs reviews each general election, which review includes evaluating the performance of the Commission. Similarly, the Electoral Act 1993 specifies that the Commission must publish a review of its performance in running each general election. Both Parliament's and the Commission's reviews result in significant reports that provide in-depth information.

In theory, Parliament could also vote to “remove or suspend members” of the Commission, if such board members were found to have grossly underperformed. The Electoral Act 1993 refers to the “Power to remove or suspend members”, which can be necessitated by “just cause by the Governor-General acting upon an address from the House of Representatives”.<sup>845</sup>

The Commission is answerable in law through the courts. In particular, it is subject to judicial review. Such reviews can establish whether the Commission has acted reasonably, without bias, and in line with legislation.

### 6.2.4 Accountability (practice)

**To what extent does the electoral management body have to report and be answerable for its actions in practice?**

Score: 4

*The Electoral Commission makes itself accountable through its public reports – especially through a comprehensive annual report.*

The annual report of the Electoral Commission is ostensibly for the purposes of the executive and Parliament, but is easily available for the public and contains a wealth of information about

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<sup>845</sup> Electoral Act 1993, section 4G.

the agency. However, it is not so apparent that the Commission makes an effort to hold regular meetings with parties, the media, and observers to answer queries.<sup>846</sup>

Generally, the Commission is not a well-known public agency, and its outreach seems limited. It does, however, engage in public consultation and holds public meetings when a particular project demands it. For example, in 2012, the Commission held public hearings for its review of MMP representation. And for the 2011 electoral system referendum, according to the Commission, it held “601 community presentations and public meetings reached 28,151 people”.<sup>847</sup>

One case study of accountability relates to a notable case of poor performance by the electoral agencies in counting the vote in a timely fashion on polling day in 1999. As a result, staff were removed from their positions for “failure to perform”.<sup>848</sup>

The Electoral Commission has been subject to two judicial reviews that are of note. First, the 2008 case taken against the Commission by the National Party about the Commission’s decision to register a union as a third party for the purposes of the Electoral Finance Act’s parallel campaigning rules.<sup>849</sup> Second, the Alliance sought a judicial review of the Commission’s allocation of time and money for the 2008 general election.<sup>850</sup> It should be noted, however, that judicial reviews are slow and expensive. In the case of the Alliance, the party received its decision a year and a half after the election, which meant it was good only for setting a new standard for the next election.<sup>851</sup>

#### **6.2.5 Integrity (law)**

**To what extent are there mechanisms in place to ensure the integrity of the electoral management body?**

Score: 5

*Mechanisms to ensure the integrity of the Electoral Commission appear to be few, but appropriate.*

As with members of any state sector board, commissioners must declare potential conflicts of interest or relevant connections they may have. Commissioners and staff also fall under the scope of the legal requirements of the Crown Entities Act 2004. In addition, a convention is emerging that a judge or retired judge chairs the Commission while other members have no partisan affiliations.

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<sup>846</sup> Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

<sup>847</sup> Electoral Commission, *Report on the 2011 General Election*, 2012, p. 17.

<sup>848</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

<sup>849</sup> *Kirk v Electoral Commission* 21 May 2008, High Court Wellington CIV 2008-485-756.

<sup>850</sup> *Alliance Party v Electoral Commission* [2010] NZAR 222.

<sup>851</sup> The Alliance judicial review established that the Electoral Commission was obliged to make allocations of both opening and closing broadcast addresses to all parties. It also resulted in Television New Zealand providing additional free time so all parties could make such addresses.

The Electoral Act 1993 does not restrict political affiliation by members of the Electoral Commission or its staff. However, it is incompatible to be in office on behalf of a political party. The laws and regulations applicable to public servants apply to commission staff. (For more information on the rules applicable to public servants, see the public sector pillar report.)

The only staff who appear to be restricted in their political affiliations are the returning officers in each electorate who may not hold official positions in political parties.

#### **6.2.6 Integrity (practice)**

##### **To what extent is the integrity of the electoral management body ensured in practice?**

Score: 5

*An overall aim of the Electoral Commission is to preserve integrity and public confidence in the democratic process, and there is no suggestion of any impropriety or bias in the dealings of the Commission.*

Public surveys shows a high level of satisfaction with the way elections are run, which suggests little concern about the integrity of the Electoral Commission. Of those surveyed in 2017, 94 per cent expressed satisfaction with the electoral process – up from 85 per cent in 2008.<sup>852</sup> Political parties were also surveyed in 2011, with 98.8 per cent of secretaries of political parties expressing satisfaction with the services the Commission provided.<sup>853</sup>

In 2008, voters were also surveyed about the administration of parliamentary elections and referenda, with 85 per cent responding that they were “confident or very confident”.<sup>854</sup>

To run general elections, the Commission must hire large numbers of additional staff, increasing the risks for integrity, because of the significant numbers of temporary new staff operating with authority. The Commission’s 2011/12 annual report makes the following declaration: “There were close family members of key management personnel among the 24,000 New Zealanders engaged to assist with the conduct of the November 2011 General Election and referendum on the voting system. The terms and conditions of those arrangements were no more favourable than the Electoral Commission would have adopted if there were no relationship to key management personnel.”<sup>855</sup>

#### **6.3.1 Campaign regulation**

##### **Does the electoral management body effectively regulate candidate and political party finance?**

Score: 3

*The Electoral Commission generally enforces the laws governing political party finance.*

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<sup>852</sup> Electoral Commission, *Annual Report*, 2018: 25.

<sup>853</sup> Electoral Commission, *Annual Report*, 2012: 16.

<sup>854</sup> Electoral Commission, *Annual Report*, 2012: 16.

<sup>855</sup> Electoral Commission, *Annual Report*, 2012: 35.

The Electoral Commission regulates the financing of political parties, candidates, organisations, and individuals engaged in campaigning. The Commission maintains and makes available several public registers of political parties and details of their donations and campaign expenditures.<sup>856</sup> Limited information is also kept on registered parallel campaigners (known as “registered promoters”). However, the law provides the Commission with a limited number of campaign-regulation mechanisms. Therefore, as Graeme Edgeler (electoral law specialist and former lawyer for the Commission) says, “In terms of the rules as they exist, the Commission does everything that is asked of it. But the role of the Commission is deliberately kept minimal. So really what the Commission is there to do is to accept the reports that are given to it by the participants. They receive donation reports; they receive expenditure reports; and if a complaint is made, they make a decision on whether to give this to the police. They have minimal powers to investigate.”<sup>857</sup> The role can, therefore, be characterised as passive and limited.

Edgeler says, “They do have good internal processes for investigating allegations. They are very good at investigating the basics (dual-voting etc). They don’t go out and interview people under caution like the police – it’s certainly not at that level. But in actually finding out what did happen they go and interview people, speak to electors”. Edgeler stresses that the Commission has few auditing powers: “they don’t have auditors to investigate financial affairs. They receive expense reports and donation disclosures and as long as it all adds up and is on time – unless there’s something that they know is missing then they won’t do anything further unless someone complains”.<sup>858</sup> Therefore, although the Commission does seek to regulate candidate and political finance, its approach is largely reactive, and its success could be seen as limited.

Whether the Commission should take a more thorough, interventionist, and proactive role in regulating campaign finance is entirely a question for the law-makers rather than the Commission. This issue is addressed further in the political parties pillar report.

Since 2011, the Commission has had a statutory role in providing advisory opinions about whether something is legally an election advertisement. During the 2017 general election it “received 711 advisory opinion requests dealing with 1121 separate election advertisements”.<sup>859</sup>

### **6.3.2 Election administration**

#### **Does the electoral management body ensure the integrity of the electoral process?**

Score: 5

*The Electoral Commission is active and successful in ensuring free and fair elections.*

Elections run smoothly in New Zealand with strong confidence in the integrity of the electoral process. The Electoral Commission is seen as performing strongly in this regard. According to Geddis, “It handles the task of running elections perfectly. I don’t think that anyone has got any

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<sup>856</sup> The Electoral Commission publishes these details on its website, [www.elections.org.nz/parties-candidates](http://www.elections.org.nz/parties-candidates)

<sup>857</sup> Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

<sup>858</sup> Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

<sup>859</sup> Electoral Commission, *Report on the 2017 General Election*, 2012: 50.

real concerns that the vote tally that you get at the end is a genuine representation of the people who showed up to vote".<sup>860</sup>

Serious voting irregularities and allegations of impropriety are rare. According to Geddis, "There's never been – in recent New Zealand political history – an allegation that an election result has been obtained by fraud or wrong behaviour. It just hasn't arisen".<sup>861</sup> Geddis's opinion is backed up by the lack of obvious complaints about the Commission or the electoral process and by the survey evidence that the vast majority of voters have confidence in the process.<sup>862</sup>

There is some evidence of a reduction in confidence in the integrity of the democratic process and in political party funding and campaign expenditure. But it is far from clear that the Commission's work is related to this. In particular, there are serious problems with declining faith and participation in the electoral process. Voter turnout has generally been in decline over a long period, and, at recent elections has been around 70 per cent of eligible voters. However, following extensive work by the Electoral Commission and others, voter turnout in 2017 increased to 79.8 per cent, the highest since 2005.<sup>863</sup> There is also a trend for fewer participants standing for office. The Commission reported that, in 2017, "453 electorate candidates and 429 list candidates were nominated as well as 16 parties contesting the party vote. This was a significant reduction compared to 2008 when there were 522 electorate candidates, 593 list candidates and 19 parties contesting the party vote."<sup>864</sup>

Such trends are generally beyond the powers of the Commission to address. In particular, the trend of declining voter turnout is one experienced in most Western liberal democracies and, obviously, relates to more significant issues in modern politics. Nonetheless, the Commission needs to be measured on this criterion, and its response should be examined. The Commission has sought to make this issue a priority in future work, saying in its post-election review that, "An immediate area of focus for the Commission will be civics education"<sup>865</sup> and in its 2012 annual report, "Promoting participation to reverse the downward trend is therefore a key objective for the Commission to be achieved over the next 9–12 years."<sup>866</sup> It is questionable whether the level of electoral participation relates to such public education, but the Commission could certainly play a stronger role in providing electoral information and encouragement.

New Zealand's 2018-20 OGP National Action Plan, released in December 2018, includes a commitment to develop a School Leavers Kit to assist schools to integrate civics education into their local curriculum for students before they leave compulsory schooling.<sup>867</sup> The Electoral Commission has a role in this work.

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<sup>860</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

<sup>861</sup> Interview of Andrew Geddis with author, Dunedin, 8 February 2013.

<sup>862</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 4.

<sup>863</sup> See <https://www.elections.org.nz/news-media/election-turnout-all-age-groups>

<sup>864</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 30. ; Electoral Commission, *Report on the 2017 General Election*, 2017: 50.

<sup>865</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 4.

<sup>866</sup> Electoral Commission, *Annual Report*, 2012: 4.

<sup>867</sup> NZ Open Government Partnership National Action Plan 2018-2020: Commitment 3: School Leavers Toolkit. (Wellington: State Services Commission, 2018)

The Commission claims that “administrative barriers to participation in New Zealand elections are low by international standards”.<sup>868</sup> It is also the case that the electoral agencies have achieved enrolment rates that “compare favourably with enrolment rates achieved overseas”.<sup>869</sup>

The Commission surveys the public following each election, and the details for the 2011 election (see above at 6.2.6) suggest strong voter confidence and satisfaction in the administration of general elections.<sup>870</sup>

The Commission is relatively accessible to the public. There is a free-phone number for the answers to questions on electoral rights and elections. For example, according to the Commission, in the three months leading up to the 2011 election, it received 54,193 enquiries.<sup>871</sup> The Commission website is also a key communication device, and can be used, not only for contacting the agency, but also for registering to vote, and for individuals to check whether they are already registered. The website received about 1.7 million visits during the 2011 election year. A separate “election results” website received 3.3 million visits during 2011 election day.<sup>872</sup>

The Commission handles most complaints about electoral matters. During the 2011 election year, it “investigated in excess of 600 complaints before election day”.<sup>873</sup> It should be noted that the judiciary, not the Commission, deals with electoral recounts and electoral petitions. Requests for electoral recounts are dealt with, and the recounts organised, by a District Court judge. For electoral petitions, jurisdiction is split: the High Court has the power to hear electoral petitions about a particular electorate seat and the Court of Appeal hears electoral petitions about the allocation of list seats.

The Electoral Commission administers only general elections not local body or district health board elections, although the Commission provides the electoral rolls for those elections.<sup>874</sup>

Other areas relating to the integrity of elections are also outside of the Commission’s role. The most critical one relates to the investigation and prosecution of electoral offences, which NZ Police carry out after the Commission (or any member of the public) passes on serious allegations. Reflecting on the 2011 election year, the Commission stated that it was “concerned about the priority the Police seem able to accord these referrals”, noting that “Effective and timely investigation and prosecution of electoral offences is critical to ensuring public confidence in the integrity of the democratic process.”<sup>875</sup>

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<sup>868</sup> Electoral Commission, *Statement of Intent 2011–2014*, 2011, p. 6,  
[www.elections.org.nz/sites/default/files/plain-page/attachments/Electoral\\_Commission\\_Statement\\_of\\_Intent\\_2011-14.pdf](http://www.elections.org.nz/sites/default/files/plain-page/attachments/Electoral_Commission_Statement_of_Intent_2011-14.pdf).

<sup>869</sup> David McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Press, 2005).

<sup>870</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 4.

<sup>871</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 37.

<sup>872</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 16.

<sup>873</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 37.

<sup>874</sup> The local body elections are subject to the Local Electoral Act 2001, and district health board elections are subject to the New Zealand Public Health and Disability Act 2000.

<sup>875</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 39.

Again in 2018, the Commission pointed to this problem in its report on the 2017 election, making a specific recommendation to Parliament: “The Commission recommends a review of all the offences, penalties and the mechanisms for enforcement and whether they remain fit for purpose. There appear to be some offences that could more appropriately be dealt with by administrative penalties or other mechanisms rather than referral to the Police for prosecution.”

<sup>876</sup> For more on this, see the law enforcement pillar report.

#### **6.4.1 Te Tiriti o Waitangi**

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the Electoral Commission 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 the Electoral Commission has 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?**

*The Electoral Commission has a special role in administering the Māori vote and has expressed its intention to reduce barriers to the participation of Māori in elections. Māori are generally satisfied with the electoral process.*

The Electoral Commission has a special role in dealing with Māori voters because of the seven Māori seats. Māori can choose to register on the Māori roll and vote in a Māori electorate. For this reason, the Commission administers the Māori Electoral Option every five years following the national census, although it should be noted that the 2018 census figures are not yet available. This is of concern, since the Māori Electoral Option has been exercised for 2018<sup>877</sup> and the absence of reliable population data could cast doubt on the calculation to be made to ascertain the number of Māori seats. In its Statement of Intent for 2011–14, the Commission expressed its intention to reduce barriers to the participation of Māori in elections. Most significantly, it committed to “provide information in te reo Māori [Māori language] in our key communications”, to participate in “face to face outreach programmes that encourage Māori to enrol and vote”, to “ensure that those voting on the Māori roll get the same services as those voting on the general roll”, and to “integrate counting of votes for Māori electorates with the counting of votes for general electorates, so that there are no undue delays with reporting results for Māori electorates”.<sup>878</sup> In its role of voter education, the Commission endeavours to “provide targeted information to suit the needs of Māori, ethnic minorities, migrants and youth”.

The Commission can indirectly claim some successes in this regard. The 2017 post-election survey of voters found that 88 per cent of Māori voters were satisfied with the electoral process, which was up from 86 per cent in 2014.<sup>879</sup>

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<sup>876</sup> Electoral Commission, *Annual Report*, 2018: 7.

<sup>877</sup> See <https://www.elections.org.nz/events/maori-electoral-option-2018/results-statistics>

<sup>878</sup> Electoral Commission, *Statement of Intent*, 2011: 7.

<sup>879</sup> Electoral Commission, *Report on the 2017 General Election*, 2018: 1.

Also, as a public sector organisation, the Commission strives to make itself an agency that is a good employer for Māori.

New Zealand's declining voter turnout was particularly accentuated for those on the Māori roll. In 2011, the turnout of those on the Māori roll declined to 58.2 per cent – down from 62.4 per cent in 2008,<sup>880</sup>but with a recovery to 71.1 per cent in 2017.<sup>881</sup>The Treaty of Waitangi has been invoked in issues relating to the Electoral Commission's allocation of time and money for election broadcasting. For example, the Māori Party complained in 2011 that the Commission had failed to give effect to the Treaty in deciding how much to distribute to the party. MP Te Ururoa Flavell stated in Parliament that "we believe that decisions were made that in effect devalue the role of the Treaty and of te reo Māori as the official language of Aotearoa [New Zealand]". But Flavell expressed optimism that the appointment of a Māori Commissioner, Jane Huria ("tangata whenua") might lead the Commission to better reflect the Treaty.

The Commission also makes a strong effort to translate much of its publicity material into te reo Māori. For example, the Commission's post-election review stated that "Core information brochures and media releases about key milestones were translated into te reo Māori," "The Commission's bilingual advertising was broadcast on Māori Television and iwi radio," and "The Commission's 'Candidate Handbook – 2011 General Election and Referendum' was also made available in te reo Māori".<sup>882</sup> Also during the election campaign, the Commission's "Community Liaison Coordinators worked directly with communities nationwide, including three Pasifika and five Māori specialists".<sup>883</sup>

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<sup>880</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 24.

<sup>881</sup> See <https://www.elections.org.nz/news-media/election-turnout-all-age-groups>

<sup>882</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 18–19.

<sup>883</sup> Electoral Commission, *Report on the 2011 General Election*, 2012: 17.

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## Ombudsman (pillar 7)

### Summary

*Where more recent figures are available, data in this report has been updated. Other changes are minor and should be apparent from the context.*

The Office of the Ombudsman meets high standards of independence, integrity, and accountability. It is an important check on the exercise of administrative power and on the proper use of the official information legislation.

Although the Ombudsmen's funding has not been reduced, it has not kept up with the increase in complaints, or with the new functions they have been required to undertake. This has resulted in a backlog of complaints and an ongoing inability to carry out some functions. A substantial increase in funding was recently announced, but the office may still be under-resourced. (See below for 2018 update)

The Ombudsmen are effective in their handling and resolution of citizens' complaints and thus in acting as a check on the exercise of administrative power. However, they are not funded to carry out educational functions or to assess the quality of agencies' systems for handling complaints and requests for information. In practice, they do some educational work, but do not systematically audit agencies' processes.

Recommendations in Chapter 6 of the 2013 NIS assessment relating to the Office of the Ombudsman reflect the need for more effective oversight by the Ombudsmen of agencies' compliance with both the spirit and the letter of the OIA, as well as a wider educative role. For both of these roles, and possibly also to carry out current functions effectively, more resources are needed. For this reason a review of funding was recommended for 2014/15.

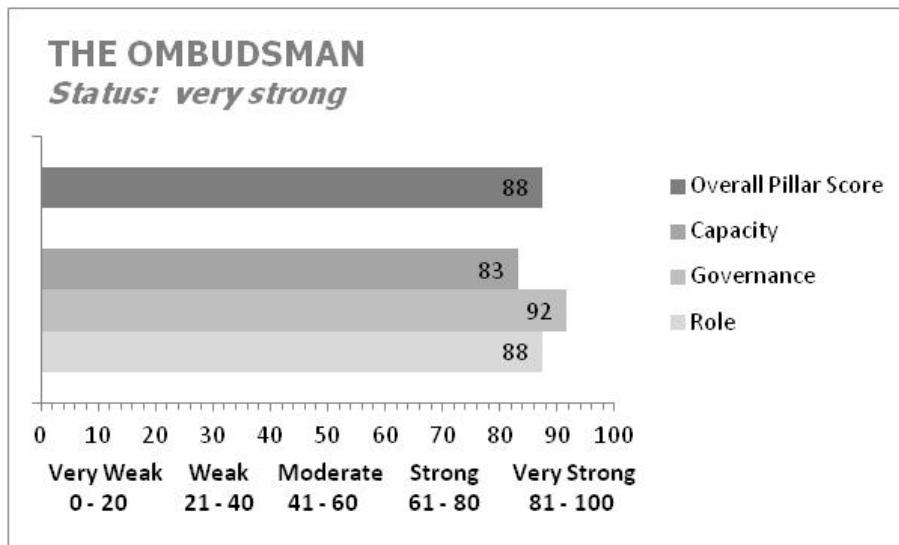
### 2018 update

Since 2013, substantially more funding has been made available to the Ombudsman. The current Chief Ombudsman, Peter Boshier, considers the office to be adequately resourced and able to carry out awareness-raising, educational and training functions in addition to the investigation and determination of complaints. New functions are adequately funded. The time taken to complete investigations has reduced and there is effectively no backlog of complaints awaiting allocation.<sup>884</sup> It is possible that a re-evaluation of the pillar score would result in a small increase as a result of the increase in capacity.

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<sup>884</sup> Interview by author with Chief Ombudsman 21 June 2018

Figure 9: Ombudsman scores



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

The Office of the Ombudsman has an important role to play in maintaining the integrity of government processes and practices. Its stated aim is to achieve an overall outcome that a “high level of public trust in government is maintained”.<sup>885</sup>

The Governor-General appoints Ombudsmen on the unanimous recommendation of Parliament. Their statutory functions are to:<sup>886</sup>

- investigate state sector administration and decision-making
- investigate and review decisions made on requests to access official information
- deal with requests for advice and guidance about alleged serious wrongdoing
- monitor and inspect places of detention for cruel and inhumane treatment
- provide comment to the Ministry of Transport on applications for authorised access to personal information on the motor vehicle register.

The Ombudsmen are also an “independent mechanism”, protecting and monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities.

There is a separate Human Rights Commission, and the Ombudsman does not take cases that can be considered under the Human Rights Act 1993.

<sup>885</sup> Office of the Ombudsman, *Annual Report 2011/12*, 2012, p. 8.

<sup>886</sup> See Office of the Ombudsman, *Statement of Intent for the period 1 July 2012 to 30 June 2015*, 2012.

New Zealand was the first English-speaking and the first common law country to appoint an Ombudsman, and the Office of the Ombudsman celebrated its 50th anniversary in 2012.

The Banking Ombudsman and the Insurance and Financial Services Ombudsman are private sector ombudsman schemes that investigate and resolve disputes between financial service providers and those who use those services. Although they do not carry out statutory functions, they do “provide the assurance that important private actors too are accountable and observe principles of fairness and consistency in decision-making”.<sup>887</sup> They are not part of the Office of the Ombudsman and are not covered further in this assessment.

The main powers of the Ombudsmen derive from the Ombudsmen Act 1975. This has stood the test of time well, but is now in need of review to bring it into line with modern legislation.<sup>888</sup> The official information legislation was the subject of a 2012 review by the Law Commission.<sup>889</sup>

Probably because of the diversity of forms taken by the institution of Ombudsman worldwide, there are few international benchmarks or norms. However, the international status of the Ombudsman of New Zealand is reflected in the fact several New Zealand Ombudsmen, including the immediate past Chief Ombudsman, Dame Beverley Wakem,<sup>890</sup> have been presidents of the International Ombudsman Institute. The Chief Ombudsman is also a member of the Australian and New Zealand Ombudsman Association, which sets stringent criteria for membership.<sup>891</sup>

### **7.1.1 Resources (practice)**

**To what extent do the Ombudsmen have adequate resources to achieve their goals in practice?**

Score: 3

*In 2013, the Office of the Ombudsman had a serious backlog and despite a recently announced increase in funding was probably still under-resourced. In 2018 very substantially more funding has been made available and a higher score is almost certainly warranted*

In 2013 the Chief Ombudsman was of the view that, since about 2009, the Ombudsmen had been seriously under-resourced and a substantial backlog of complaints was awaiting investigation. In addition, they had not been in a position to compete in the market for staff, and staff salaries were about 14 per cent below market rate. Staff turnover was low, but had increased from 6 per cent in 2010 to 14 per cent in 2011.<sup>892</sup>

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<sup>887</sup> See, for example, Dame Sian Elias, Chief Justice, “The place of the Ombudsman in the justice system”, paper presented at Australia and New Zealand Ombudsman conference It’s the Putting Right that Counts, Wellington, 6 May 2010.

<sup>888</sup> Mai Chen, “New Zealand’s ombudsmen legislation: The need for amendments after almost 50 years” *Victoria University of Wellington Law Review* vol. 40(4), 2010, p. 723.

<sup>889</sup> Law Commission, *The Public’s Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012).

<sup>890</sup> Dame Beverley retired in 2015 and was succeeded as Chief Ombudsman by Peter Boshier

<sup>891</sup> See the website of the Australian and New Zealand Ombudsman Association, [www.anzoa.com.au](http://www.anzoa.com.au) [accessed 17 February 2013]. The criteria relate to independence, fairness, accountability, accessibility, efficiency, and effectiveness.

<sup>892</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

As part of the Budget for 2012, additional funding allowed the Ombudsmen to make a 3.5 per cent adjustment to staff remuneration. For 2013/14, sufficient funding was to be made available for six more investigating staff. In the then economic climate this was a substantial increase, although, in the opinion of the Chief Ombudsman, a further two investigating staff (that is, eight additional staff) were needed to bring workloads down to a reasonable level.<sup>893</sup> The recent introduction of an ongoing continuous practice improvement initiative was expected to make for more efficiency.<sup>894</sup>

By 2018, funding had risen to a point where the Chief Ombudsman (now Peter Boshier) considered staff salaries adequate and staff turnover to be at an acceptable level,<sup>895</sup>

From 2008/09 to 2011/12, the number of complaints on hand at any one time increased from about 1000 to about 1700, a 59 per cent increase. In contrast, the Ombudsmen's annual appropriation from Parliament increased only 6.3 per cent, from NZ\$8.33 million to NZ\$8.86 million during the same period. However by 2018 the appropriation had risen to more than \$18 million.<sup>896</sup> At 31 December 2012, 465 requests for assistance had not been allocated to a case officer.<sup>897</sup> In 2011/2, only 53 per cent of complainants considered the Ombudsman process to be timely, and overall satisfaction with their standard of service dropped from 66 per cent in 2008/09 to 55 per cent in 2011/12.<sup>898</sup> The effect of the increased funding has since been reflected in case numbers and between 30 June 2014 and 1 July 2017 there was a steady reduction in numbers of complaints on hand because of increased turnover.<sup>899</sup>

In 2012-13 senior lawyers said that although the Ombudsmen's investigations were thorough and fair, they were no longer referring clients to the Ombudsmen if there was an alternative.<sup>900</sup> The process took too long, and irreparable damage might be done to their clients' interests before the investigation could be completed. A case was cited in which a family lodged a complaint in July 2011 against the Immigration Department, which had declared the family to be in New Zealand illegally.<sup>901</sup> By January 2012, an Ombudsman had not yet decided whether to accept the case for investigation, and a deportation order was served on the family. Shortly afterwards, the Ombudsman decided to commence an investigation, but the Immigration Department refused to suspend the order and the family was deported.

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<sup>893</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>894</sup> However, the 2012/13 annual report of the Office of the Ombudsman, which arrived too late for analysis in this report, records a further 29 per cent increase in work.

<sup>895</sup> Interview with author 16 June 2018

<sup>896</sup> See <https://www.budget.govt.nz/budget/pdfs/estimates/v5/est18-v5-ombud.pdf>

<sup>897</sup> Office of the Ombudsman, *Budget Report 2012 for Officers of Parliament Select Committee*, 2012, p. 14.

<sup>898</sup> Office of the Ombudsman, *Budget Report*, 2012: 10.

<sup>899</sup> *Office of the Ombudsman Annual report for 2016-7* Ombudsman p. 95

<sup>900</sup> Interview of Tim Clarke, partner at Russell McVeagh, with author, 12 December 2012; interview of Doug Tennent, University of Waikato, with author, 21 December 2012; Mai Chen (public law specialist), "Celebrating 50 years of Ombudsman in New Zealand", paper presented at the International Ombudsman Institute conference, Wellington, 16 November 2012.

<sup>901</sup> Interview of Doug Tennent, University of Waikato, with author, December 2012.

The 2013 NIS assessment found that Ombudsmen sometimes had insufficient resources to perform new functions allocated to them, or at least to perform them to an acceptably high standard.<sup>902</sup> By 2018 funding had increased to an adequate level<sup>903</sup>

In their role under the UN Optional Protocol Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, for example, their inspection team consisted of two staff, which is the minimum recommended in the guidelines provided by the Association for the Prevention of Torture.<sup>904</sup> No funding was available to employ a medically qualified team member as also recommended by the guidelines.<sup>905</sup> There is now (2018) a team of six, to be increased to nine, and with a broader skills base.<sup>906</sup> Similarly, no extra funding was made available in 2010 when the Ombudsmen were required to take on the function of providing comment to the Ministry of Transport on applications for authorised access to personal information on the motor vehicle register.<sup>907</sup>

### **7.1.2 Independence (law)**

#### **To what extent are the Ombudsmen independent by law?**

Score: 5

*With the minor exception of the reappointment process, the independence of the Ombudsmen is strongly protected by law.*

An Ombudsman is appointed by the Governor-General for a term of five years (with provision for reappointment) on the recommendation of the House of Representatives (that is, Parliament).<sup>908</sup> It is established practice that the recommendation must be unanimous. An Ombudsman may be removed from office only by Parliament and only for a limited number of specified reasons such as bankruptcy or misconduct.

The Ombudsmen Act 1975, which governs the role of the Ombudsmen, contains no provision declaring it to be a constitutional Act, though there is judicial authority for the constitutional status of the Ombudsmen,<sup>909</sup> and they are generally regarded as a constitutional watchdog.

An Ombudsman is an officer of Parliament and accounts to Parliament through the Officers of Parliament Committee, which is a non-partisan committee headed by the Speaker of the House. The Ombudsmen are not subject to the oversight of Treasury or any other government department.

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<sup>902</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>903</sup> Interview author with Chief Ombudsman 21 June 2018

<sup>904</sup> Association for the Prevention of Torture, *Optional Protocol to the UN Convention against Torture*, 2010, pp. 51, 71–72, [www.apt.ch/content/files\\_res/opcat-manual-english-revised2010.pdf](http://www.apt.ch/content/files_res/opcat-manual-english-revised2010.pdf) [accessed 2 May 2013].

<sup>905</sup> Association for the Prevention of Torture, 2010.

<sup>906</sup> Interview author with Chief Ombudsman 21 June 2018

<sup>907</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>908</sup> Ombudsmen Act 1975, section 3(2).

<sup>909</sup> See *Wyatt Co (New Zealand) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180, 190 (HC).

An independent body, the Remuneration Authority, determines the Ombudsmen's salaries, and they may not be diminished during the continuance of an Ombudsman's appointment.<sup>910</sup> They are roughly comparable to the salary of a District Court judge.<sup>911</sup> Funding for the Ombudsmen's salaries is by way of "permanent legislative authority". An Ombudsman may not hold any other office or undertake any other employment without the specific approval of the Prime Minister.<sup>912</sup> The annual budget for the Office of the Ombudsman is agreed with the Officers of Parliament Committee, and then automatically included in the national budget for the year. It is not controlled by the Treasury or any other body over which the Ombudsmen have jurisdiction.

The Ombudsmen have sole authority to appoint and dismiss staff, and the relationship between the Ombudsmen and staff is governed by general employment law.

The independence of the Ombudsmen is fully protected by law. However, it should be noted that the reappointment, as well as the appointment, of an Ombudsman requires a unanimous recommendation of Parliament. Accordingly, any political party can block an Ombudsman's reappointment. It has been suggested that it might be preferable for an Ombudsman to serve a single term of five or seven years with no provision for reappointment.

Ombudsman processes (but not decisions) are judicially reviewable, but there has been no recent judicial review of an Ombudsman's process of complaint consideration.<sup>913</sup>

### **7.1.3 Independence (practice)**

#### **To what extent are the Ombudsmen independent in practice?**

Score: 5

*Successive Ombudsmen have maintained high standards of independence in practice, and neither their independence nor that of their staff has been seriously questioned.*

It is clear from reported cases<sup>914</sup> and, in particular, from the Ombudsmen's reports on investigations undertaken on their own initiative under the "own motion" powers<sup>915</sup> that the Ombudsmen act independently of government or any other outside influences.

There have been no examples of political influence (or attempts to exert political influence) on the appointment of Ombudsmen and their staff in the past 20 years. In 1992, a serving

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<sup>910</sup> Ombudsmen Act 1975, section 9(3).

<sup>911</sup> Taking into account the allowance for general expenses paid to a District Court judge but not to an Ombudsman.

<sup>912</sup> Ombudsmen Act 1975, section 4.

<sup>913</sup> The most recent judicial review was *Television New Zealand Ltd v Ombudsman* [1992] 1 NZLR 106 (HC). There has, however, been a judicial review of the Chief Ombudsman's refusal to grant leave to use the name "Ombudsman". *Financial Services Complaints Ltd v Chief Ombudsman CA 162/2017* [2018] NZCA 27.

<sup>914</sup> Available from [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)

<sup>915</sup> See, for example, the 2012 "own motion" investigation into prison health services: Chief Ombudsman Beverley Wakem and Ombudsman David McGee, *Investigation of the Department of Corrections in Relation to the Provision, Access and Availability of Prisoner Health Services*, 2012, [www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/456/original/own\\_motion\\_prisoner\\_health.pdf?1349735789](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/456/original/own_motion_prisoner_health.pdf?1349735789)

Ombudsman's reappointment was blocked by the government of the day,<sup>916</sup> but, since then, Ombudsmen who have signified their availability for reappointment have always been reappointed, and there has been no apparent attempt to influence the appointment or reappointment process.

Complainants to the Ombudsmen are generally treated with respect by the agencies against whom the complaint is made. Any suggestion of retaliatory action could itself be the subject of an Ombudsman's investigation.<sup>917</sup>

In general, the courts support the independence of the Ombudsmen. In one of the few cases where an Ombudsman's decision has been before a court, the judge said, "Parliament delegated to the Chief Ombudsman tasks, which at times are complex and even agonising, with no expectation that the Courts would sit on his shoulder about those judgments which are essentially balancing exercises involving competing interests. The Courts will only intervene when the Chief Ombudsman is plainly and demonstrably wrong, and not because he preferred one side against another."<sup>918</sup>

An independent commentator noted in 2012 that "the gravitas of the office, as an independent and professional Officer of Parliament, allows them to use persuasion to great effect in resolving complaints about matters of administration".<sup>919</sup>

### **7.2.1 Transparency (law)**

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsmen?**

Score: 4

*Adequate transparency provisions are in place, but they could be improved by adopting the Law Commission's recommendations.*

The Ombudsmen must report annually to Parliament on the exercise of their functions.<sup>920</sup> The report is comprehensive and is published electronically and in hard copy. They are also required to publish an annual Statement of Intent.<sup>921</sup> They have the power to publish reports about the exercise of their functions or about specific cases<sup>922</sup> and regularly publish case notes, opinions, reports, and guidelines. However, they are not formally required to do so. Since January 2017 the Ombudsman has been publishing every six months comprehensive data about complaints

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<sup>916</sup> See parliamentary questions recorded in *Hansard* for April 1992:

<sup>917</sup> Although it is more likely to be the subject of comment in the Ombudsman's opinion on the complaint – email communication with Principal Adviser, Office of the Ombudsman, 18 July 2013.

<sup>918</sup> See *Wyatt Co (New Zealand) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180, 190 (HC).

<sup>919</sup> Chen, 2012.

<sup>920</sup> Ombudsmen Act 1975, section 29.

<sup>921</sup> Public Finance Act 1989, section 39.

<sup>922</sup> Ombudsmen Rules 1989.

his office has received relating to the way Ministers and other public sector agencies have dealt with official information requests.<sup>923</sup>

In its 2012 review of the official information legislation,<sup>924</sup> the Law Commission recommended that the Ombudsmen should expressly be given the function of publishing opinions and guidelines on that legislation. The Ombudsmen accept the desirability of such a change and consider it should also be extended to their general jurisdiction under the Ombudsmen Act.<sup>925</sup>

The OIA does not apply to the Ombudsmen, but the Law Commission has recommended that it be extended to cover all officers of Parliament in respect of their administrative functions.<sup>926</sup> The government has not accepted the recommendation. It seems reasonable that the Ombudsmen should be open to the same scrutiny as other public bodies.

The Ombudsmen and their staff have a general duty of confidentiality in respect of information they receive<sup>927</sup> and do not publish identifying information about complainants.

There is no legal requirement for Ombudsmen or their staff to publish declarations of assets.<sup>928</sup>

### **7.2.2 Transparency (practice)**

#### **To what extent is there transparency in the activities and decision-making processes of the Ombudsmen in practice?**

Score: 5

*There is a good level of transparency in practice, generally more than is required by law.*

The Ombudsmen regularly publish the annual report required by the legislation. It gives a comprehensive account of the Ombudsmen's activities in the previous year, including the numbers and types of complaints and the time taken to complete investigations. Reports on own motion investigations are also published.

For many years, the Ombudsmen have published case notes, and they now offer an extensive range of guidance notes, newsletters, reports, and other publications. Their new website<sup>929</sup> has the stated purpose of informing the public about the role of the Ombudsmen and providing a platform from which to build resources for both the public and state sector agencies.<sup>930</sup>

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<sup>923</sup> See [http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/468/first\\_release\\_of\\_oia\\_stats.pdf?1485835400](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/468/first_release_of_oia_stats.pdf?1485835400)

<sup>924</sup> Law Commission, NZLC R125, '2012: 44.

<sup>925</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>926</sup> Law Commission, 2012: 339.

<sup>927</sup> Ombudsman Act 1975, section 21.

<sup>928</sup> But see the discussion under "Integrity mechanisms", p. 200.

<sup>929</sup> [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)

<sup>930</sup> Office of the Ombudsman, *Annual Report*, 2012: 9.

Information is available in several languages, including New Zealand's three official languages.<sup>931</sup> A suite of information leaflets in different languages (including some directed specifically at prison inmates) was recently reviewed in view of New Zealand's changing demographic and now includes information in Braille.

A recently introduced policy requires the maintenance and publication of registers of interests for Ombudsmen and their staff.<sup>932</sup>

### **7.2.3 Accountability (law)**

**To what extent are there provisions in place to ensure that the Ombudsmen have to report and be answerable for their actions?**

Score: 5

*The law requires the Ombudsmen to be fully accountable.*

As already noted, the Ombudsmen are accountable to Parliament through a select committee – the Officers of Parliament Committee – and make an annual report to Parliament. The report is publicly available.

Audit New Zealand audits the performance of the Office of the Ombudsman in relation to its published performance measures as agreed with the select committee and in regard to its obligations under the Public Finance Act 1989.

In relation to their function as a “national preventive mechanism” under the Crimes of Torture Act 1989, the Ombudsmen contribute to a national report made by the Human Rights Commission to the UN Subcommittee on the Prevention of Torture.

The Ombudsmen are subject to the general law (including the Protected Disclosures Act 2000). There is an exception for the protection of confidentiality and for “anything [the Ombudsmen] may do or report or say” in the course of exercising the statutory functions, unless in bad faith.<sup>933</sup> Ombudsmen processes are judicially reviewable.

The Office of the Ombudsman has a formal, documented process for ensuring complaints about the Ombudsmen and their staff are taken seriously and handled appropriately.<sup>934</sup>

### **7.2.4 Accountability (practice)**

**To what extent do the Ombudsmen report and answer for their actions in practice?**

Score: 5

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<sup>931</sup> Te reo Māori, and New Zealand Sign Language are official languages. Although English is the most commonly used language in New Zealand, it does not have the declared status of an official language

<sup>932</sup> See below under “Integrity mechanisms”.

<sup>933</sup> Ombudsmen Act 1975, section 22.

<sup>934</sup> Office of the Ombudsman, *Continuous Practice Improvement Manual*, 2012.

*The Ombudsmen comply with the legal accountability requirements. There has been no occasion in recent years for judicial review.*

The Ombudsmen report to Parliament through the Speaker each year, and the report contains comprehensive information on the activities of the Ombudsmen and their staff, including performance against the measures specified in their public Statement of Intent. The report has always been submitted on time. Neither the House nor the Officers of Parliament Select Committee has recently debated the Ombudsmen's report,<sup>935</sup> although there has been debate in the Government Administration Select Committee.

It is not unusual for complaints about the Ombudsmen to be made to the Speaker. Although the Speaker has no legal duty to consider such complaints, there is a practice whereby the complaint is forwarded to the relevant Ombudsman, who then reports to the Speaker on it.<sup>936</sup>

There have been no cases of whistle-blowing within the Office of the Ombudsman and no suggestion of circumstances where whistle-blowing would be desirable.

A judicial review mechanism exists, but has not been used to review the Ombudsman's complaints process in recent years.<sup>937</sup>

#### **7.2.5 Integrity mechanisms (law)**

**To what extent are there provisions in place to ensure the integrity of the Ombudsmen?**

Score: 4

*The statutory provisions ensuring the integrity of the Ombudsmen have a few gaps, but the new code of ethics fills most of them.*

On taking office, an Ombudsman is required to take an oath that "he will faithfully and impartially perform the duties of his office, and that he will not except in accordance with [certain specified exceptions] divulge any information received by him under this Act".<sup>938</sup>

An Ombudsman and the staff of the Ombudsmen's office are "officials"<sup>939</sup> for the purposes of sections 105 and 105A of the Crimes Act 1961, which prohibit bribery of, and the corrupt use of official information by, officials.

There are no statutory provisions for a public declaration of an Ombudsman's assets or other pecuniary interests, and no restriction on post-service employment. An internal code of conduct (a code of ethics) was introduced in 2012 and updated in 2017. The code is contained in a set of internal policies that apply to Ombudsmen and their staff.

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<sup>935</sup> An Ombudsman's report was last debated in 1999.

<sup>936</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>937</sup> A judicial review in 2017-8 concerned the Ombudsman's decision to refuse permission for the use of the name "Ombudsman" by a privately-owned dispute resolution organisation. See Financial Services Complaints Ltd v Chief Ombudsman CA 162/2017 [2018] NZCA 27

<sup>938</sup> Ombudsmen Act 1975, section 10.

<sup>939</sup> Ombudsmen Act 1975, section 21.

The 2012 Code included material on conflicts of interest, but the office has since developed a more extensive and separate conflict of interest policy. A register (to which access is limited to a small number of senior staff) is maintained by the Deputy Ombudsman. The contents of any disclosures will remain confidential unless it is considered by the Chief Ombudsman necessary to publish them in order to maintain public trust and confidence in the integrity and impartiality of the Office.

With the move to a single Ombudsman model in July 2018, additional procedures were introduced to cover any potential or actual conflict of Interest on the part of the Chief Ombudsman<sup>940</sup>

A gifts, benefits and hospitality register is maintained and may be released to the public on request, following the principles of the OIA and Privacy Act. The register will also be available for review by the Office's auditors and may be requested by a parliamentary select committee.

As noted above, the courts may conduct a judicial review of the process by which an Ombudsman determined a complaint, and this power would extend to a review of any allegations of bias or improper influence.

#### **7.2.6 Integrity mechanisms (practice)**

##### **To what extent is the integrity of the Ombudsmen ensured in practice?**

Score: 5

*The integrity of the Ombudsmen and their staff has never been seriously questioned.*

Staff of the Ombudsmen's office take an oath of secrecy, adhere to a code of ethics, go through formal induction and training programmes, make regular declarations of conflicts of interest, and have the necessary security clearances.<sup>941</sup>

The new code of ethics has been in place only a short time, so it is not yet possible to assess its effectiveness. The gifts and hospitality register (see above) has not yet been published.

In general, the integrity of the Ombudsmen is ensured through the appointment process, their accountability to Parliament, and the openness of their processes, including the process for handling complaints about the Ombudsmen.

#### **7.3.1 Investigation**

##### **To what extent is the Ombudsman active and effective in dealing with complaints from the public?**

Score: 5

*The Ombudsmen are highly active and effective and are greatly respected.*

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<sup>940</sup> Correspondence by author with Acting Deputy Ombudsman Emma Leach March 2019

<sup>941</sup> Office of the Ombudsman, *Statement of Intent for the period 1 July 2011 to 30 June 2014*, 2011.

The jurisdiction of the Ombudsmen extends to almost all government departments and agencies, local government bodies, including the governing bodies of state-run schools, and (under the official information legislation only) Ministers of the Crown. It does not extend to the Parliamentary Service. It extends to government trading enterprises, but debate is considerable about whether it should extend to mixed-ownership-model enterprises such as power companies that are currently state owned but where the government has announced its intention to sell up to 49 per cent of its interest. There was a similar debate about the inclusion of proposed “charter schools”<sup>942</sup> (In 2013 they were excluded), which were to be privately owned but to receive public funding. However by 2018 jurisdiction had been extended to complaints about secure private facilities for dementia patients and there appears to be more general acceptance that institutions that receive public funds should be subject to Ombudsman jurisdiction.

Complaints to the Ombudsmen are usually made in writing (including by email), but if a complainant has any difficulty making a written complaint, Ombudsmen staff will take an oral complaint, write it down, and check its accuracy with the complainant.

In 2017-18, the Ombudsmen received 11,468 complaints and other contacts requiring action and completed 11,846.<sup>943</sup> Most investigations are of complaints from the public, but the Ombudsmen have, and regularly exercise, the power to investigate an issue of their own motion.<sup>944</sup> The most recent own motion investigation was into the Ministry of Education's engagement processes for school closures and mergers, with the report published in 2017.<sup>945</sup>

There is a reasonable degree of public awareness of the right to complain to an Ombudsman. A survey by an independent research organisation in 2012 found that 69 per cent of respondents had heard of the Ombudsmen,<sup>946</sup> although 14 per cent of those respondents were not sure what the Ombudsmen did.<sup>947</sup>

Under the Ombudsmen’s general jurisdiction, they have recommendatory powers only. However, it is unusual for an Ombudsman’s recommendation to be declined. In the 2017-18 report, it was recorded that 12 recommendations were made: 11 were accepted, and the Ombudsman was awaiting confirmation of acceptance on the other one.<sup>948</sup>

Under the official information legislation, an Ombudsman’s recommendation imposes a public duty on the relevant organisation to observe that recommendation.<sup>949</sup> Cabinet may veto a recommendation, but has never done so. Rather different provisions apply to recommendations in respect of local government,<sup>950</sup> where the veto has been used very occasionally.

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<sup>942</sup> The current government (2018) is in the process of abolishing charter schools

<sup>943</sup> Office of the Ombudsman, *Annual Report 2011/8*, 2018: 5

<sup>944</sup> Ombudsmen Act 1975, section 13(3).

<sup>945</sup> See <http://www.ombudsman.parliament.nz/resources-and-publications/latest-reports>

<sup>946</sup> 73% in 2016-7 Office of the Ombudsman, *Annual Report 2016-17* 2017: 48

<sup>947</sup> UMR Research, *Nationwide Omnibus Survey*, May 2012

<sup>948</sup> Office of the Ombudsman, *Annual Report 2017/8*, 2018:20

<sup>949</sup> Official Information Act 1982, section 32

<sup>950</sup> The Law Commission ‘recommended extending the Cabinet veto to local government recommendations in place of the existing provisions: Law Commission, 2012: 242.

In general, the Ombudsmen are highly regarded. Two independent lawyers interviewed for this assessment expressed the highest regard for the Ombudsmen, their staff, and the quality of their processes and decisions, with concern only about the time taken over investigations.<sup>951</sup> Surveys of complainant satisfaction are not a good indicator of the Ombudsmen's performance, as unsuccessful complainants will usually be dissatisfied, however well the complaint was handled. However, it was noted in 2013 that complainant satisfaction had recently declined.<sup>952</sup>

The Law Commission stated that, "The flexible and inquisitorial nature of the processes followed by the Ombudsmen is effective for resolving official information disputes".<sup>953</sup> It also noted that concerns had been raised about the time taken to complete investigations.

### 7.3.2 Promoting good practice

**To what extent is the Ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?**

Score: 4

*Although the Ombudsmen have been active through the complaint investigation process, especially in the use of the "own motion" powers, and do some training, they do not generally carry out oversight or educational activities.*

There appears to be a case for reviewing the Ombudsmen's functions and funding with a view to enabling them to promote better administrative practices in the public sector and, thus, greater public trust in government.

The Ombudsmen have always been active in identifying and addressing all kinds of maladministration, usually through the investigation and resolution of specific complaints.

In the years preceding the 2013 NIS assessment, the Ombudsmen had made greater use of the power to conduct an "own motion" investigation,<sup>954</sup> especially in relation to conditions in prisons.<sup>955</sup> In 2013, the then Chief Ombudsman announced an investigation into the handling of requests for official information in certain government departments and agencies<sup>956</sup> in view of concerns that delay and obstruction may have become institutionalised in them. Her report "Not a Game of Hide and Seek", published in December 2015, found that, while agencies were generally compliant, there were five key areas where there were increasing risks and vulnerabilities in the way the OIA was being administered.<sup>957</sup> The most recent own motion

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<sup>951</sup> Interview of Tim Clarke, partner at Russell McVeagh, with author, 12 December 2012; interview of Doug Tennent, University of Waikato, with author, 21 December 2012.

<sup>952</sup> Office of the Ombudsman, *Budget Report*, 2012: 10.

<sup>953</sup> Law Commission, 2012: 244, para. 11.102.

<sup>954</sup> Section 13(3) of the Ombudsmen Act 1975 gives an Ombudsman power to investigate a complaint or "of his own motion".

<sup>955</sup> Recent investigations related to self-harm in prisons (2010), prisoner complaints systems (2011), and prison health services (2012).

<sup>956</sup> Media release, 18 December 2012.

<sup>957</sup> See

investigation was into the Ministry of Education's engagement processes for school closures and mergers, with the report published in 2017.<sup>958</sup>

In 2012, the post of senior adviser wider administrative improvement was created to consider and recommend to the Chief Ombudsman issues that might warrant an investigation of this kind – that is, systemic issues or when investigation of a complaint identifies an opportunity for wider administrative improvement.<sup>959</sup> More resource has since been allocated to this area.<sup>960</sup>

There is a training programme for state sector agencies, and advice and comment are also provided on legislative, policy, and procedural matters.<sup>961</sup> However, the Ombudsmen do not have the legislative authority or the funding to carry out more extensive educational or awareness programmes.

The previous Chief Ombudsman noted that, in other jurisdictions, Ombudsmen have published material on the principles of good administration and similar topics,<sup>962</sup> and indicated that she would be able to do the same if funding were available.

The Law Commission, in its review of the official information legislation, identified the absence of an oversight function. It recommended that the legislation be amended to include provision for the functions of policy advice, review, statistical oversight, promotion of best practice, oversight of training, oversight of requester guidance, and annual reporting.<sup>963</sup> To date, the government has not accepted this recommendation. The Law Commission did not extend its comments to the operation of the Ombudsman Act, but a similar oversight function would enable the Ombudsmen to act more effectively in raising awareness both in government and among the public about standards of ethical behaviour.

In the wake of a major mining disaster at Pike River after which a Royal Commission found that workers and management knew the mine was unsafe, questions were asked about public understanding and knowledge of the Protected Disclosures Act 2000.<sup>964</sup> However, there does not appear to have been any suggestion that the Ombudsmen are failing in their duty to provide advice and guidance to potential whistle-blowers, and they are not required or funded to provide general education on the Act's provisions. Any criticism has been directed at the Act itself and the level of protection it provides.

Agencies must develop their own processes for those who want to make protected disclosures, and these processes should include providing information about the advice and other

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[www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/399/oia\\_report\\_not\\_a\\_game\\_of\\_hide\\_and\\_seek.pdf?1449533820](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/399/oia_report_not_a_game_of_hide_and_seek.pdf?1449533820)

<sup>958</sup> See <http://www.ombudsman.parliament.nz/resources-and-publications/latest-reports>

<sup>959</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>960</sup> Interview by author with Chief Ombudsman 21 June 2018.

<sup>961</sup> Office of the Ombudsmen, *Annual Report*, 2012.

<sup>962</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012 where she cited, in particular, Ann Abraham, *Principles of Good Administration*, [www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples](http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples)

<sup>963</sup> Law Commission, NZLC R125, 2012: 317.

<sup>964</sup> See, for example, "Where were the mine whistleblowers?", *The Press*, 11 November 2012.

information available from the Ombudsmen. In 2013, the Ombudsmen had not audited the processes, and had no resources to do so.<sup>965</sup> By 2018, although there had still been no auditing of processes the Ombudsman had recently called for and reviewed a range of central government agencies' protected disclosures policies in order to inform the development of new guidance for agencies.<sup>966</sup>

#### 7.4.1 Te Tiriti o Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect, and participation. What do the Ombudsmen 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 the Ombudsmen have legal rights and obligations in this respect given to them by the Crown, how well do they honour them, including any Treaty obligations passed on by the Crown?**

*Ombudsman staff receive training in the Treaty, and information is available in te reo. There are some outreach programmes in areas of high Māori population.*

The Ombudsmen appear very conscious of the Treaty of Waitangi and their relationship with Māori. For example, in 2012, when the Ombudsmen hosted the International Ombudsman Institute conference, Māori were involved in the planning and there was a formal welcome by Māori at the commencement of the conference.<sup>967</sup>

The then Deputy Ombudsman advised in 2012 that staff were given specific training on the Treaty of Waitangi five years previously, and such training had since been reviewed and incorporated into the staff training schedule. At that time, the Ombudsmen planned to use existing links with Māori communities and to tailor aspects of the training to focus on the Treaty, and on constitutional arrangements from the perspective of the office, described as "fairness for all, how we impact on Māori communities, and being able to navigate Māori people to access information and education, particularly rights based education".<sup>968</sup> The office has now established a Treaty of Waitangi integrity group. There is increasing use of Māori symbolism, and waiata are sung on formal occasions.<sup>969</sup>

Discussions have been held with Port Nicholson Settlement Trust and Ngāti Poneke (a pan-tribal iwi) to build the capacity of the organisation and enhance the professional knowledge of staff for working with all communities, particularly Māori.<sup>970, 971</sup>

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<sup>965</sup> Interview of Dame Beverley Wakem, Chief Ombudsman, with author, 11 December 2012.

<sup>966</sup> Correspondence by author with Emma Leach, Acting Deputy Ombudsman March 2019

<sup>967</sup> See the conference programme for Speaking Truth to Power: The Ombudsman in the 21st century, Wellington, 12–26 November 2012.

<sup>968</sup> Email communication between author and Deputy Ombudsman Bridget Hewson, 23 January 2013.

<sup>969</sup> Interview Chief Ombudsman with author 21 June 2018

<sup>970</sup> Email communication between author and Deputy Ombudsman Bridget Hewson, 23 January 2013.

<sup>971</sup> From 2016 the office has offered training in te reo to its staff (interview of Chief Ombudsman with author, 21 June 2018)

From 2016 the office has offered training in te reo to its staff.<sup>972</sup> The Ombudsmen's information leaflets are produced in te reo Māori, and the office subscribes to Language Line, an interpretation service for telephone callers. Until mid-2012, the Ombudsmen had one staff member (now retired) who was a fluent speaker of te reo (Māori language) and had expertise in tikanga Māori (law, rules, and practice).<sup>973</sup> Since then it has had no fluent speaker of te reo but, as of 2018, there are five staff with iwi connections and some knowledge of te reo and tikanga Māori.<sup>974</sup> External resources are used to advise the Ombudsmen and staff, and to accompany them as appropriate on business with public sector agencies and international visitors.<sup>975</sup>

The Ombudsmen engage in some outreach programmes delivered by the government in remote areas with substantial Māori populations. In areas such as Gisborne, Kaitaia, Whangarei, Whanganui, and Hawke's Bay, they deliver presentations to the public generally; to groups interested in Māori health, budgeting, and advocacy; and to interest groups such as Citizens Advice Bureaux and community law centres. In particular, they participate in an outreach programme organised by staff from the Ministry of Consumer Affairs, who are extremely competent at promoting the programme to Māori communities.<sup>976</sup>

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<sup>972</sup> interview of Chief Ombudsman with author 21 June 2018

<sup>973</sup> An appointment has not yet been made to fill the vacant position.

<sup>974</sup> As of 2018 the office has five staff with iwi connections but none are fluent in te reo (interview Chief Ombudsman with author 21 June 2018).

<sup>975</sup> External resources are now used to carry out this function (interview Chief Ombudsman with author 21 June 2018)

<sup>976</sup> Email communication between author and Deputy Ombudsman Bridget Hewson, 23 January 2013.

Office of the Ombudsman, *Statement of Intent for the period 1 July 2012 to 30 June 2015*, 2012.

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“Where were the mine whistleblowers?”, *The Press*, 11 November 2012.

## Supreme audit institution (pillar 8)

### Summary

*Data in this pillar report has been updated where later information is available. Other updated information has been sourced from the OAG's annual reports and from discussion with staff of the OAG. All updates are either noted as such or easily identifiable from the context.*

The supreme audit institution in New Zealand is the OAG. The OAG is fully independent in the performance of all audit work and has the budget, staff, and legal powers it requires to carry out its audits. It is a trusted institution of governance and an effective watchdog of public integrity. It is able to set and enforce high standards of audit and integrity of auditors. It is subject to independent financial audit and commissions periodic independent reviews of its performance.

The OAG's reports and advice are nearly always delivered on time and made public. Its major reports generally receive significant media attention, and public officials take its findings seriously, although the direct responsiveness of Parliament to its findings depends mainly on their political salience. A few reports have a major political impact, but many findings have received only cursory attention in select committees and the House of Representatives. The 2013 NIS assessment found a recent trend towards improved scrutiny of reports by the committees and this appears to have continued.

The OAG plays a significant role in maintaining New Zealand's high standards of public financial management. It has supported the development of specific accounting and auditing standards for the public sector, particularly in the monitoring and reporting of service performance. Its criticisms of performance reporting are contributing to improvements in the quality of this reporting.

The OAG is required by its Act to take existing government policy as a given, and performance audits tend to focus on issues of process and service delivery and pay limited attention to effectiveness measured by outcomes. It is considering an appropriate methodology for value-for-money audits of public entities.

The recommendations (in Chapter 6 of the 2013 NIS assessment) that flow from the analysis in this pillar report are directed more generally towards the legislature and the public sector pillars. Parliament is recommended to strengthen select committees to enable them, among other things, to follow up on findings by the OAG more consistently and effectively as a way of holding the executive to account and as part of the general emphasis for the public sector on the impact of policies. The OAG should examine those impacts in its performance reporting.

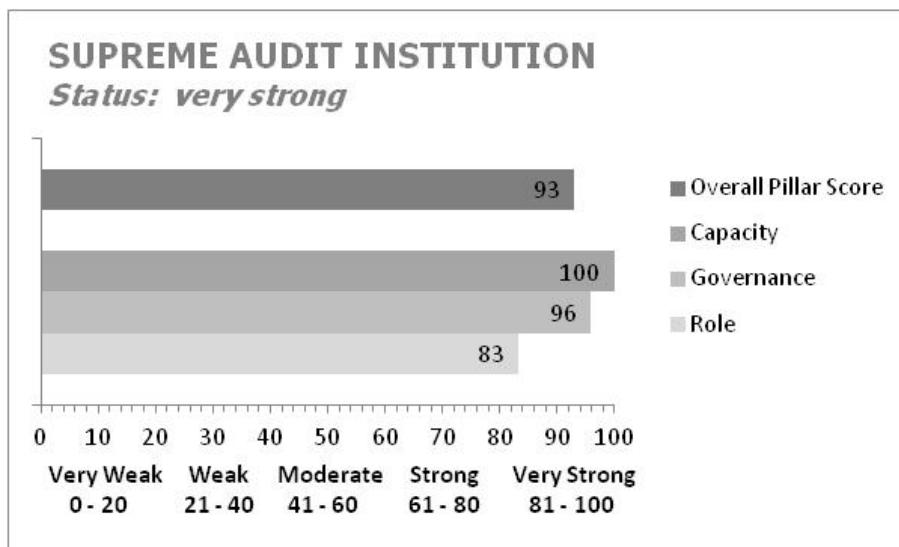
### Structure and organisation

The OAG was established by the Public Audit Act 2001 and is headed by the Controller and Auditor-General, an officer of Parliament. There is also a Deputy Controller and Auditor-General, who has the same powers, duties and functions as the Controller and Auditor-General and is also an officer of Parliament. The Controller and Auditor-General also employs the staff of Audit

New Zealand, a public organisation that shares the work of public audits with private accounting firms.

As well as the responsibilities as Auditor-General, the Controller and Auditor-General has a controller function to provide assurance during a financial year that expenditure by central government has been made lawfully and within the authority provided by Parliament. This report does not cover this function. In the audit role, the Controller and Auditor-General is known simply as the Auditor-General.

**Figure 10: Supreme audit institution scores**



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

The OAG is responsible for audits of more than 3,600 public entities both of central and local government, including state-owned enterprises, public education institutions, and district health boards.<sup>977</sup> Its powers of audit include mandatory annual audit of the financial statements and, where applicable, the statements of service performance of these entities, as well as discretionary audits of the performance of public entities and inquiries into matters of public interest. It also assists Parliament's select committees with advice on financial reviews and scrutiny of annual estimates of expenditure.

The OAG allocates almost all of the annual audit work to audit service providers, either Audit New Zealand or private accounting firms, who carry out the actual audits. In almost all cases, staff of the OAG lead performance audits and inquiries.

<sup>977</sup> Controller and Auditor-General, *Statement of Intent 2012–2015* (Wellington: Office of the Auditor-General, 2012), p. 27.

## Relevant international standards

The relevant standards for assessment of the supreme audit institution in New Zealand are the Auditor-General's Auditing Standards (AGAS),<sup>978</sup> which incorporate the standards of the New Zealand Audit and Assurance Standards Board,<sup>979</sup> supplemented by the Auditor-General's own standards and statements. The Auditor-General also takes note of the International Standards of Supreme Audit Institutions (ISSAI), issued by the International Organization of Supreme Audit Institutions (INTOSAI).<sup>980</sup> The most important of these standards for this review are the prerequisite standards on supreme audit institution independence (ISSAI 10 and 11), transparency and accountability (ISSAI 20 and 21), and ethics (ISSAI 30).

New Zealand government financial statements have for many years been based on international financial reporting standards supplemented by requirements appropriate for the public sector.<sup>981</sup> With effect from 2015, New Zealand has adopted International Public Sector Accounting Standards,<sup>982</sup> which are expected to better meet the specific requirements of the public sector, including the reporting of service performance. New Zealand financial reporting standards for public benefit entities are now (2018) based on the International Public Sector Accounting Standards, with amendments to reflect the legal and reporting environment in New Zealand.

## Capacity

### 8.1.1 Resources (practice)

**To what extent does the audit institution have adequate resources to achieve its goals in practice?**

Score: 5

*The OAG is fully independent in the performance of all audit work and has the budget, staff and legal powers it requires to carry out its audits.*

**Money and people:** The OAG controls and manages its own budget and staff.<sup>983</sup> Annual audits are funded by fees charged to the audited entity on a scale determined by the OAG<sup>984</sup>. Resources are generally sufficient for the OAG to complete all financial audits required by statute and an agreed programme of performance audits as discussed below, although an increase in its budget

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<sup>978</sup> Controller and Auditor-General, *The Auditor-General's Auditing Standards* (Wellington: Office of the Auditor-General, 2011).

<sup>979</sup> Under the framework of the External Reporting Board (XRB) in terms of the Financial Reporting Act 1993. Current standards can be obtained from [xrb.govt.nz/Site/Auditing\\_Assurance\\_Standards/Current\\_Standards/default.aspx](http://xrb.govt.nz/Site/Auditing_Assurance_Standards/Current_Standards/default.aspx)

<sup>980</sup> INTOSAI standards may be found at the ISSAI website: [www.issai.org](http://www.issai.org).

<sup>981</sup> Public Finance Act 1989, section 2.

<sup>982</sup> The full conceptual framework for IPSAS is being developed by the International Federation of Accountants (IFAC) and should be complete by mid-2014 ([www.ifac.org/public-sector](http://www.ifac.org/public-sector)).

<sup>983</sup> Public Finance Act 1989, section 45F; Public Audit Act 2001, Schedule 3(8).

<sup>984</sup> Public Audit Act 2001, s. 42.

has recently (2018) been requested<sup>985</sup>. The OAG's budget bypasses the normal process of executive budget formation. The OAG presents a draft budget to the Officers of Parliament Committee, which recommends a budget to the House. By convention, this recommended budget is included unaltered in the Appropriation (Estimates) Bill.<sup>986</sup> The trend information for Vote Audit in the 2018/19 Estimates of Appropriations show, overall, an increasing trend in the Auditor-General's budget. Variations are primarily driven by fluctuations in the amount of audit work completed each year, particularly for the cost, every three years of the triennial audits of Local Authorities' long-term plans.<sup>987</sup> However, in 2015-16, the executive accepted a recommendation from the Officers of Parliament Committee for small increases to the Auditor-General's budget, to pay for additional staff for inquiries and analysis of audit results despite prevailing restraints on budgets.

Any resource constraints are due more to limits on staff time than to budget limits and (particularly for sensitive ad hoc inquiries) limits on the time available from senior OAG staff for direction and oversight.<sup>988</sup> The OAG's annual audits absorb about 90 per cent of the budget. This proportion of resource dedicated to carrying out annual audits relative to other products such as performance and compliance audits, is unusually high when compared to Supreme Audit Institutions (SAIs) of other developed jurisdictions. The OAG completes 80 per cent or more of these annual audits on time, and more often than not is held up by delays in the audited entities.<sup>989</sup>

Performance audits and inquiries, covering about 7 per cent of the OAG's budget, are funded by a multicategory parliamentary appropriation that also funds the OAG's work of supporting accountability to Parliament.<sup>990</sup>

The OAG's mandate allows it to audit the performance of all public entities (except the Reserve Bank of New Zealand). These reports identify good practices, raise any issues or concerns, and recommend improvements where necessary. The OAG completes around 12 performance audits each year, as well as follow-ups to see if recommendations have been implemented. Often, Parliament's select committees will invite the OAG to brief them on these reports. The Office reports its findings and helps the committee to hold the public entities to account for implementing its recommendations. The OAG will usually follow up about 18 months after the report to see what progress has been made. The OAG also presents these findings to Parliament.

Since 2012/13, the OAG has applied a theme to its work, particularly in its performance audits. The annual themes have been:

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<sup>985</sup> See [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCOP\\_EVI\\_85012\\_OP89/office-of-the-controller-and-auditor-general-2019-budget#RelatedAnchor](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/52SCOP_EVI_85012_OP89/office-of-the-controller-and-auditor-general-2019-budget#RelatedAnchor)

<sup>986</sup> D McGee, *Parliamentary Practice in New Zealand* (Wellington: Dunmore Publishing, 2005), p. 474.

<sup>987</sup> Government of New Zealand, *Vote Audit Finance and Administration Sector - Estimates 2018/19*

<sup>988</sup> Interviews of David Macdonald, former Controller and Auditor-General, with author, Wellington, 13 December 2012 and 23 January 2013; interviews of Phillipa Smith, Deputy Controller and Auditor-General, with author, Wellington, 20 November 2012, 14 February 2013, and 7 March 2013.

<sup>989</sup> Controller and Auditor-General, *Annual Report 2010/11* (Wellington: Office of the Auditor-General, 2011)

<sup>990</sup> Controller and Auditor-General, *Annual Report 2016/17* (Wellington: Office of the Auditor-General, 2017)

- 2012/13: *Our future needs – is the public sector ready?*
- 2013/14: *Service delivery.*
- 2014/15: *Governance and accountability.*
- 2015/16: *Investment and asset management.*
- 2016/17: *Information.*
- 2017/18: *Water*
- 2018/9 *Procurement*

Although the OAG and Audit New Zealand have had an overall staff turnover rate up to 20 per cent,<sup>991</sup> they are, together with the private firms to which work is allocated, able to meet the requirement for qualified senior auditors to lead all public audits. Staff turnover is largely churn among more junior staff in Audit New Zealand, which the OAG says is typical for the accounting profession in New Zealand.<sup>992</sup> New recruits are immediately placed into audit teams, but study for (and generally pass) their professional exams. After a few years' experience, they are likely to seek other opportunities either in New Zealand or overseas. These "pull" factors seem to be the main reasons for leaving. Demand for positions in Audit New Zealand and staff climate surveys indicate that it remains a desirable place to work.<sup>993</sup>

**Legal powers:** The OAG has the legal power of:

- access to documents and accounts,
- examination under oath,
- access to premises,
- protection for people supplying information.

It can delegate these powers to an audit service provider.<sup>994</sup> There are few, if any, cases where this power has had to be invoked.

The OAG audits public entities,<sup>995</sup> which do not include non-public entities that receive public funding. Some jurisdictions also give their supreme audit institutions the legal power to inspect the accounts of any third party in receipt of public funding. The OAG's approach is to audit the public entity's management of the funding contracts or agreements, but, if necessary, it could directly inspect third-party records of public funding using its existing powers.<sup>996</sup>

### 8.1.2 Independence (law)

#### To what extent is there formal operational independence of the audit institution?

Score: 5

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<sup>991</sup> Controller and Auditor-General, *Annual Report 2011/12* (Wellington: Office of the Auditor-General, 2012), p. 67.

<sup>992</sup> Controller and Auditor-General, *Annual Report*, 2012.

<sup>993</sup> OAG annual reports, for example, Controller and Auditor-General, *Annual Report 2011/12*, 2012: from p. 65.

<sup>994</sup> Public Audit Act 2001, sections 24–31.

<sup>995</sup> Public Audit Act 2001, section 14.

<sup>996</sup> Public Audit Act 2001, section 25.

*The OAG's empowering statute gives it full legal independence in all operational matters.*

The legal basis for the OAG meets the requirements of the standards set by INTOSAI for the operational independence of a supreme audit institution. The OAG is fully independent of the executive, and the Auditor-General is required to act independently.<sup>997</sup> The Public Audit Act 2001 “binds the Crown” to give effect to any of its provisions. Parliament appoints the Auditor-General, conventionally by unanimous resolution.<sup>998</sup> The position is non-political. The incumbent generally may not hold any other public office,<sup>999</sup> may only serve a single term, and may be removed from office by Parliament only “for disability affecting the performance of duty, bankruptcy, neglect of duty, or misconduct”.<sup>1000</sup> Public auditors are protected from personal liability for work on public audits carried out in good faith.<sup>1001</sup>

The OAG must audit the financial statements of the government and of individual public entities. There are no other specific requirements in law for the programme of other audits or inquiries or the methods used by the OAG. The Auditor-General must consult the Speaker and MPs on a draft work programme. The OAG generally has full authority to set its own standards for audits.<sup>1002</sup> The only exception is for its audits of public issuers of certain securities, which must meet standards set under the Financial Reporting Act 1993.<sup>1003</sup>

The Auditor-General is the auditor of all public entities, although private auditing firms undertake a substantial part of the audit work on contract to the Auditor-General. Because the OAG decides how work will be allocated, public entities, unlike firms in the private sector, have no choice of who will carry out their audit. Conversely, private accountancy firms have an incentive to comply with the independence requirements of the Auditor-General’s standards in order to retain their public audit business.

### **8.1.3 Independence (practice)**

**To what extent is the audit institution free from external interference in the performance of its work in practice?**

Score: 5

*The OAG's reports indicate that it is able to report frankly and fearlessly on significant matters of public governance.*

The actual independence and neutrality of the OAG fully reflects its statutory independence and its duty to act independently. In accordance with the Public Audit Act 2001 (see above), no Auditor-General has ever been reappointed, and none has ever been removed from office without proper cause.

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<sup>997</sup> Public Audit Act 2001, section 9.

<sup>998</sup> McGee, 2005: 71–72.

<sup>999</sup> Public Audit Act 2001, section 8.

<sup>1000</sup> Public Audit Act 2001, Schedule 3, clause 4.

<sup>1001</sup> Public Audit Act 2001, section 41.

<sup>1002</sup> Public Audit Act 2001, section 23.

<sup>1003</sup> Public Audit Act 2001, section 15(3).

However, the resignation of Mr Martin Matthews after the events described below appear to have led to him losing the confidence of Parliament and to have been a departure from the informal convention of across-party support for the appointment of the Auditor-General.

Mr Matthews began his term as Auditor-General on 1 February 2018, after an appointment process carried out by the Officers of Parliament Committee. Prior to his appointment as Auditor-General, Mr Matthews had been the Secretary of Transport, during which time a significant public fraud was committed by a senior staff member who reported directly to Mr Matthews.

Soon after his appointment, concerns, were raised by MPs about whether Mr Matthews had acted appropriately in his role as Secretary for Transport, in responding to the concerns of the staff of the Ministry of Transport about the conduct of the senior staff member.

These concerns led to the Officers of Parliament Committee commissioning a review by a former senior public servant, Sir Maarten Wevers, into the suitability of Mr Matthews to hold the role of Controller and Auditor-General. The review terms included investigating and reporting on whether there were any material and relevant matters that could have made a difference to the committee's decision to recommend Mr Matthews' appointment as Controller and Auditor-General that were not available to the committee at the time it made its decision.<sup>1004</sup>

In August 2018, before the review report results were publicly released, Mr Matthews resigned, saying that "the issues and speculation about how I handled matters in relation to the fraud committed on the Ministry of Transport during my term as CEO have made it untenable for me to continue in this role".<sup>1005</sup> Although Sir Maarten Wevers' report has never been publicly released, his investigation and the media comment on Mr Matthews' actions at the Ministry of Transport appears to have led to Mr Matthews losing the confidence of Parliament and the public in his ability to act as Auditor-General.

Throughout the period to August 2017, and the subsequent period to July 2018 when the current Auditor-General commenced his term, the OAG continued to function, largely because the Deputy Auditor-General was able to exercise all of the powers, duties and functions of the Auditor-General.

In the New Zealand context, political interference with the OAG's activities would be very unlikely, although it is not inconceivable, particularly for inquiries, that the OAG could be persuaded at the draft stage to modify its findings. Findings later in this report support the view that the OAG is generally regarded as an independent and authoritative voice on standards in public governance.

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<sup>1004</sup> Officers of Parliament Committee, *Briefing on the Controller and Auditor-General Report of the Officers of Parliament Committee*, August 2017.

<sup>1005</sup> Statement from Martin Matthews, Auditor-General, August 2017.

## Governance

### 8.2.1 Transparency (law)

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the supreme audit institution?**

Score: 4

*The law provides for reports on audits and inquiries and most written advice to be promptly published but not necessarily debated. There is no requirement to publish communications with audited entities.*

All public entities are required to publish annual reports, which include their financial statements and the report of the OAG on its audit of the statements.<sup>1006</sup> Those reports of central government entities must be tabled in Parliament with their audit reports. Other financial statements (of local authorities, education institutions, and health boards) must be published with audit reports, but are not required to be tabled in Parliament. Limited reports are published for security intelligence organisations, and a special committee of Parliament reviews them. The OAG is also required to report annually to Parliament on matters arising from its public audits and inquiries,<sup>1007</sup> and on its own implementation of its annual plan.<sup>1008</sup> All OAG reports, except those on security intelligence agencies, must be published when received.<sup>1009</sup> Reports are referred to the Finance and Expenditure Committee of Parliament, which may consider the reports itself or refer them to another select committee.<sup>1010</sup> The Finance and Expenditure Committee also receives and reviews the Auditor-General's annual plan and report on implementation.<sup>1011</sup>

There is no requirement for the reports of the Auditor-General to Parliament to be debated in the House. Select committees are required to conduct, and report to the House on, an annual financial review of every government entity, covering its performance in the previous financial year and its current operations.<sup>1012</sup> The reports of the Auditor-General on the associated financial audits will form part of the evidence for these reviews. Other reports, for example on performance audits or inquiries, are also received and considered by a select committee. Any findings by the committee, including any recommendation, will be included in a report for consideration by the House.<sup>1013</sup>

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<sup>1006</sup> Public Finance Act 1989, section 45; Crown Entities Act 2004, sections 150–151.

<sup>1007</sup> Public Audit Act 2001, section 20.

<sup>1008</sup> Public Audit Act 2001, section 37.

<sup>1009</sup> Office of the Clerk of the House of Representatives, *Presentation of Papers to the House* (Wellington: Office of the Clerk, 25 September 2012), p. 5.

<sup>1010</sup> House of Representatives, *Standing Orders of the House of Representatives*, 2011, No. 339. Updated 2017 edition: <https://www.parliament.nz/mi/pb/parliamentary-rules/standing-orders/> (hereafter “*Standing Orders, 2011*”).

<sup>1011</sup> *Standing Orders, 2011*: Standing Order 393.

<sup>1012</sup> *Standing Orders, 2011*: Standing Order 340.

<sup>1013</sup> *Standing Orders, 2011*: Standing Order 340.

Information on other activities of the OAG, such as its advisory support for select committees of Parliament or the content of its management letters to public entities, is not covered by any legal requirement for publication. The OAG is not required to make any of this information publicly available. The OAG is not subject to their<sup>1014</sup> The government did not accept a recent recommendation from the Law Commission that the provisions of the OIA should apply to officers of Parliament.<sup>1015</sup> Information supplied by the OAG or an audit service provider to a public entity (such as management letters) would, in the hands of the entity, be covered by the OIA and be potentially discoverable. In practice, the OAG releases information about its own management as if it were covered by the OIA.

### **8.2.2 Transparency (practice)**

#### **To what extent is there transparency in the activities and decisions of the audit institution in practice?**

Score: 5

*In practice, the OAG and Parliament between them ensure that all significant audit findings and written advice are made public and, although the OAG will not be drawn into debate on its findings, it has a proactive communications and publications policy.*

All OAG reports to Parliament on public audits and inquiries appear to be publicly available on the OAG website.<sup>1016</sup> Publication of other information varies. OAG written briefings for select committees are generally published on the Parliament website;<sup>1017</sup> issues raised in briefings for select committees may also be taken up in the financial review or be referred by the committees to the entities reviewed for written response. Oral briefings for select committees are generally not made public, although they may be reported in the committee's minutes. The OAG does not publish management letters to public entities, but they may be discoverable in the hands of the entity, under the provisions of the OIA. The OAG publishes other information, such as high-level overviews of its findings from annual audits, which will probably reflect the substance of management letters as well as the statutory audit reports, and occasional observations on specific topics drawing on overall audit findings.<sup>1018</sup> Information on most activities of the OAG itself is readily obtainable from its annual report or in other reports on the OAG website.<sup>1019</sup>

Nevertheless, other than the legal requirements for publication of public audit reports, information from the OAG in the hands of Parliament is not legally discoverable. The retiring Speaker in 2013 considered that Parliament should be proactive about releasing the written advice and assessments of the OAG, but that the principle should remain that Parliament

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<sup>1014</sup> Official Information Act 1982.

<sup>1015</sup> Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012), p. 16; New Zealand Government, *Government Response to Law Commission Report on The Public's Right to Know: Review of the official information legislation* (Wellington: House of Representatives, 2013), pp. 3–4.

<sup>1016</sup> See [www.oag.govt.nz](http://www.oag.govt.nz)

<sup>1017</sup> See [www.parliament.nz](http://www.parliament.nz)

<sup>1018</sup> Philippa Smith interviews.

<sup>1019</sup> See [www.oag.govt.nz](http://www.oag.govt.nz)

retained control of information supplied to it. In particular, he thought that oral advice should be confidential if release might inhibit what the OAG would say.<sup>1020</sup>

In the past, Auditors-General have generally not entered into debate on the results of their reports and have taken a generally cautious approach to opening direct channels of communication with the public, although OAG representatives would be prepared to “discuss and explain” reports with the media.<sup>1021</sup> The OAG does, however, have a communications strategy, closely monitors requests for information and comment, and identifies issues where a “media strategy” is necessary.<sup>1022</sup> The retiring (2013) Speaker considered that the OAG’s responsibility to Parliament should not be compromised by broadening its reach.<sup>1023</sup>

Reflecting the greater range and extent of channels by which the public accesses information, the OAG has taken a more active social media presence in recent years. Its website includes “Audit Blogs”, in which, it says, the Auditor-General’s staff discuss interesting, perplexing, and pleasing aspects of their work.<sup>1024</sup> It sends out information about reports and other matters about its work through a great range of channels, including Twitter and Facebook.

### **8.2.3 Accountability (law)**

**To what extent are there provisions in place to ensure that the supreme audit institution has to report and be answerable for its actions?**

Score: 5

*The OAG is subject to independent annual audit. There are limited provisions for auditees to challenge findings from annual audits.*

The financial statements in the OAG’s annual report are independently audited.<sup>1025</sup> The Finance and Expenditure Committee carries out the financial review of the OAG.<sup>1026</sup> As the OAG reports to Parliament on public audits, as well as to the governing bodies of audited entities, it is not solely accountable to the entities themselves. Public entities cannot choose who audits them, nor is there any legal provision for them to challenge any opinion of the OAG on those audits.<sup>1027</sup> Under principles of natural justice, a public entity might challenge the process by which an auditor formed an opinion, including a requirement to consult the entity during that process.<sup>1028</sup> However, the auditor’s findings are rarely challenged.

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<sup>1020</sup> Interview of Dr Rt Hon Lockwood Smith MP, Speaker of the House of Representatives, with the author, Wellington, 13 February 2013.

<sup>1021</sup> David Macdonald interview.

<sup>1022</sup> Philippa Smith interview.

<sup>1023</sup> Lockwood Smith interview.

<sup>1024</sup> See <https://blog.oag.govt.nz/>

<sup>1025</sup> Public Audit Act 2001, section 38.

<sup>1026</sup> *Standing Orders*, 2011: Standing Order 340.

<sup>1027</sup> The OAG has an Opinions Review Committee (AGAS 3-4804) but this is for purely internal reviews.

<sup>1028</sup> Philippa Smith and David Macdonald interviews.

#### 8.2.4 Accountability (practice)

**To what extent does the supreme audit institution have to report and be answerable for its actions in practice?**

Score: 5

*The OAG commissions independent reviews of its performance and it is reviewed in Parliament. It will discuss its findings in draft with affected organisations and people.*

The OAG meets its commitments to report to Parliament, and the Finance and Expenditure Committee review will usually include substantive questions and comments by members on the activities of the OAG.<sup>1029</sup> How an audited entity might legally challenge an auditor's opinion is hypothetical since it has never happened. According to the OAG, the auditor would advise the entity of any modifications to the audit report or adverse comment in a management letter to give opportunity for comment.<sup>1030</sup> There are significant cases where the audit opinion on treatment of specific items in the financial statements has in effect been negotiated with the entity concerned.<sup>1031</sup> Entities are likely to be given opportunity to comment on draft reports on performance audits and inquiries, particularly where people or organisations may be criticised.<sup>1032</sup>

Although there is provision for the independent auditor to audit the performance of the OAG,<sup>1033</sup> there has never been a performance audit under this provision. The OAG itself commissions an independent external review of its performance from time to time and a review was carried out in 2008 by a team led by a former Australian Commonwealth Auditor-General.<sup>1034</sup> In 2016, the OAG carried out a pilot self-assessment using the INTOSAI Working Group on the Value and Benefits of Supreme Audit Institutions framework for SAIs to assess their own performance.<sup>1035</sup> This report was tabled in Parliament and the Finance and Expenditure Committee heard evidence from the OAG about the findings.

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#### 8.2.5 Integrity mechanisms (law)

**To what extent are there mechanisms in place to ensure the integrity of the audit institution?**

Score: 5

*The OAG has comprehensive standards to ensure its integrity and that of its appointed auditors.*

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<sup>1029</sup> Philippa Smith interview.

<sup>1030</sup> Philippa Smith interview.

<sup>1031</sup> David Macdonald and Philippa Smith interviews.

<sup>1032</sup> AGAS:AG-5 (performance audits) and AG-6 (inquiries) set out provisions for communicating draft findings to persons and organisations affected. Also David Macdonald and Philippa Smith interviews.

<sup>1033</sup> Public Audit Act 2001, section 38(2), importing section 16 (performance audits).

<sup>1034</sup> International Peer Review Team, *Report on the Efficiency and Effectiveness of the Office of the Controller and Auditor-General of New Zealand*. (Wellington: Controller and Auditor-General, 2008).

<sup>1035</sup> Controller and Auditor-General, *Assessing the Performance of the Office of the Auditor-General Against International Standards*, 2016

The AGAS define standards of integrity and specific rules of conduct for appointed auditors. These standards conform to the INTOSAI principles of independence and objectivity. The AGAS Code of Ethics is based on that of the New Zealand Institute of Chartered Accountants, with additional guidance for the public sector, and applies to all public audits and other work carried out on behalf of the Auditor-General.<sup>1036</sup> The AGAS statement on independence in assurance engagements identifies potential risks to independence arising from relationships with the audited entity, including financial, business, employment, or personal relationships; gifts and hospitality; and actual or threatened litigation.<sup>1037</sup> All staff engaged on audits must also make an independence declaration relating to conflict risk in terms of investments such as in shares, previous employment in audited entities, and personal relationships with employees in public entities more generally. There are policies on the ownership of shares and insider trading.

#### **8.2.6 Integrity mechanisms (practice)**

##### **To what extent is the integrity of the audit institution ensured in practice?**

Score: 5

*In practice, the OAG and auditors observe high standards of integrity.*

There have been no cases of breaches of the AGAS Code of Ethics by OAG staff, Audit New Zealand staff, or private audit service providers. Two issues worthy of further comment are related to the employment of OAG staff and allocation of audit work.

Senior OAG officials previously employed in a public entity have a minimum two-year stand-down from audits of that entity. In some cases where an employee held a senior position in another public entity, the stand-down will be longer than two years. For example, the previous Auditor-General was employed by NZ Police before commencing her term as Auditor-General and stood down for more than two years.<sup>1038</sup> The current (2018) Auditor-General, was employed by the Ministry for Primary Industries before commencing his term and will stand down from any work relating to that public entity for at least two years.

On the other hand, there are no restrictions on employment of former employees of OAG or Audit New Zealand. Staff frequently take up employment in finance directorates in public entities. When former senior employees are employed in entities they may have audited, the OAG will consider whether arrangements need to be made for “firewalling” them from the team undertaking the audit (who may have worked for them).<sup>1039</sup>

The Auditor-General allocates audit work to Audit New Zealand (whose staff it employs) and to private auditors and has legal authority to set fees charged to audited entities. The OAG appoints an independent reviewer to report on the “probity and objectivity” of the “basis on which

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<sup>1036</sup> Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3-200 et seq.

<sup>1037</sup> Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3-201 et seq. and 3-302 et seq. Cite actual ranges

<sup>1038</sup> Philippa Smith interview.

<sup>1039</sup> Philippa Smith interview.

auditors are appointed and the basis on which appropriate levels of audit fees are determined". The reviewer raised no significant concerns with the processes between 2012 and 2017.<sup>1040</sup>

## Role

### 8.3.1 Effective financial audits

#### To what extent does the audit institution provide effective audits of public expenditure?

Score: 4

*The OAG is effective in its role of financial auditing, but could do more to evaluate the effectiveness of public spending.*

In its basic role of financial auditing, the OAG is effective in maintaining high standards of financial reporting and control. A small percentage of audit opinions are modified in any way, and management letter recommendations are largely accepted.<sup>1041</sup> Between 75 per cent and 85 per cent of clients report satisfaction with audit work, which is lower than the target the OAG sets itself.<sup>1042</sup>

The OAG has carried out a pilot self-assessment using the INTOSAI Working Group on the Value and Benefits of Supreme Audit Institutions framework for SAIs to assess their own performance.

Strengths were assessed as the OAG's financial audit quality assurance processes and its communication with Parliament. Areas for improvement included maintaining the quality of small audits (such as schools) and specialist compliance audits (such as regulatory audits).<sup>1043</sup>

A comprehensive audit of a public entity would cover the efficiency, economy, and effectiveness of the entity and the governance and management attributes expected to contribute to these aspects of performance. Although the OAG audits statements of service performance, performance in the "comprehensive" sense is only a secondary topic in financial audits. The OAG asks financial auditors to "maintain an awareness of other performance audit matters" that can be taken up in its performance audits. These audits are an opportunity to evaluate "the extent to which a public entity is carrying out its activities effectively and efficiently",<sup>1044</sup> but few appear to review achievement of the entity's policy objectives. If a policy is in place, the audit is supposed to be of the efficiency and effectiveness with which it is implemented,<sup>1045</sup> but the OAG has, in practice, interpreted this rather narrowly.<sup>1046</sup> The independent 2008 review of the OAG also commented that "there was scope for performance audits to take a wider look at systemic

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<sup>1040</sup> The reviewer's reports are published in the OAG's annual reports. See, for example, Controller and Auditor-General, *Annual Report 2011/12*, 2012: 109 et seq.

<sup>1041</sup> Controller and Auditor-General, *Annual Report*, 2012.

<sup>1042</sup> Controller and Auditor-General, *Annual Report*, 2017, p. 25.

<sup>1043</sup> Controller and Auditor-General, *Assessing the Performance of the Office of the Auditor-General Against International Standards*, 2016, pp. 5 and 6

<sup>1044</sup> Public Audit Act 2001, section 16.

<sup>1045</sup> Public Audit Act 2001, section 16.

<sup>1046</sup> Philippa Smith and David Macdonald interviews

issues and effectiveness".<sup>1047</sup> The OAG is developing a better methodology for "value-for-money" evaluations of public entities' efficiency,<sup>1048</sup> which may permit more evaluation of outcomes,<sup>1049</sup> but it seems likely that the OAG will continue to take a cautious approach to being seen to influence policy debates.

Such a methodology has not developed. However, since 2012/13 the OAG has taken a themes-based approach to determining the focus of its performance audit work and to underpin its audits (see above under "Resources (practice)"). It draws together and reports the collective results of its theme-based work to give insight into broader questions of public sector economy and efficiency.<sup>1050</sup> The OAG has also begun to invest in greater use of data analysis to allow it to examine underlying questions of effectiveness.<sup>1051</sup>

**Relationship between external and internal auditor:** An ongoing concern from government managers is that external audit can duplicate the work of internal audit. Legally, it is entirely up to the external auditors what use they make of the work of the internal auditors,<sup>1052</sup> but in practice an appointed auditor would usually design a work programme to take account of specific internal audit reviews.<sup>1053</sup>

### 8.3.2 Detecting and sanctioning misbehaviour

#### Does the audit institution detect and investigate misbehaviour of public officeholders?

Score: 5

*The OAG makes a significant contribution to protecting New Zealand's high standards of probity in public life.*

**General role in issues of fraud and corruption:** The OAG has extensive powers of access to all the information it would require to detect risk of fraud or other misuse of public funds and audited entities are legally required to cooperate in full.<sup>1054</sup> Auditors are not specifically responsible for detecting fraud, but, if they encounter or suspect fraud during an audit, they are required to report it to the OAG.<sup>1055</sup> Further investigation would then normally be the responsibility of the appropriate regulatory or enforcement authority. Auditors report other significant cases of non-compliance to the OAG, which will decide whether they are to be

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<sup>1047</sup> International Peer Review Team, 2008: 53.

<sup>1048</sup> Interview by author with Phillipa Smith, Deputy Controller and Auditor-General 14 February 2013 along with advice from OAG March 2019.

<sup>1049</sup> Interview with Nicola White, Assistant Auditor-General (Legal), by the author, Wellington, 20 February 2013.

<sup>1050</sup> For instance, see Controller and Auditor-General, *Our Future Needs, Is the Public Sector Ready?*, 2014 pp. 29 -30.

<sup>1051</sup> For instance, see Controller and Auditor-General, *Central Government: Results of the 2011/12 Audits*, 2013, 101 -111

<sup>1052</sup> Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3-308.

<sup>1053</sup> David Macdonald interview.

<sup>1054</sup> Public Audit Act 2001, sections 24 et seq.

<sup>1055</sup> Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3:2403.

covered in the report on the audit. The OAG makes information available on its website about the fraud incidents reported by auditors on an annual basis.<sup>1056</sup>

The OAG's theme-based work for 2018/19 is procurement. In its feedback on the OAG's 2018/19 work plan, the Finance and Expenditure Committee asked the OAG to include work to ensure that the public sector has effective corruption detection and prevention processes in place, noting that this risk extends more widely than procurement. The OAG has reported that it is considering how it can best address this request through its annual audits, including by taking more of a focus on the controls in place to reduce the risk of wrongdoing in the public sector.<sup>1057</sup>

**Investigation of misbehaviour by office-holders:** MPs and Ministers are subject to the law on fraud and other forms of corrupt behaviour. The sanctions for offences would be determined by the criminal code. Whether they would be applied is hypothetical because of the very small number of *prima facie* cases of corruption or other criminal offences involving national political office-holders. A rare exception (in which, however, audit investigations played no part) was the 2009 conviction and imprisonment of Taito Philip Field, a Labour MP, on charges of bribery and corruption and attempting to pervert the course of justice.<sup>1058</sup>

The OAG's public reputation for probity and independence in general carries sufficient weight for political office-holders to take its recommendations seriously.<sup>1059</sup> However, the reactive and unpredictable timing and nature of inquiries means that the Office has historically struggled to produce inquiries on a timely basis<sup>1060</sup>. At 31 December 2018, it had not recently published a major inquiry report, with the most recent report published in July 2017.<sup>1061</sup> but shortly afterwards, in March 2019, it published an inquiry report on procurement of work by Westland District Council at Franz Josef.<sup>1062</sup>

In March 2016, the Kaipara District Council and the Auditor-General agreed to settle a claim by the Council against the Auditor-General in connection with audit issues identified in the Auditor-General's report *Inquiry into the Mangawhai community wastewater scheme*, tabled in Parliament in December 2013. The Auditor-General disputed the Council's claim for damages arising out of those failings but agreed to pay the sum of \$5.375million to the Council to settle the dispute, without any admission of liability.

In the Inquiry report, the Auditor-General offered an unreserved apology to the Kaipara District community for the failings of its own audit work carried out by her office. The report includes the conclusion that the inquiry might have begun months earlier had the Office reconsidered the correspondence from ratepayers and additional information emerging from the Kaipara District Council more fully in late 2011.

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<sup>1056</sup> See <https://www.oag.govt.nz/our-work/reporting-fraud>

<sup>1057</sup> Controller and Auditor-General, Annual Plan 2018/19 (Wellington: Office of the Auditor-General, 2016), page 4

<sup>1058</sup> New Zealand Press Association, "Guilty verdicts for Taito Phillip Field", *New Zealand Herald*, 4 August 2009i, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10587391](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10587391) [accessed 29 March 2013].

<sup>1059</sup> Lockwood Smith interview.

<sup>1060</sup> Controller and Auditor-General, *Annual Report*, 2017, pages 36.

<sup>1061</sup> See the website of the Controller and Auditor-General, <https://oag.govt.nz/reports/inquiry-reports>

<sup>1062</sup> See <https://www.oag.govt.nz/2019/westland-dc-procurement>

The 2013 NIS Assessment described the OAG reporting on matters touching on the ethical responsibilities of national political office-holders, including inquiries in 2006 into public funds used for party-political advertising and in 2009 and 2010 on how parliamentary and ministerial accommodation entitlements were administered. Each of these reviews was critical of some aspects of current practice by elected officials, and each resulted in changes in the rules. In response to the 2006 report, the Labour Prime Minister denied that her party had spent public funds improperly, but agreed to repay the amounts found by the OAG to be unlawful.<sup>1063</sup>

A more recent report on consideration of SkyCity and other proposals for building a convention centre in Auckland and the inquiry into the Saudi Arabia Food Security Partnership in 2016, found no evidence of corruption, but strongly criticised the decision-making processes used.<sup>1064</sup> <sup>1065</sup>

The Local Authorities (Members' Interests) Act 1968 has provisions that can preclude elected local authority members from holding office if they have a significant contract or contracts with the authority to which they are elected, and also requires them to withdraw from involvement on any issue before the authority for decision if they have a pecuniary interest relating to that issue. The OAG can investigate and prosecute breaches of these provisions.

### 8.3.3 Improving financial management

**To what extent is the supreme audit institution effective in improving the financial management of government?**

Score: 4

*The OAG has made a significant contribution to the quality of financial management in New Zealand and is a trusted independent watchdog. Parliament could play a stronger role in ensuring the OAG's findings are responded to. There is scope in the wider system for improving reporting of the results of public spending.*

New Zealand ranks high on international governance and financial management indicators. The OAG's own assessments indicate that there is a high quality of management control and financial information systems in the New Zealand public sector.<sup>1066</sup>

In 2017, the OAG was questioning whether the financial management system for the New Zealand public sector, which is now more than 30 years old will be able to preserve public trust and confidence for the next few decades of the 21st century.

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<sup>1063</sup> H. Clark, "Labour to refund funding", 12 October 2006, [web.archive.org/web/20061023085134/http://www.labour.org.nz/news/latest\\_labour\\_news/news-061012/index.html](http://web.archive.org/web/20061023085134/http://www.labour.org.nz/news/latest_labour_news/news-061012/index.html) [accessed 25 March 2013].

<sup>1064</sup> Controller and Auditor-General, *Inquiry into the Government's Decision to Negotiate with SkyCity Entertainment Group Limited for an International Convention Centre* (Wellington: Office of the Auditor-General, 2013).

<sup>1065</sup> Controller and Auditor-General, *Inquiry into the Saudi Arabia Food Security Partnership* (Wellington: Office of the Auditor-General, 2016).

<sup>1066</sup> Controller and Auditor-General, *Statement of Intent*, 2012: 31–33.

It says that globally, people are losing faith in governments and that the veracity and reliability of information is increasingly being questioned; affordability is an increasing issue; and technology is challenging and changing how people communicate, how services are delivered, how people expect to interact with government, and how government interacts with them.

The OAG's view is that current entity-based reporting based on an annual cycle is unlikely to meet people's needs or maintain their trust. It has committed to encouraging debate and carrying out work to explore what the public sector should be accountable for, how public accountability can better maintain public trust and confidence and support public and Parliamentary decision-making needs.<sup>1067</sup>

The specific contributions of the OAG to the rankings mentioned above and to further improvement are difficult to identify because they depend on many features of the public governance system. However, the indicators reported by the OAG for years preceding both the 2013 NIS assessment and this 2018 update suggest that public entities and stakeholders are responsive to the OAG's reports and recommendations.<sup>1068</sup>

- For financial audits, about 73–82 per cent of sampled public entities accepted management report recommendations.
- For performance audits and inquiries, the OAG has carried out follow up audits on the uptake of recommendations in past performance audit reports. Overall, these reports show that entities were acting on recommendations, although progress was better in some cases than others.
- Stakeholders surveyed confirm the relevance of the OAG's work to users, that it reports independently and produces high quality reports. The percentage satisfaction rating varies, but has averaged about 90 per cent over the last three years.<sup>1069</sup>

The most recent stakeholder survey in 2018 indicated that, overall, the OAG provides a highly valued service holding the public sector to account and providing assurance that public money is spent as Parliament intended. All those interviewed agreed that the OAG acts with integrity and independently of the government. The OAG was credited with improving public trust in government agencies and driving better performance across the public sector. All select committee chairpersons interviewed agreed that the OAG's advice is relevant and useful, and that it assists their committee in its work. Senior public servants were less positive than select committee chairs, with two thirds of those interviewed agreeing that OAG's advice assists their organisation.<sup>1070</sup>

The role of Parliament in backing up the OAG is uneven. On the one hand, MPs say they value the OAG's work. In 2012, between 85 per cent and 100 per cent of select committee members confirmed that OAG advice assists Estimates examinations and financial reviews, 75–

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<sup>1067</sup> Controller and Auditor-General, *The Auditor-General's strategic intentions to 2025* (Wellington: Office of the Auditor-General, 2017).

<sup>1068</sup> The following figures are estimated from charts in Controller and Auditor-General, *Statement of Intent*, 2012: 36–46. In some cases the statistics are sampled.

<sup>1069</sup> Controller and Auditor-General, *Annual Report*, 2017: 32–34.

<sup>1070</sup> Controller and Auditor-General, *Annual Report*, 2018: 29.

100 per cent of select committee members rated OAG advice highly for quality, and 80–85 per cent of members rated the advice highly for usefulness.<sup>1071</sup> These results were broadly confirmed in interviews, although it appeared that select committees may value OAG advice for financial reviews, where the OAG can draw on its audit work, more than on Estimates scrutiny.<sup>1072</sup> In 2013, the Finance and Expenditure Committee said it “would like to see the [OAG] work to improve the usefulness of its reports and to reduce the cost of their publication; we believe they could be shorter and do more to facilitate systematic comparisons”.<sup>1073</sup> However, an opposition party finance spokesperson added that select committee members were “absolutely reliant” on the Auditor-General for advice in both Estimates scrutiny and financial review.<sup>1074</sup> Informants agreed that the OAG has “political clout” in the sense that Parliament and the executive have to respond to its reports if there is public interest in them.

On the other hand, the attention received by OAG reports in Parliament depends very much on their political salience.<sup>1075</sup> The 2013 NIS assessment found that a few reports had had a major political impact, but many findings received only cursory attention in select committees and the House, although there was a recent trend towards improved scrutiny of reports by the committees. Enquiries made in preparing the 2018 update indicate that the trend continues. The review function is spread over several committees, rather than being concentrated, as in some other jurisdictions, in one Public Accounts Committee or its equivalent. The OAG is often left on its own to follow up public entities’ responses to its findings or recommendations, such as the annual reports on uptake of recommendations mentioned above. However, matters that are not discussed or debated in Parliament could still have effects: an adverse audit report “would be a black mark for a government official” and “should have consequences”.<sup>1076</sup>

It was also argued that the OAG (like the Ombudsman) should not spend the capital of its independence too often: there would be a danger of it being seen by the government as just another political risk to be managed.<sup>1077</sup> The “damage limitation” responses of the government to the SkyCity report<sup>1078</sup> and another on defence restructuring<sup>1079</sup> are two examples.

In previous years, the OAG has strongly criticised the quality of information about the non-financial performance of public sector entities.<sup>1080</sup> In 2011, the Auditor-General released a revised (and significantly strengthened) auditing standard for service performance

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<sup>1071</sup> Estimated from charts in Controller and Auditor-General, *Statement of Intent*, 2012.

<sup>1072</sup> Interview with David McGee, Ombudsman and former Clerk of the House of Representatives, by the author, Wellington, 4 February 2013; Philippa Smith interview.

<sup>1073</sup> Finance and Expenditure Committee, 2013: 4.

<sup>1074</sup> Interview with David Parker MP, Labour party finance spokesperson, with the author, Wellington, 20 February 2013.

<sup>1075</sup> Lockwood Smith, David Parker, and David McGee interviews.

<sup>1076</sup> David Parker interview.

<sup>1077</sup> Lockwood Smith and David McGee interviews.

<sup>1078</sup> For the political debate on this report, see, for example, “Opposition keeps heat on Govt over SkyCity deal”, TVNZ, 20 February 2013, [tvnz.co.nz/politics-news/opposition-keeps-heat-govt-over-skycity-deal-5346932](http://tvnz.co.nz/politics-news/opposition-keeps-heat-govt-over-skycity-deal-5346932)

<sup>1079</sup> See “Minister disputes critical report on Defence restructure”, *Radio New Zealand*, 31 January 2013, [www.radionz.co.nz/news/national/126854/minister-disputes-critical-report-on-defence-restructure](http://www.radionz.co.nz/news/national/126854/minister-disputes-critical-report-on-defence-restructure)

<sup>1080</sup> See, for example, Controller and Auditor-General, *The Auditor-General’s Observations on the Quality of Performance Reporting* (Wellington: Office of the Auditor-General, 2008).

information<sup>1081</sup> for the first time requiring auditors to modify their audit opinion “if the performance information in the annual report does not, in their opinion, fairly reflect performance for the year”.<sup>1082</sup> The OAG reports improvements since the introduction of the standard with entities assessed as needing improvement to their service performance information and associated systems and controls reducing from 18 per cent to 4 per cent in the four years between 2012/13 and 2017/8.<sup>1083</sup>

The OAG has outlined its future challenge as being to use its position to influence policy-makers and decision-makers so that by 2025, the public sector is operating and accountable in ways that will meet the needs of New Zealanders in the second quarter of the 21st century.

The OAG regards the effectiveness of the public sector accountability system in providing assurance that public entities are meeting their required responsibilities and standards as critical to New Zealanders’ trust and confidence in government. The OAG says it intends to carry out an ongoing programme of thought leadership work to examine whether New Zealand’s public sector accountability system is keeping pace with changes in the public sector environment. It intends to encourage discussion and debate about key aspects of the public sector accountability system, including performance reporting, with a view to influencing improvements.<sup>1084</sup>

#### 8.4.1 Te Tiriti o Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the OAG 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 the OAG has 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?**

*The OAG has made significant efforts to ensure its responsiveness to Māori.*

The OAG is not part of the Crown,<sup>1085</sup> so does not inherit any Treaty of Waitangi obligations from the Crown; neither are there specific provisions relating to the Treaty in legislation affecting it. The audit function is conducted according to international standards of auditing and accounting, which contain no reference to ethnicity or indigeneity. The OAG has, however, developed a policy for its relations with Māori set out most recently in an “effectiveness plan for Māori”,<sup>1086</sup> which is based on “the protection of the right of Māori to live as Māori in New Zealand”. The

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<sup>1081</sup> Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 201: AG-4 (revised), “The audit of service performance reports”.

<sup>1082</sup> Controller and Auditor-General, *Central Government: Results of the 2010/11 audits (Volume 1)* (Wellington: Office of the Auditor-General, 2011), p. 70.

<sup>1083</sup> Controller and Auditor-General, *Statement of Intent*, 2012: 32. Controller and Auditor-General Annual Report 2017/8 p10

<sup>1084</sup> Controller and Auditor-General, *The Auditor-General's strategic intentions to 2025* (Wellington: Office of the Auditor-General, 2017).

<sup>1085</sup> The Public Audit Act interpretation section defines the Crown to exclude offices of Parliament.

<sup>1086</sup> Controller and Auditor-General, *Effectiveness for Maori Plan: Te Mana Arotake 2007–2009* (Wellington: Office of the Auditor-General, 2007).

plan includes responsiveness to the specific interests of Māori in government services, specific Treaty initiatives and the settlement of Treaty claims; consultation with Māori on effective accountability and the responsiveness of entities working for the benefit of Māori; and being a good employer.<sup>1087</sup> The OAG is currently (2018) working on a review of its Māori strategy.

The Public Audit Act 2001 also requires the OAG to implement good employer and equal employment opportunities policies in language very similar to the requirements for chief executives of government departments in the State Sector Act 1988.<sup>1088</sup> These obligations include recognition of “the aims and aspirations of the Māori people”. Although only about 10 staff identify as Māori, the OAG has made efforts to live up to these obligations as an employer.<sup>1089</sup> The OAG has also conducted performance audits on matters of specific interest to Māori. In an audit of Māori housing, the OAG sought the advice of kaumātua (elders), consulted Māori in a series of hui (meetings), and reported back to those consulted.<sup>1090</sup> A similar approach was taken to the series of five reports on Māori education.<sup>1091</sup> Fieldwork included individual and group interviews of teachers and parents,<sup>1092</sup> and a Māori advisory group provided an effective role in providing advice and oversight.<sup>1093</sup> Thus, in practice, the OAG’s principles for engaging with Māori are not very different from those of government departments.

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<sup>1087</sup> Controller and Auditor-General, 2007.

<sup>1088</sup> Public Audit Act 2001, Schedule 3, clauses 9 and 10.

<sup>1089</sup> Interview of staff of the Performance Audit Group, Office of the Auditor-General, with the author, Wellington, 5 June 2013.

<sup>1090</sup> Nicola White interview.

<sup>1091</sup> Controller and Auditor-General, *Education for Māori: Context for our proposed audit work until 2017* (Wellington: Office of the Auditor-General, 2012); Controller and Auditor-General, *Education for Māori: Implementing Ka Hikitia – Managing for success* (Wellington: Office of the Auditor-General, 2013); Controller and Auditor-General, *Education for Māori: Relationships between schools and whānau* (Wellington: Office of the Auditor-General)

<sup>1092</sup> OAG Performance Audit Group staff interview.

<sup>1093</sup> Interview of Professor Wally Penetito, Te Kura Māori, Victoria University of Wellington, with the author, Wellington, 11 June 2013.

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## Political parties (pillar 9)

### Summary

*The update to this section draws on material from the two general elections since 2013, which has been used to update both comment and data. Other updated material either includes dates or should be easily identified from its context.*

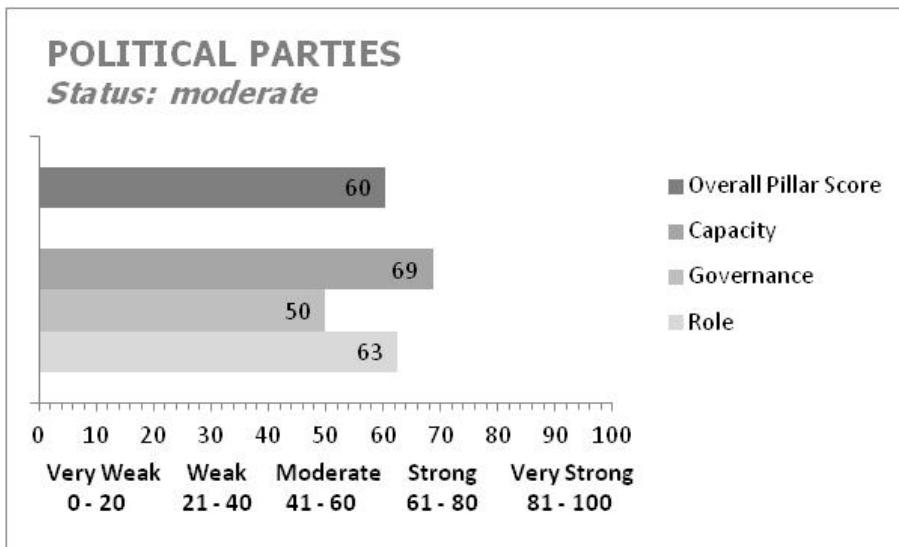
The institution of political parties is perceived to be one of the weakest in holding up the integrity of public life in New Zealand. The most problematic features of political party integrity in New Zealand involve political finance – how politicians raise and spend their funds, and how the state attempts 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 vigilant about any potential wrongdoing on the part 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 state institutions, they play a significant role in the operation of several other pillars, and they receive significant state funding. For these reasons, the recommendations in Chapter 6 include that there be greater transparency of the finances (income and spending) of political parties. It is also recommended that the allocation of election broadcasting time be reviewed with a view to reducing barriers that disadvantage small and new political parties.

Figure 11: Political parties scores



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### 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 1000 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.<sup>1094</sup>

<sup>1094</sup> Transparency International, *Global Corruption Barometer 2013*, 2013, [http://transparency.org/gcb2013/country/?country=new\\_zealand](http://transparency.org/gcb2013/country/?country=new_zealand). This is the latest survey that includes New Zealand.

The New Zealand party system has evolved considerably in the last two decades. Twelve political parties are registered with the Electoral Commission, and five parties are represented in Parliament. By comparison, in the last election before the shift to 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 longstanding two-party system. Not only have a wider range of political parties gained representation in Parliament, but the demographic profile of Parliament has broadened in significant ways, especially in ethnicity and gender.<sup>1095</sup>

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

## Capacity

### 9.1.1 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 current financial members who are also registered voters.<sup>1096</sup> 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).

Registered political parties must comply with statutory controls especially controls on donations and expenditure – issues explored later in this pillar report. They are required to submit returns on their finances.

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<sup>1095</sup> See the legislature pillar report (pillar 1).

<sup>1096</sup> See Electoral Commission, “Registered political parties”, [www.elections.org.nz/parties-candidates/registered-political-parties-0](http://www.elections.org.nz/parties-candidates/registered-political-parties-0)

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 is 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.

At the 2017 election, the Electoral Commission had NZ\$4.1 million to allocate to the parties. This was a substantial increase over previous election allocations (in the previous five elections, the total amount had remained the same – NZ\$3.3 million. The increase was given, partly, to make up for the abolition of the allocation of opening and closing addresses that had previously been on Television New Zealand (TVNZ) and Radio New Zealand – for example in 2011, there were 112 minutes available for distribution. 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 of broadcasting time. 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.”<sup>1097</sup> 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.”<sup>1098</sup>

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 wings of the parties for the purpose of helping MPs to carry out their parliamentary or ministerial activities. MPs receive resources intended to permit them 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 party organisation.

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<sup>1097</sup> 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](http://www.scoop.co.nz/stories/PO0208/S00086.htm)

<sup>1098</sup> Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

Officially, such financial support is not described as state funding for parties, but as “parliamentary funding”.<sup>1099</sup>

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 2018, the Parliamentary Service had a budget of NZ\$180 million.<sup>1100</sup>

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 more than 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.”<sup>1101</sup> 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 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.”<sup>1102</sup> 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 the political executive – what Lord Hailsham in the United Kingdom called “elective dictatorship”.

There are some 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

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<sup>1099</sup> David McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Publishing, 2005), p. 85.

<sup>1100</sup> New Zealand Government, ‘Vote Parliamentary Services’, *Budget 2018: Foundations for the Future*, <https://www.budget.govt.nz/budget/pdfs/estimates/v5/est18-v5-parser.pdf>

<sup>1101</sup> *Sunday Star-Times*, 6 May 2001, p. 2.

<sup>1102</sup> Raymond Miller, “New Zealand: A party system transformed”, in Kay Lawson, ed., *Political Parties and Democracy*, vol IV (Santa Barbara: Praeger, 2010), p. 164.

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.<sup>1103</sup> The OECD shares this approach.<sup>1104</sup>

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.

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

### 9.1.2 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 opaque 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.<sup>1105</sup> Many other parties have failed to gain representation; 41 parties have been registered, set up, and disbanded since the introduction of MMP.<sup>1106</sup>

Yet there are good reasons to doubt whether New Zealand's party system leads to 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 9.3.1), 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

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<sup>1103</sup> 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.

<sup>1104</sup> OECD, *Transparency and Integrity in Political Finance* (Paris: OECD, 2012).

<sup>1105</sup> 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, 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).

<sup>1106</sup> Electoral Commission, "Register of political parties", [www.elections.org.nz/parties-candidates/registered-political-parties-0/register-political-parties](http://www.elections.org.nz/parties-candidates/registered-political-parties-0/register-political-parties)

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”.<sup>1107</sup>

Small parties have a precarious existence and often fail to compete effectively 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, from fund-raising 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.<sup>1108</sup>

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, in 2012, National had only about 20,000 and Labour about 10,000 members. Likewise, the relatively newer parties of the Greens and New Zealand First probably only have about 10,000 members among them. The situation in 2018 appears to be much the same.<sup>1109</sup> 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.<sup>1110</sup>

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 2017 election, the Commission divided this election broadcasting funding among 15 parties, with the Labour and National parties receiving most of the money allocation – 56 per cent between them (or NZ\$1million and NZ\$1.1 million respectively) – the Greens, ACT, and

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<sup>1107</sup> Jack Vowles, “The 2008 election: Why National won”, in Raymond Miller, ed., *New Zealand Government and Politics* 5th ed. (Sydney: Oxford University Press, 2009).

<sup>1108</sup> 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.

<sup>1109</sup> See <https://www.stuff.co.nz/national/politics/opinion/108177857/political-parties-benefit-from-having-a-broad-base-of-members>

<sup>1110</sup> 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](http://www.TeAra.govt.nz/en/elections-and-campaigns/page-4)

New Zealand First receiving much smaller amounts, and eleven other small parties getting very small allocations.<sup>1111</sup>

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 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 MMP-era parties to successfully enter 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 in 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 received and expenditure, the amounts of money available to Labour and National have been broadly similar. Other parties, such as the Greens and ACT, have also been well resourced at various elections, but the superior resources of the two major parties compared to most others 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.<sup>1112</sup>

### 9.1.3 Independence (law)

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

Score: 4

*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.

Instead of unwarranted external interference from the state, concerns are normally expressed about the interference of private, business and trade union influences, especially in the form of

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<sup>1111</sup> For further details, see Electoral Commission, "Broadcasting allocation 2017 general election", <https://www.elections.org.nz/events/2017-general-election/2017-parties-candidates-and-third-parties/broadcasting-allocation-2017>

<sup>1112</sup> Nicky Hager, *The Hollow Men: A study in the politics of deception* (Nelson: Craig Potton, 2006).

political donations. This is where much of the debate about law is centred, as discussed in the following sections.

#### 9.1.4 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.<sup>1113</sup>

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' links to civil society and business. Recent political finance scandals suggest that political parties are still not seen as being protected from external influence.<sup>1114</sup> 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."<sup>1115</sup> "Grubby scandals" have continued to dominate domestic politics since 2013, ranging from the involvement of the then Minister of Foreign Affairs in setting up a sheep farm in Saudi Arabia, which resulted in a 2016 report by the OAG,<sup>1116</sup> to the Jami-Lee Ross affair which began with accusations of leaking information about the

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<sup>1113</sup> Nick Barnett, "The spies are coming in from the cold", *Dominion*', 7 April 2000, p. 11.

<sup>1114</sup> 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>

<sup>1115</sup> 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](http://www.stuff.co.nz/national/politics/7370248/Grubby-scandals-threaten-NZs-reputation)

<sup>1116</sup> See <https://www.oag.govt.nz/2016/food-security>

expenses of the Leader of the Opposition, continued with concerns about inappropriate behaviour, and resulted in Mr Ross leaving the National Party.<sup>1117</sup>

## Governance

### 9.2.1 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.<sup>1118</sup>

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 OIA. 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."<sup>1119</sup> 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.

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<sup>1117</sup> See <https://www.newshub.co.nz/home/politics/2018/10/the-jami-lee-ross-and-expenses-leak-mega-scandal-a-timeline.html>

<sup>1118</sup> The rules can be found on the Electoral Commission website: <https://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans>

<sup>1119</sup> 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](http://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, the right to privacy should prevail, but on the other hand, when donations are large, they must be disclosed. Significantly, no limitations are imposed on donations, although the 2013 NIS assessment found there had been some support from the public and politicians for a ban on donations from anonymous sources.<sup>1120</sup>

### **9.2.2 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 Electoral Commission confirms that rules about expenditure and donation disclosure are comprehensive and that parties take compliance seriously.<sup>1121</sup>

The opaque nature of the use of parliamentary funding means that transparency is ultimately very limited. The institution of Parliament is exempt from the OIA, which means little information can be gathered about the use of parliamentary budgets by parties. One 2012 change 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.<sup>1122</sup> Details on how this money has been spent are not available. Ministers' travel and accommodation expenditure is published on a separate site.<sup>1123</sup>

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<sup>1120</sup> Campaign expenditure is also subject to disclosure rules: Electoral Commission, "Party expenses", [www.elections.org.nz/parties-candidates/registered-political-parties-0/party-expenses](http://www.elections.org.nz/parties-candidates/registered-political-parties-0/party-expenses)

<sup>1121</sup> Conversation with Electoral Commission officials

<sup>1122</sup> For details of MPs' expenses, see New Zealand Parliament, "MPs" expenses".  
<https://www.parliament.nz/mi/mps-and-electorates/mps-expenses/>

<sup>1123</sup> For Ministers' travel and accommodation expenses, see <https://www.dia.govt.nz/Ministers-expense-releases>

### 9.2.3 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 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). Its main function in this respect is 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 of any use of public funds 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 OAG that appears to have the most potential for effective oversight of political party finances. In 2006, the Auditor-General published a report (explored below) 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 Auditor-General has become involved in such oversight roles on only an occasional and *ad hoc* basis, drawing attention to the fact there is no systematic oversight system.

### 9.2.4 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 failing in the legislation itself. The Electoral Commission and NZ Police are often criticised for not enforcing electoral finance laws. There have been many cases where the Commission did not refer clear violations of the rules to the Police. 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 a party must make an immediate disclosure to the Electoral Commission when a donor

gives it 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.<sup>1124</sup> This example, along with many others, suggests that, when the political parties break the rules, the sanctions are lax.

The next problem is that when the Electoral Commission does refer a political party to NZ 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 NZ 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. NZ Police stated, however, that while it considered “there was sufficient evidence to establish a *prima facie* case” of an offence, it was not clear that the offence was intentional. Accordingly, it decided not to lay a prosecution, preferring instead to warn Labour that similar future offences would risk prosecution. NZ Police also said that other parties had used similar tactics, so it would have been unfair to single out Labour.<sup>1125</sup>

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.<sup>1126</sup> While all but one of the parties eventually repaid the improperly spent funding to the public purse, Parliament also passed retrospective legislation under urgency to make the spending legal. At the time, TINZ 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.”<sup>1127</sup> 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 in, and debate about, campaign finance and the misuse of state funds by politicians.

In a recent interview with officials from the Electoral Commission,<sup>1128</sup> the view was expressed that there had been a marked improvement in NZ Police follow-up of referrals and in its attitudes to the importance of such investigations.

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<sup>1124</sup> 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](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10882830) (Note Link broken and no alternative as at 2018)

<sup>1125</sup> New Zealand Police, “No prosecutions for electoral complaints”, 17 March 2006, [www.police.govt.nz/news/release/2345](http://www.police.govt.nz/news/release/2345)

<sup>1126</sup> 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](http://www.oag.govt.nz/2006/election-spending/docs/election-spending.pdf)

<sup>1127</sup> Kay Martin, ‘Reputation “at risk” in funds row’, *Dominion Post*, 13 September 2006, p.2.

<sup>1128</sup> Interview 5 March 2019

### 9.2.5 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 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”.<sup>1129</sup> Before MMP, the processes for selecting parliamentary candidates were left entirely in the hands of the parties. Now, the Electoral Act requires every registered political party 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, 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.

### 9.2.6 Integrity (practice)

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

Score: 2

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<sup>1129</sup> Electoral Act 1993, section 71.

*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 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.”<sup>1130</sup> 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.<sup>1131</sup>

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”.<sup>1132</sup>

## Role

### 9.3.1 Interest aggregation and representation

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

Score: 3

*There is concern about the disengagement of the public from New Zealand politics.*

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 2011 election, sank to the lowest turnout in over a century, with only 69.57 per cent of those eligible to enrol turning

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<sup>1130</sup> 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](http://www.idea.int/publications/democracy_nz/upload/New_Zealand.pdf)

<sup>1131</sup> Hager, 2006.

<sup>1132</sup> Miller, 2010.

out on polling day – a decline of six percentage points from the previous election.<sup>1133</sup> By 2017, the turnout had increased to 79.8 per cent, showing some recovery from this downward trend<sup>1134</sup>.

There is also a trend for fewer participants standing for office. For example, the Electoral Commission has reported a decrease in parties and candidates in recent elections, with the number of participating parties declining from 19 to 16, list candidates declining from 593 to 429, and electorate candidates declining from 522 to 453.<sup>1135</sup> In the 2017 general election, there were still 16 parties and candidates were reported as a total of 534 compared with 554 in the 2014 general election.<sup>1136</sup>

### **9.3.2 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 impropriety in 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. For example, in 2009 and 2010 MPs, Ministers and former Ministers – from various parties – were enmeshed in various parliamentary and ministerial perks scandals. More recently the accusations made by Jami-Lee Ross MP have been referred to the SFO.<sup>1137</sup>

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<sup>1133</sup> Electoral Commission, *Report of the Electoral Commission on the 2011 General Election and Referendum*, 2012, p. 24.

<sup>1134</sup> See <https://www.elections.org.nz/news-media/election-turnout-all-age-groups>

<sup>1135</sup> Electoral Commission, 2012: 30.

<sup>1136</sup> See <https://www.elections.org.nz/news-media/party-and-candidate-lists-2017-election>

<sup>1137</sup> See <https://www.radionz.co.nz/news/national/384516/sfo-to-investigate-jami-lee-ross-complaint-on-national-party-donations>

#### 9.4.1 Te Tiriti o 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.*

Political parties 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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## Media (pillar 10)

### Summary

*Many of the trends identified in the 2013 NIS assessment have continued and sometimes accelerated in the intervening five years. Material and comment on developments since 2013 is either dated or can be identified from the context. Data has been updated where new information has become available*

The media has a critical role to play in the maintenance of the National Integrity System in New Zealand. In theory, it acts as a watchdog on the powerful, it keeps the public informed on political issues, and it provides a forum for the exchange of views. In many senses, this sector is healthy – it is regarded as both free and independent, and much attention is placed by the media on holding the government of the day to account as well as uncovering corruption where it might occur in any of the other pillars. However, there are areas in which the media is seen as less healthy and robust – mostly in the lack of diversity in New Zealand, the decline of serious investigative journalism, and the reduced state of public and community broadcasting. More than anything, economics rather than any direct government actions are impeding a strong fourth estate.

Four main points summarise the findings about the media pillar. First, the media is mostly independent and free in New Zealand. The media is very active and successful in informing the public on the activities of the government. There is seen to be a fair degree of objectivity in reporting on politics. Such reporting is relatively comprehensive (but not always in depth). Adequate legal safeguards prevent unwarranted interference in the activities of the media. Journalists are generally very free to operate. Intimidation and harassment of journalists is very rare. In general, media outlets have to answer for their activities to stakeholders. There are sector-wide accountability mechanisms in respect of content (the Broadcasting Standards Authority and Media Council), which work relatively effectively. The print media reviewed the Media Council's jurisdiction and complaints processes in 2014 and took responsibility in 2017 for issues relating to the online publishing of broadcasters.<sup>1138</sup> Media organisations normally operate in a relatively transparent way.

Second, New Zealand media outlets are active and successful in investigating and exposing cases of corruption. Journalists take a strong interest in highlighting and exposing corruption or lapses in integrity among those with power. However, often such reporting can be superficial and focused on the salacious and sensationalist elements of these stories. There are signs, however, that this is improving, with traditional and newer media outlets now putting more resources and emphasis on investigative journalism.

Third, the New Zealand media is not diverse in terms of ownership or content. While there is a plurality of media sources (in terms of type, ideology, or ownership), they do not cover the entire political and social spectrum. Therefore, only to a small extent is there a diverse media providing

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<sup>1138</sup> The review was completed in 2014 and resulted in some changes – see below at 10.1.3

a variety of perspectives, and there are doubts that the mainstream media adequately represents the entire political spectrum. There are few legal impediments to the establishment and existence of an independent and diverse media – there are few general legal restrictions on setting up media. Instead, economic barriers inhibit the establishment and existence of media entities. And, arguably, media diversity is not promoted through the state. Some media scholars believe there is inadequate competition regulation and legislation. New Zealand is said to have the most deregulated media market in the Western world.

Fourth, public broadcasting and community broadcasting are fostered in New Zealand only to a limited extent. The commercial environment is not conducive to the development of public- and community-oriented media, and the state plays only a limited role in fostering public broadcasting. Although the state provides and owns broadcast media, the biggest entity, Television New Zealand, is no longer seen as a bona fide public service broadcaster. Conversely, both Radio New Zealand and Māori Television continue to credibly hold that status.<sup>1139</sup>

The independence of the New Zealand media and its activities in informing the public about government activities and cases of corruption and maladministration are extremely valuable in the National Integrity System context. To sustain this level of benefit, more monitoring and oversight of the integrity of the media is needed, whether by self-regulation or by public agencies. The less formal frameworks that generally work effectively in New Zealand do need this ongoing monitoring and evaluation. Chapter 6 of the 2013 NIS assessment, therefore, recommended strengthening the existing integrity frameworks applying to the media, and suggested the government should publish reports on its oversight of the effectiveness of those frameworks.

In 2013, it was already apparent that a trend towards public reliance on a great diversity of online media rather than traditional sources of news, comment and entertainment was occurring. That trend had intensified by 2018. However most of the findings on the media pillar remain valid.

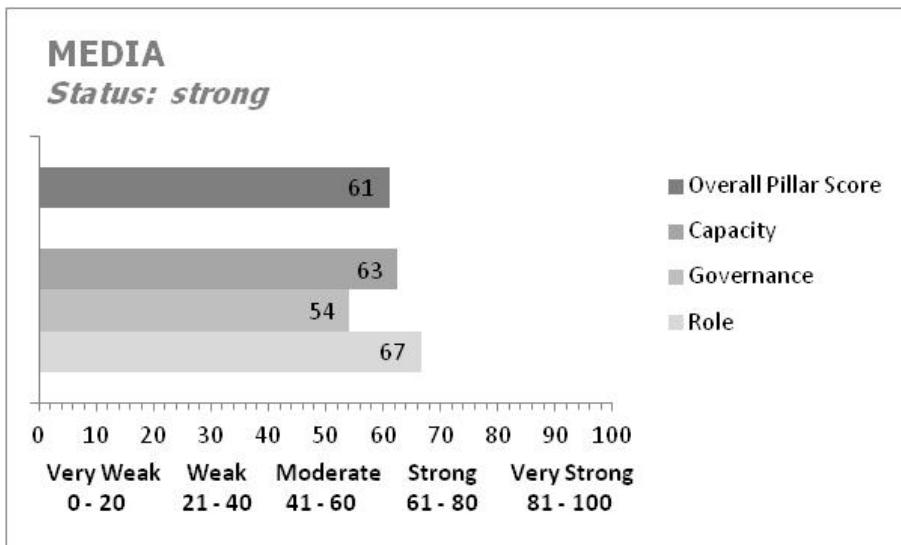
There has been some movement on the part of the government. In July 2018, the government announced a new \$6 million Innovation Fund to drive more public media content for underserved audiences such as Māori and Pacific peoples, children, and regional New Zealand, along with increased funding for Radio New Zealand and New Zealand on Air.<sup>1140</sup> This followed the first report of an advisory group on public media funding which was established in March 2018 while the government investigated the establishment of a permanent public media funding commission.

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<sup>1139</sup> Judith Collins and Craig Foss, "Government responds to news media report", 12 September 2013. <https://www.beehive.govt.nz/release/government-responds-news-media-report>

<sup>1140</sup> See <https://www.beehive.govt.nz/release/new-innovation-fund-part-public-media-funding-allocation>

**Figure 12: Media scores**



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

Media options are plentiful in New Zealand, with a vast array of newspapers, radio stations, televisions, magazines, and websites. Ownership in most sectors is, however, highly monopolised, as is the trend in other countries. Public broadcasting takes the form of three main television channels – TV One and TV2 (both Television New Zealand) and Māori Television – and in terms of radio, two non-commercial networks – RNZ National and RNZ Concert.

Outside publicly owned broadcasting, four media companies dominate the landscape – Stuff.co.nz (Stuff), New Zealand Media and Entertainment (NZME), MediaWorks, and Sky TV. In terms of newspapers, two Australian companies dominate the market – Stuff and NZME. Commercial radio is dominated by NZME, which owns the Radio Network, and by MediaWorks, which owns RadioWorks. In television, aside from the publicly owned channels, the main players are MediaWorks, which operates Three and Bravo, and Sky TV, which dominates the pay-television market and runs free-to-air Prime Television.

The news media plays a vital role in New Zealand's democracy. New Zealanders expect the “fourth estate” to act as an independent watchdog – a role in which journalists “speak truth to power”, act “on behalf of the people”, and highlight abuses of power. The role of the media is also to inform the public about complex policy and issues and provide a forum for debate and diverse views.

According to Victoria University of Wellington media scholar Kate McMillan, “The news media’s ability to fulfil its democratic role is affected by: the laws protecting freedom of expression, regulation and censorship, media access to official information, ownership of the media, levels of funding for public-service broadcasting, commercial pressures to increase advertising

revenues, and levels of newsroom resourcing.<sup>1141</sup> This pillar report looks at these influences. There are also concerns about both the bias of the media – especially in political coverage – and the concentration of media ownership in relatively few hands.

It is also important to note that a proposal from the Law Commission for the regulation of the media was published in 2013. The commission proposed an independent unitary regulator to combine the roles of the Broadcasting Standards Authority and the then Press Council (now the Media Council).<sup>1142</sup>

Currently, the Media Council regulates the print industry as well as online publishing (including that of radio and television broadcasters) and has recently taken on the task of video on demand classification.<sup>1143</sup> The Broadcasting Standards Authority governs the television and radio industry, but only in regard to their broadcasts. Print media organisations originally established the Media Council, so it has a self-regulatory role, whereas the Broadcasting Standards Authority is a statutory body. In both cases, the main focus of regulation is on the content in the media, with each body responding to complaints about material that complainants consider does not meet prescribed standards.<sup>1144</sup>

The government decided not to accept the Law Commission's recommendation,<sup>1145</sup> leaving the two regulatory bodies separate. The Ministry for Culture and Heritage has general policy oversight of the industry. In 2014, the Newspaper Publishers Association, which funds the Media Council, extended the jurisdiction of the Council to digital publishing, and decided to bring websites into its orbit. In January 2017, at the request of the broadcasters who had set up the Online Media Standards Authority (OMSA) to deal with complaints about online content, the Media Council took on jurisdiction over OMSA members. This means that it no longer just has traditional press membership. OMSA was set up because the Broadcasting Standards Authority's jurisdiction does not extend to online material, but it proved not to be viable as a standalone authority. There have been discussions on media content regulation, led by the Ministry for Culture and Heritage, from which it has become apparent that the industry favours a self-regulatory regime with a single regulator based on the existing Media Council.<sup>1146</sup> No decisions have yet been made.

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<sup>1141</sup> Kate McMillan, "Media and politics", *Te Ara: The Encyclopedia of New Zealand*, updated 29 May 2012, [www.TeAra.govt.nz/en/media-and-politics](http://www.TeAra.govt.nz/en/media-and-politics)

<sup>1142</sup> Law Commission, *The News Media Meets "New Media": Rights, responsibilities and regulation in the digital age*, NZLC R128 (Wellington: Law Commission, 2013), <http://r128.publications.lawcom.govt.nz/>

<sup>1143</sup> The New Zealand Media Council (see [www.mediacouncil.org.nz](http://www.mediacouncil.org.nz)) is an independent forum for resolving complaints about the following

- content of newspapers, magazines and periodicals in circulation in New Zealand including their websites.
- online content of the following broadcasters – TVNZ, Mediaworks, Maori Television, Sky Network Television, NZME Radio and Radio New Zealand.
- digital sites with news content, including blogs characterised by news commentary, that have been accepted as members of the Media Council.
- classification of Video-on-Demand content of the following providers – TVNZ, RNZ, Mediaworks, Maori Television, Lightbox, Netflix, Stuff, and NZME.

<sup>1144</sup> Judith Collins and Craig Foss, "Government responds to news media report", 12 September 2013, [www.beehive.govt.nz/release/government-responds-news-media-report](http://www.beehive.govt.nz/release/government-responds-news-media-report)

<sup>1145</sup> Ministers of Justice and Broadcasting, press statement, 12 September 2013.

<sup>1146</sup> Interview Liz Brown with Mary Major, CEO of the Media Council 14 August 2018

The media sector continues to grapple with incredibly pressing economic, cultural, and technological issues. Quite simply, the business models that characterised media production in the 20th century are breaking down, so a great deal of flux is occurring in this sector. This is producing uncertainty about the media's ongoing role in helping maintain the National Integrity System.

### Capacity

#### 10.1.1 Resources (law)

**To what extent does the legal framework provide an environment conducive to a diverse independent media?**

Score: 3

*The regulatory framework pertaining to the existence and operations of independent media is conducive to the establishment of media, but not to the diversity of media; nor is it particularly conducive to strong public broadcasting.*

New Zealand has an extremely deregulated media market with little in the way of state regulation of, or impediments to, the establishment of new and competing media. According to media scholar Geoff Kemp, "Market liberalization in the late 1980s and 1990s produced one of the world's most deregulated media sectors."<sup>1147</sup> Ownership of media entities is now regulated only by the general competition laws of the Commerce Act 1986. There are virtually no legal constraints on setting up broadcast media entities, there are absolutely no restrictions on setting up print media entities, and entry into the journalistic profession is unrestricted by law.

On the other hand, however, the market model means there is little regulatory encouragement of diversity in the media or of widespread ownership of media. A strong feeling among many experts is that media regulation is not adequate enough to promote media diversity.<sup>1148</sup>

New Zealand's broadcasting legislation does not provide for an environment conducive to public, commercial, and community broadcasting. According to McMillan, "Deregulation and the development of private radio and television since the 1980s has meant that public broadcasting now competes with private broadcasters."<sup>1149</sup>

In 2018, the main public service broadcasters are RNZ and Māori Television.<sup>1150</sup> TVNZ is also state owned, but does not otherwise appear to have any particular qualities that define it as a public service broadcaster. Instead, it is required to operate as a private commercial company and provide dividends to the state.

Private media ownership continues to be the subject of considerable flux. In particular, two very large-scale media mergers have been proposed in the last two years, but appear to have been

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<sup>1147</sup> Geoff Kemp, "Democracy, the public and the media", in Raymond Miller, ed., *New Zealand Government and Politics*, 5th ed. (Sydney: Oxford University Press, 2000).

<sup>1148</sup> Kemp, 2000.

<sup>1149</sup> McMillan, 2012.

<sup>1150</sup> McMillan, 2012.

blocked by the Commerce Commission. The first proposed merger – of Sky TV and telecommunications company Vodafone New Zealand – was denied by the Commission in 2017 on the basis that such a merger would substantially lessen competition in contravention of the Commerce Act 1986.

There was another proposed merger, between Stuff and NZME, which was also denied by the Commerce Commission in 2017. The companies appealed unsuccessfully against this ruling, first to the High Court, and then to the Court of Appeal. A merger of the two companies would have had a particular influence on the newspaper market, as they control about 90 per cent of the daily newspaper circulation in New Zealand.

In its ruling against the merger, the Commission stated that the quality of news and diversity of voices in the media would suffer. Overall, the new combined company would not be beneficial for democracy, and the proposal failed the public benefit test.<sup>1151</sup> The Court of Appeal largely accepted this argument,<sup>1152</sup>

In 2018 the merger of Stuff's Australian owner, Fairfax, with Nine, another Australian media company, led to suggestions that Stuff is now likely to be sold.<sup>1153</sup>

#### **10.1.2 Resources (practice)**

##### **To what extent is there a diverse independent media providing a variety of perspectives?**

Score: 3

*The New Zealand media does not adequately represent the entire political spectrum; nor does it reflect a full broad spectrum of social interests and groups.*

Media in New Zealand is highly monopolised. This does not mean there are few media outlets – there is certainly a plurality of media sources – but that diversity in terms of ideology and ownership is lacking. Many important social and political interests do not find a voice in the media landscape of the country. A large part of the lack of diversity relates to the intense concentration of media ownership in New Zealand. Media academic Gavin Ellis notes that “ownership of New Zealand’s media became so concentrated that a report published in 2003 by the United Nations Research Institute for Social Development stated that the country presented the starker example of media company consolidation”.<sup>1154</sup>

Outside publicly owned broadcasting, four media companies dominate the landscape – Stuff, NZME, MediaWorks, and Sky TV. In terms of newspapers, two Australian companies dominate the market – Stuff and NZME. They own most daily newspapers in a country in which all cities – even the larger ones – now have only one daily newspaper.

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<sup>1151</sup> Merja Myllylahti, *New Zealand Media Ownership 2017*, (The Journalism, Media and Democracy research centre, AUT, 4 December 2017). [https://www.aut.ac.nz/\\_\\_data/assets/pdf\\_file/0006/149946/JMAD-2017-Report.pdf](https://www.aut.ac.nz/__data/assets/pdf_file/0006/149946/JMAD-2017-Report.pdf)

<sup>1152</sup> NZME and others v the Commerce Commission CA92/2018 [2018] NZCA 389

<sup>1153</sup> See [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12190619](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12190619)

<sup>1154</sup> Gavin Ellis, “Who owns the media?”, in Raymond Miller, ed., *New Zealand Government and Politics*, 5th ed. (Sydney: Oxford University Press, 2009).

Commercial radio is dominated by NZME, which owns the Radio Network, and by MediaWorks, which owns RadioWorks. In television, aside from the publicly owned TV One, TV2, and Māori TV, the main players are MediaWorks, which operates the channels Three and Bravo, and Sky TV, which dominates the pay-television market and runs free-to-air Prime Television. In 2013, Sky TV had about 850,000 subscribers, representing a residential household penetration of about 49.4 per cent,<sup>1155</sup> but this had declined to 750,321 by 31 December 2018.<sup>1156</sup>

Public broadcasting takes the form of three main television channels – TV One and TV2 (Television New Zealand) and Māori Television – and in terms of radio two non-commercial networks – RNZ National and RNZ Concert.

Radio New Zealand and Māori Television rely, according to McMillan, “largely on government funding. In contrast, TVNZ [Television New Zealand] receives 90 per cent of its funding from advertising. This has raised questions over TVNZ’s ability to deliver public service broadcasting, in particular news and current affairs.”<sup>1157</sup> The former National government was frequently criticised over its attitude to public broadcasting. In 2012, it closed down the smaller, non-commercial channel TVNZ7. Funding from the Broadcasting Commission (otherwise known as New Zealand On Air) for news and current affairs in community broadcasting helps to support 25 community radio stations.

According to Freedom House’s review of New Zealand media, a “serious blow to media diversity” occurred with the closure in 2011 of the 132-year-old cooperative news agency the New Zealand Press Association.<sup>1158</sup>

There are questions about the adequacy of resources and training for journalists. In New Zealand, journalism is generally seen as a vocational trade, and qualifications in the industry are normally expected to be skills-based rather than academic. Few media companies encourage their staff to acquire higher qualifications once in the job.

The development of social media is seeing lower entry barriers for the public. Opportunities for citizen journalism are changing the media environment in ways that are beginning to increase the diversity of media outlets at a micro level.

The most important new online media outlets to spring up in recent years are the websites of The Spinoff ([www.thespinnoff.co.nz](http://www.thespinnoff.co.nz)) and Newsroom ([www.newsroom.co.nz](http://www.newsroom.co.nz)). These two digital-only media outlets were established and owned by experienced media industry journalists.

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<sup>1155</sup> Merja Myllylahti, *JMAD New Zealand Media Ownership Report 2012*, 23 November 2012, [www.aut.ac.nz/\\_data/assets/pdf\\_file/0005/323546/JMAD-New-Zealand-Media-Ownership-2012.pdf](http://www.aut.ac.nz/_data/assets/pdf_file/0005/323546/JMAD-New-Zealand-Media-Ownership-2012.pdf)

<sup>1156</sup> See [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12205399](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12205399)

<sup>1157</sup> McMillan, 2012.

<sup>1158</sup> Freedom House, “New Zealand”, in *Freedom of the Press*, 2012, [www.freedomhouse.org/report/freedom-press/2012/new-zealand](http://www.freedomhouse.org/report/freedom-press/2012/new-zealand)

### 10.1.3 Independence (law)

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

Score: 4

*New Zealand's regulatory framework is conducive to a relatively independent media with few restrictions and little overt censorship.*

In any country, the democratic functions of the media depend on laws that protect freedom of expression, the extent to which official information can be obtained, and the levels and nature of censorship and regulation. In all these areas, the New Zealand media functions well because comprehensive legal safeguards prevent unwarranted external interference in the media. All media is subject to the Films, Videos, and Publications Classification Act 1993, which prohibits the publication of objectionable material.<sup>1159</sup> The activities of broadcasters are also covered by the Broadcasting Act 1989, which makes them subject to the requirements of accuracy and balance in the content they broadcast. However, libel laws are still relatively restrictive for the media, and official information legislation does not function effectively.

Legal safeguards ensure the independence of the media. The New Zealand Bill of Rights Act 1990 protects the media's freedom of expression, and the Privacy Act 1993 provides exemptions for the media from requirements that might otherwise make it less free.

Journalists are generally able to protect their sources, and the Evidence Act 2006 allows media to keep the details of their sources confidential. However, in restricted circumstances both NZ Police and the SFO can force journalists to reveal their sources. For the police, this requires a warrant from a judge, and journalists can make appeals to the High Court to keep their sources protected. However, the SFO can act on its own initiative without any judicial process. One such recent example of this occurred when the SFO demanded that the *National Business Review* hand over all material, including sources, of its investigation into the collapse of South Canterbury Finance.<sup>1160</sup>

The work of journalists is also greatly enhanced by the OIA, which makes available to the public, on request, most internal government documents. However, journalists are increasingly thwarted by delays and the use of exemptions by government departments (see the public sector pillar report for more information).

State censorship is relatively moderate and infrequent in New Zealand. Few complaints about the suppression of expression occur nowadays; instead it is defamation law that results in more problems for the media.<sup>1161</sup>

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<sup>1159</sup> "Objectionable material" is concerned with sex, horror, crime, cruelty, or violence when presented in such a manner that the availability of the publication is likely to be injurious to the public good. Films, Videos, and Publications Classification Act 1993 section 3(1).

<sup>1160</sup> "NBR in stand off with SFO over file seizure", *National Business Review*, 20 October 2010, [www.nbr.co.nz/article/sfo-demands-nbr-documents-refusal-risks-40k-fine-jail-131836](http://www.nbr.co.nz/article/sfo-demands-nbr-documents-refusal-risks-40k-fine-jail-131836)

<sup>1161</sup> Ursula Cheer, "Reality and myth: The New Zealand media and the chilling effect of defamation law", PhD thesis at the University of Canterbury, 2008.

Traditionally, libel laws have also played a role in suppressing the freedom of the press, especially because defamation proceedings have – as in the traditional Westminster model – often produced considerable burdens on publishers. It is often argued that the defamation laws are “overly plaintiff-friendly”.<sup>1162</sup>

However, since the 1998–2000 landmark case *Lange v Atkinson*, the media has been able to rely on the defence of “qualified privilege”, which means journalists can avoid defamation actions if it is clear that any criticism of public figures arises out of “honest belief”. In 2018, in the case of *Durie v Gardiner*, the Court of Appeal extended the defence further to cover all cases where publication was in the public interest and the reporting was responsible.<sup>1163</sup> These Court of Appeal decisions mean the performance of politicians and others can more easily be commented on in the media. Nonetheless, there are occasions when the media pays a high price for defamation. For example, in 2010 the 18-year-old *New Korea Herald* newspaper was forced to close after being ordered by the High Court to pay NZ\$250,000 in damages after defaming a prominent Korean businessman.<sup>1164</sup>

New Zealand governments have generally been reluctant to impose regulatory controls over the press. Instead, for newspapers and magazines, the print and online media have established their own voluntary regulatory system – the Media Council; the broadcast media has a state entity, the Broadcasting Standards Authority, regulating its broadcast content.

As noted earlier, the government decided not to accept the Law Commission proposal that these organisations be merged into a new agency that would cover virtually all forms of media. However, the regulatory regime continues to evolve. The Media Council’s jurisdiction now (2018) extends to some online media (including the websites of the main broadcasters), and it now has more extensive sanctions available, including the power to censure a publication for a particularly egregious breach of standards.

#### **10.1.4 Independence (practice)**

**To what extent is the media free from unwarranted external interference in its work in practice?**

Score: 4

*The New Zealand media is relatively free from unwarranted external interference. While the state or other external actors occasionally interfere with the activities of the media, these instances of interference are usually non-severe, without significant consequences for the behaviour of media.*

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<sup>1162</sup> Cheer, 2008.

<sup>1163</sup> *Durie v Gardiner* [2018] NZCA 278

<sup>1164</sup> Lincoln Tan, “Defamation kills Korean paper”, *New Zealand Herald*, 9 December 2010, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10693024](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10693024)

The 2018 Global Press Freedom Index produced by Reporters Without Borders ranks New Zealand at 8 (out of 175 countries) and rates media freedoms as “good”.<sup>1165</sup> New Zealand is noted as being the only non-European country in the top 10. Similarly, a 2018 Freedom House report rates the media as “free” and gives New Zealand a total score of 98 out of 100 overall for freedoms.<sup>1166</sup> Therefore, New Zealanders can be confident that journalists can assert their right to freedom of expression without fear. The various media regulatory agencies are seen to operate independently of state interference.

There have, however, been concerns about the political harassment of journalists and media agencies in recent years. Two investigative journalists endured particularly strong attacks from the Prime Minister in 2011. Nicky Hager published *Other People’s Wars*, which was critically dismissed by Prime Minister John Key, who had not read the book, but said it was a work of fiction and Hager had no credibility.<sup>1167</sup> Similarly, award-winning investigative journalist Jon Stephenson was forced to defend himself against a bitter attack on his credibility by the Prime Minister and defence officials after *Metro* magazine published his exposé on the New Zealand military’s arrangement for handing over prisoners in Afghanistan to US forces.<sup>1168</sup> Stephenson took legal action against the New Zealand Defence Force, suing for defamation, and in 2015 the government agency made a settlement with the journalist, which included an acknowledgement of his claim and an unspecified payment.<sup>1169</sup>

However, a potentially more chilling episode occurred during the general election of 2011 when the Prime Minister condemned the media and officially complained to NZ Police against various media agencies. The controversy related to what became known as the “teapot tape” scandal in which the Prime Minister met at a café with Act Party candidate John Banks for a photo opportunity, and they were covertly recorded by freelance cameraman Bradley Ambrose.

Ambrose claimed the audio recording had been made unintentionally. Along with other members of the media, Ambrose had been invited to record the initial meeting of the two politicians in the café, but he claimed that when all journalists were ushered out of the café, he was prevented from being able to remove his microphone from the café table, and it was only after the event that he discovered it had recorded the whole conversation. He took the recording to the *Herald on Sunday* newspaper, which chose not to publish the recording.

The Prime Minister publicly condemned what he called “*News of the World* style tactics”, describing the issue as “the start of a slippery slope”. After the Prime Minister’s complaint to police and the intervention of the Solicitor-General, NZ Police issued search warrants to various

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<sup>1165</sup> “New Zealand rises in press freedom ranking”, *New Zealand Herald*, 2 February 2013, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10863009](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10863009)

<sup>1166</sup> Freedom House, 2018.

<sup>1167</sup> Belinda McCammon, Danya Levy, and Vernon Small, “Key dismisses Hager book claims”, *Stuff*, 2 September 2011, [www.stuff.co.nz/national/politics/5551661/Key-dismisses-Hager-book-claims](http://www.stuff.co.nz/national/politics/5551661/Key-dismisses-Hager-book-claims) (2018 update this link broken, alternative is <https://www.radionz.co.nz/news/the-wireless/371906/key-rejects-hager-s-claims-of-dirty-politics>

<sup>1168</sup> Derek Cheng, “PM attacks journalist over SAS torture claims”, *New Zealand Herald*, 3 May 2011, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10723016](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10723016)

<sup>1169</sup> New Zealand Herald, “Defence Force settle defamation action with journalist”, 1 October 2015, [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11522106](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11522106)

media outlets and carried out an investigation, but no charges were laid. These events were characterised as “insidious attacks” on media freedom by the former chair of the New Zealand National Commission for the UN Educational Scientific and Cultural Organization, Bryan Gould.<sup>1170</sup>

According to the New Zealand Media Freedom Committee chair, Tim Murphy (also editor-in-chief of the *New Zealand Herald*), this incident possibly played a part in New Zealand dropping five places in the 2011 media freedom rankings produced by Reporters Without Borders.<sup>1171</sup> The ranking has risen since then and currently (2018) stands at eight.<sup>1172</sup>

Untoward statements to the media come from any government, of all colours, of course, and in 2006, for example, then Minister of Finance Michael Cullen spoke out against a *New Zealand Herald* campaign against proposed government legislation. According to Ellis, “Cullen issued a veiled threat against the owners ... suggesting that the government could withdraw retrospective legislation validating the company’s position on a potential [NZ]\$219 million [goods and services tax] liability if the newspaper persisted in its campaign.”<sup>1173</sup>

There are, then, potential areas for concern over legal interference with the freedom of the press. That said, these interferences and issues are relatively minor when placed in the context of the problems that face the media in other parts of the world. And as Freedom House’s 2012 review of New Zealand noted, “Despite these incidents, journalists are generally able to cover the news freely, and physical attacks or threats against the media are rare”.<sup>1174</sup>

State funding for broadcasting is, in theory, an area where the government of the day can have an influence over the media. New Zealand On Air is the state agency responsible for the funding of public-good broadcasting content across television, radio, and new media platforms. The agency spends about NZ\$130 million a year to fund radio, television, music, and digital media production carried out by a variety of public and private broadcasters and platforms.

For example, New Zealand On Air fully funds RNZ. Although the agency is an autonomous Crown entity separate from central government and governed by a board, appointments to the board are made by the Minister of Broadcasting, raising issues of partisan bias. For example, in 2012, allegations of a conflict of interest were levelled at board member Stephen McElrea, because he was also Prime Minister John Key’s National Party electorate chairman and had allegedly attempted to stop the broadcast of a controversial documentary, *Inside Child Poverty*, four days before the 2011 general election. The agency subsequently made enquiries about its legal

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<sup>1170</sup> Bryan Gould, “Insidious attacks on press freedom”, *New Zealand Herald*, 23 January 2012, [www.nzherald.co.nz/opinion/news/article.cfm?c\\_id=466&objectid=10780431](http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=10780431)

<sup>1171</sup> Matthew Backhouse, “New Zealand’s media freedom ranking drops after teapot tapes saga”, *Otago Daily Times*, 26 January 2012. [www.odt.co.nz/news/politics/195740/nzs-media-freedom-ranking-drops-after-teapot-tapes-saga](http://www.odt.co.nz/news/politics/195740/nzs-media-freedom-ranking-drops-after-teapot-tapes-saga)

<sup>1172</sup> See <https://rsf.org/en/ranking>

<sup>1173</sup> Ellis, 2009.

<sup>1174</sup> Freedom House, 2012.

powers to prevent broadcasters from screening politically sensitive programmes that it funded during election campaigns.<sup>1175</sup>

Some of the most concerning recent (2018) allegations about political and state interference in media freedoms came in relation to the publication in 2014 of Nicky Hager's book called *Dirty Politics: How Attack Politics is Poisoning New Zealand's Political Environment*.<sup>1176</sup> The book was primarily concerned with how the government had allegedly used a blogger to carry out its negative attacks on opponents. The use of state resources to manipulate the media led to some serious reflections on the health and practices in journalism and broadcasting.

Of greater consequence, however, was the Police investigation into the source of the book's material, which had been electronically hacked from a blogger's computer. This led to numerous Police breaches of the privacy of the book's author, Nicky Hager, including an unlawful search of his home. Hager won various legal actions against the Police, including an apology and financial settlement.<sup>1177</sup>

## Governance

### 10.2.1 Transparency (law)

**To what extent are there provisions to ensure transparency in the activities of the media?**

Score: 2

*New Zealand has no specific legislation to ensure transparency in the media, and instead relies on civil law to ensure a high degree of transparency.*

Media entities in New Zealand are subject to the same rules as any other private company.<sup>1178</sup> It is also not always clear that the media generally has clear rules on disclosure of information relating to internal staff, reporting, and editorial policies, but few concerns appear to exist about this area.

### 10.2.2 Transparency (practice)

**To what extent is there transparency in the media in practice?**

Score: 4

*There is considerable transparency of New Zealand media in practice, both in print and broadcast media.*

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<sup>1175</sup> Claire Trevett, "New Zealand on Air to stop docos in election lead-up", *New Zealand Herald*, 18 January 2012, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10779390](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10779390)

<sup>1176</sup> Nicky Hager, *Dirty politics: How attack politics is poisoning New Zealand's political environment*. 2014. Nelson: Craig Potton.

<sup>1177</sup> Henry Cooke and Tom Hunt, "Police apologise to Nicky Hager over Dirty Politics raid as part of settlement", *Stuff*, 12 June 2018, <https://www.stuff.co.nz/national/politics/104638742/police-apologise-to-nicky-hager-over-dirty-politics-raid-as-part-of-settlement>

<sup>1178</sup> For further information on the operations of private companies, see the business pillar report (pillar 13).

Media ownership in New Zealand is widely disclosed, as are editorial policies and information on internal staff. In general, New Zealand media outlets provide full and effective disclosure of relevant information on their activities. Sometimes, however, this is partial or outdated information.

Also, the media generally makes information on its internal staff, reporting, and editing policies publicly available, but this is hard to access – especially by the general public.

The regulatory bodies – the Broadcasting Standards Authority and the Media Council – make their decisions public, mainly through press releases and by publishing the information on their websites.<sup>1179</sup> A media organisation is required to publish the decision of the Media Council when a complaint against it is upheld.

#### **10.2.3 Accountability (law)**

**To what extent are there legal provisions to ensure that media outlets are answerable for their activities?**

Score: 4

*Comprehensive mechanisms in New Zealand ensure media outlets are answerable for their activities, but accountability regulations are complex and outdated.*

The Law Commission proposed sweeping changes in the regulation of the media. In particular, it recommended a new independent regulatory body that would cover nearly all media. Nonetheless, existing laws and industry practices can be evaluated.<sup>1180</sup>

The broadcasting sector is subject to the statutory regulation found in the Broadcasting Act 1989. This legislation puts broadcast media under the oversight of the Broadcasting Standards Authority, a body that considers complaints from the public about broadcasters. The Act also requires broadcasters to maintain standards consistent with the observance of good taste and decency, the maintenance of law and order, individual privacy, balance, fairness and accuracy, and approved codes of broadcasting practice.

As noted earlier, the broadcasting media are now partially covered by the Media Council which also considers complaints about news and current affairs material published online and in print. Therefore, such published material is not regulated by a statutory body, but by self-regulation through the Media Council, a voluntary and industry-funded organisation that considers complaints against members and, in some cases, non-members. The council is made up of representatives of the public, publishers, and journalists.<sup>1181</sup>

There are also legal restraints on the media – especially laws protecting other public rights. According to McMillan, “The [New Zealand] Bill of Rights Act 1990 and the Human Rights Act

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<sup>1179</sup> The decisions of the Broadcasting Standards Authority are published on its website ([bsa.govt.nz/decisions/latest](http://bsa.govt.nz/decisions/latest)), and the Press Council publishes its rulings on its website (update 2018 now Media Council <https://www.mediacouncil.org.nz/search>)

<sup>1180</sup> Law Commission, 2013.

<sup>1181</sup> McMillan, 2012.

1993 have provisions designed to prevent discrimination on the grounds of race, ethnic or national origin, age, gender or disability. If a person considers that false statements have been made about them through the media, they can sue the broadcaster or publisher of the statement, under the Defamation Act 1992. This does not apply to statements made under parliamentary privilege. The media are also banned from publishing the name of anyone granted name suppression in court.<sup>1182</sup>

#### **10.2.4 Accountability (practice)**

##### **To what extent can media outlets be held accountable in practice?**

Score: 4

*In general, New Zealand media outlets have to answer for their activities to stakeholders.*

New Zealand has sector-wide accountability mechanisms for media outlets. The various government and industry regulators and professional oversight boards – the Press Council and Broadcasting Standards Authority – operate relatively effectively. The agencies frequently rule against media organisations for breaching standards, and the Broadcasting Standards Authority also issues fines, although only in respect of breaches of privacy.<sup>1183</sup>

Both media regulatory authorities are reactive in nature, generally only responding to complaints rather than monitoring the media. By 2018, the Media Council was responding to about 180 complaints a year and the Broadcasting Standards Authority to about 120. There are few legal requirements for media to be accountable to the public. For instance, there are no laws requiring the media to correct erroneous information in a timely manner; instead, the defamation laws together with the industry complaints processes are meant to encourage such behaviour.

Media is also made accountable and accessible by a plethora of blogs, Twitter accounts,<sup>1184</sup> and journalists' forums that enable journalists to interact with the public.

#### **10.2.5 Integrity mechanisms (law)**

##### **To what extent are there provisions in place to ensure the integrity of media employees?**

Score: 2

*The media industry generally lacks formal rules and provisions to ensure employee integrity.*

While some provisions exist, they do not cover all aspects related to the integrity of media employees and some contain loopholes. The trade union representing journalists, E Tū, has a code of ethics,<sup>1185</sup> Fairfax Media New Zealand introduced a journalism charter in 2011, and

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<sup>1182</sup> McMillan, 2012.

<sup>1183</sup> Broadcasting Standards Authority, *BSA Annual Report 2012*, 2012, [bsa.govt.nz/images/assets/Annual-Reports/Annual-Report-2012-Web.pdf](http://bsa.govt.nz/images/assets/Annual-Reports/Annual-Report-2012-Web.pdf)

<sup>1184</sup> A list of media organisations and journalists on Twitter is aggregated at [billbennett.co.nz/new-zealand-media-twitter](http://billbennett.co.nz/new-zealand-media-twitter)

<sup>1185</sup> See <https://etu.nz/journalist-code-of-ethics/>

NZME a similar charter in 2016,<sup>1186</sup> but there is no sector-wide code of ethics or code of conduct, nor any legal requirement for one. The Media Council has a “set of principles” that applies to all of its members. The Broadcasting Act 1989 also outlines principles and standards for radio and television broadcasters to adhere to.

No laws cover the conduct of journalists, so conflicts of interest or other relationships do not have to be legally disclosed (although there is coverage of conflicts of interest in the Media Council Principles and in the codes mentioned above). Similarly, there are no rules or regulations pertaining to any issues of the “revolving door” type in the relationship between the parliamentary press gallery and ministerial and parliamentary press secretaries. Journalists can freely shift between the media and working in government public relations.

#### **10.2.6 Integrity mechanisms (practice)**

##### **To what extent is the integrity of media employees ensured in practice?**

Score: 3

*The integrity of media employees in New Zealand is difficult to determine, but public confidence in the profession is lacking.*

Considerable evidence exists that the public does not feel confident of the media’s integrity. For example, according to a Colmar Brunton poll, in 2018, 50 per cent of those surveyed had “little” or “no” trust in TV and print media.<sup>1187</sup>

A 2013 *Reader’s Digest* survey of trusted professions in New Zealand ranked journalists at 43 out of 50 professions – just below real estate agents and insurance salespeople, but above sex workers and car salespeople.<sup>1188</sup> The 2013 TI Global Corruption Barometer also signalled that New Zealanders have a low opinion of the integrity of the media. Those surveyed were asked to rate how affected the media is 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>1189</sup>

In general, there appears to be a piecemeal and reactive approach to ensuring the integrity of media employees, including only some of the following elements: enforcement of existing rules, inquiries into alleged misbehaviour, sanctioning of misbehaviour, and staff training on integrity issues.

It is questionable whether journalists widely and regularly refer to the regulatory bodies’ sets of principles. One group of media academics commented on this issue: “when asked where these principles can be found in written form or what document clarifies them, there is a kind of

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<sup>1186</sup> See [https://www.nzme.co.nz/img/misc/NZME\\_Editorial%20Code%20of%20Ethics.pdf](https://www.nzme.co.nz/img/misc/NZME_Editorial%20Code%20of%20Ethics.pdf)

<sup>1187</sup> Institute for Governance and Policy Studies, Victoria University of Wellington, Public trust survey, March 2018, [https://www.victoria.ac.nz/\\_data/assets/pdf\\_file/0007/1616380/IGPS-Trust-Presentation-June2018.pdf](https://www.victoria.ac.nz/_data/assets/pdf_file/0007/1616380/IGPS-Trust-Presentation-June2018.pdf)

<sup>1188</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) (link broken 2018)

<sup>1189</sup> Transparency International, *Global Corruption Barometer 2013*, [transparency.org/gcb2013/country/?country=new\\_zealand](http://transparency.org/gcb2013/country/?country=new_zealand)

confusion: is it in the Media Council's Statement of Principles, the union's code of ethics or the news organisation's style book?"<sup>1190</sup>

This does not mean journalists are not ethical, but that there is little formal focus on codes of conduct. Generally, it is not common for journalists to receive independent instruction on ethics.

It is hard to gauge how widely journalists follow procedures when they are offered gifts or hospitality, but the release of information relating to the credit card expenditure of government Ministers has given a glimpse of the fact journalists are often wined and dined by politicians. For example, in early 2010 the release of National Party ministerial credit cards showed that Tim Groser had spent NZ\$247 on dinner at Wellington's Matterhorn with *Dominion Post* journalist Paul Easton, and that Nick Smith paid back NZ\$84.50 for a dinner with two journalists.<sup>1191</sup>

Political journalists are also subsidised by the government to travel on prime ministerial trips abroad. Generally, press gallery journalists are charged a nominal fee, such as NZ\$100, to travel on the Prime Minister's Royal New Zealand Air Force aircraft.<sup>1192</sup> There are undoubtedly good reasons for such media subsidies being given and accepted, but it is notable that such subsidies are not normally disclosed in the journalists' reports.

During election campaigns, a very different situation can occur with journalists being charged high rates to travel with politicians. For example, in the last two days of the 2008 general election campaign the National Party hired a plane to give leader John Key a presidential-style tour of the country, and the 12 travelling journalists were charged NZ\$1,200 each, thereby subsidising the party's campaigning costs.

### **Role**

#### **10.3.1 Investigate and expose cases of corruption practice**

#### **To what extent is the media active and successful in investigating and exposing cases of corruption?**

Score: 4

*In general, the New Zealand media is active and successful in reporting on individual cases of corruption, but tends to be reactive, reporting scandals rather than investigating and uncovering them.*

The New Zealand media is extremely vigilant about the abuse of power or other improprieties by governments and other pillars of the integrity system. A case could be made that the media exaggerates the level of corruption in New Zealand. Of course, it is difficult to evaluate whether the media accurately reflects levels of corruption in New Zealand. It has become common for

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<sup>1190</sup> Sean Phelan, Verica Rupar, and Martin Hirst, *Scooped: Politics and power of journalism in Aotearoa New Zealand* (Auckland: AUT Media, 2012).

<sup>1191</sup> Tracy Watkins and Vernon Small, "Minister caught short on credit card", *Stuff*, 23 February 2010, [www.stuff.co.nz/national/politics/3361482/Minister-caught-short-on-credit-card](http://www.stuff.co.nz/national/politics/3361482/Minister-caught-short-on-credit-card)

<sup>1192</sup> Deborah Coddington, "Surprise: The pen is pricier than the horde", *New Zealand Herald*, 5 July 2009, [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10582590](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10582590)

the media to give voice to those alleging corrupt practices. The high number of corruption-oriented stories in the media, therefore, appears at variance with the high ranking New Zealand enjoys in TI's Corruption Perceptions Index.

However, such a heavy focus on corruption is often superficial and non-systematic. Instead of a rigorous pursuit of corruption and understanding the complexities of integrity in public life, the media's investigations appear driven by a sense of fleeting news sensationalism.

In recent decades there has been a serious lack of investigative journalism in New Zealand, but this appears to be improving. As Nicky Hager says, a properly wide definition of investigative journalism shows there is still plenty of it in practice: "it is a mistake to see daily journalism and investigative journalism as separate occupations. It is actually a continuum ... Each of those journalists who have kept digging, driven by wanting to find out the truth, are doing investigative journalism."<sup>1193</sup>

While it is hard to define "investigative journalism" precisely, and therefore separate it from other journalistic roles, a decline of such journalism has certainly been noticeable. There are also common complaints from within the media industry of a lack of funding for investigative journalism, although some broadcasting funding is available for assistance in making documentaries, and a lack of industry support and recognition of investigative journalists and their work.

In recent years, however, there appears to be a resurgence of investigative journalistic work being funded and published by traditional and newer media outlets. This is observable in many media outlets, but especially for Stuff newspapers and NZME's *New Zealand Herald*. Both outlets pride themselves on employing and publishing investigative journalists. And these newspapers have broken important stories as well as explored social issues in an in-depth and informed way.

### **10.3.2 Inform public on corruption and its impact**

#### **To what extent is the media active and successful in informing the public on corruption and its impact on the country?**

Score: 3

*While media outlets pay some attention to informing the public on corruption and its impact, reports are often limited or of poor quality.*

There are no apparent programmes run by the media to educate the public on corruption or how to curb it, rather the media operates more as an investigator of corruption, playing the part of holding government, politicians, public officials generally, and business to account.

The media always gives significant coverage to New Zealand's annual Corruption Perceptions Index ranking. However, the coverage does not generally report what the ranking means or how

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<sup>1193</sup> Nicky Hager, "Investigative journalism in the age of media meltdown: From National party headquarters to Afghanistan", Bruce Jesson Memorial Lecture, 31 October 2012, <https://www.icij.org/blog/2012/11/investigative-journalism-age-media-meltdown/>

it is derived. One study of media coverage showed that “27 per cent of reviewed media articles [incorrectly] draw comparisons of rankings and scores over time” and “70 per cent of reviewed media articles refer to the rankings without taking confidence intervals into account”.<sup>1194</sup>

### **10.3.3 Inform public on governance issues**

**To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?**

Score: 4

*In general, the New Zealand media is active and relatively successful in keeping the public informed on the regular activities of the government and other governance institutions. However, a lack of resourcing inhibits its performance.*

The New Zealand media reports daily on politics and various political actors. Impartial and unbiased radio and television programmes are dedicated to current affairs, and newspapers also include coverage and analysis of government and governance actors. For example, RNZ National has several widely followed programmes such as *Morning Report*, *Nine-to-Noon*, *The House*, and *Checkpoint* covering political events and current affairs and interrogating politicians and members of the government. Various television programmes are dedicated to the analysis of current affairs, including daily news programmes and programmes such as *The Nation* and *Q+A*, where politicians are quizzed. There are also programmes that seek to uncover, probe, and analyse government policy, corruption, and political developments in New Zealand – for example, TVNZ’s *Sunday* and Māori TV’s *Native Affairs*. New Zealand newspapers have regular columnists who critique government policy, political parties, and current affairs.

However, financial imperatives are certainly driving down the resourcing of newsrooms. For example, Ellis reported that “the number of journalists working full-time in the Parliamentary Press Gallery was estimated to have fallen by between 10 and 20 per cent after the 2008 general election as staff were redeployed or vacated positions left unfilled”.<sup>1195</sup> However the number appears to have stabilised between 2016 and 2018<sup>1196</sup>

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<sup>1194</sup> C. Dalzell, J. Fenwicke, A. Komarovsky, S. Leduc, and F. Morrisson, “New Zealand and the Corruption Perceptions Index: How is New Zealand’s rating compiled and what can be inferred from it”, Ignite Consultants paper to Transparency International New Zealand, [www.transparency.org.nz/index.php/component/content/article/8-news/116-2011-](http://www.transparency.org.nz/index.php/component/content/article/8-news/116-2011-) (link broken 2018)

<sup>1195</sup> Ellis, 2009: 409.

<sup>1196</sup> See [https://www.parliament.nz/en/document/00speakadmindspkpressgall1\\_2016](https://www.parliament.nz/en/document/00speakadmindspkpressgall1_2016), <https://www.parliament.nz/en/get-involved/media-centre/press-gallery/> (2018)

#### 10.4.1 Te Tiriti o Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the media 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 the media has 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?**

*The mainstream media still lacks some proficiencies in its coverage of Māori issues, but a significant attempt is normally made to work with partnership, respect, and participation with Māori.*

The media's orientation and relationship to Māori and all issues related to Māori have changed considerably in the last two decades. Whereas once the media was overwhelmingly monocultural, unreflective of Māori society, and poor at reporting on Māori and Treaty issues, that is not always the case now. Furthermore, the media landscape has fundamentally altered, and it now includes significant Māori-oriented media and journalists. The state-owned broadcasters, TVNZ and RNZ have shown recognition of the place of the Treaty and Māori in New Zealand in an increasing manner through the active support of use of te reo in their broadcasts, and ensuring Treaty and Māori related issues are reported as part of overall national coverage of news-worthy stories.

The question remains as to whether or not the media is scrutinising itself to ensure there is no unconscious bias in the presentation of reports. Given that New Zealand does not have civics education, it is possible that many New Zealanders are not aware of the rights that Māori have when they protest about issues and that is not consistently part of reporting. Equally the view that Māori are disproportionately within the justice system can be misunderstood, noting the research showing the Māori are more likely to be imprisoned for the same type of crime than non-Māori, that is, research shows an apparent bias in the justice system and media reporting including ethnicity can reinforce the misperception

Within the last two decades, iwi-based radio stations and newspapers have proliferated. But, most importantly, the Māori Television Service started broadcasting in 2004. The service is funded almost entirely from the government, with a budget of about NZ\$45 million, and is widely seen as successful. The main channel is Māori Television, which broadcasts in both Māori and English. A second channel, Te Reo, was launched in 2008 and is New Zealand's first 100 per cent Māori language television channel.

Māori broadcasting is funded by Te Māngai Pāho (the Māori Broadcast Funding Agency), which is a New Zealand Crown entity responsible for promoting Māori language and culture. The state established the agency as part of its obligations under the Treaty of Waitangi.

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## Civil society (pillar 11)

### Summary

*In updating this pillar report, there was no attempt to repeat the extensive series of interviews conducted for the 2013 NIS assessment. Data has been updated where new information has become available, and developments such as reviews of legislation are noted. However this is a sector where change is usually slow and gradual, and there are no major changes since 2013*

This pillar report summarises themes from informant interviews and desk research across the community and voluntary sector, Māori, and Pasifika. The scope is wide; many organisations and individuals are active in civil society organisations (CSOs). A wide variety of organisations contributed, but it has not been possible to cover them all – sporting, religious, and professional associations are not included – and the focus of this report is mainly on those organisations that are registered charities and/or incorporated societies. There is a note on the methodology used in this pillar report at the beginning of Chapter 5.

There is a favourable legal environment for CSOs in New Zealand, and most have sufficient funding and other resources, including volunteers, to operate, albeit on a short-term planning horizon. Improvements could be made by confirming the suite of training available to CSOs across all disciplines, establishing formal qualifications in civil society activities and management (including training and qualifications on CSOs), and progressively in government funding contracts.

CSOs enjoy high legal independence. Many feel well established and report no constraints on their independence. For some, however, independence is limited by political relationships and funding uncertainty. Standards for clarity should be adopted in government funding contracts for service types (for example, advocacy) and multi-year funding should be considered and valued.

Transparency in CSOs varies widely, and it can be difficult for the public to tell in whose interests a CSO is operating (community, government, or business) and to respond appropriately. Public information on CSOs should include information on who benefits from the organisation's activities and overhead rates (that is, how much of a donated dollar gets to front-line services).

By extending the scope of public information to cover all CSOs, not only those that are registered charities, and by promoting a code of conduct, such as that adopted by the Council for International Development, for the disclosure of information to the public by all CSOs, CSOs would become more transparent. This could also be achieved by making disclosure a requirement for charitable status and not-for-profit tax treatment.

In general, CSOs should adopt the standards set by the Institute of Directors, including the Four Pillars of Governance, as benchmarks for governance best practice in setting the tone at the top.

CSOs take on advocacy and public watchdog roles; some are set up explicitly for these roles. Many are actively engaged in policy reform initiatives, although (apart from TINZ) there is little

focus on anti-corruption in view of perceived low levels of corruption in New Zealand. Government policy-making processes need to be clarified to ensure timely and well-resourced input from CSOs. Earlier input would generate better results and put less pressure on formal consultation at the end of the process to capture issues and problems.

Other actions that could be considered as a result of the findings of this report include acknowledging CSOs' charitable and advocacy work in their own right, separate from service delivery. Accounting and reporting requirements and tax status for this work should be clarified.

A publicly available annual report should be required of all community organisations that carry out public fund-raising (above a given minimum donation dollar value to ensure the measure passes a cost-benefit test) and are not registered charities. This report should include minimum requirements such as the organisation's purpose, members and beneficiaries, activities, and audit results.

There should be a coordinated single government environment scan for CSOs that wish to apply for contracts.

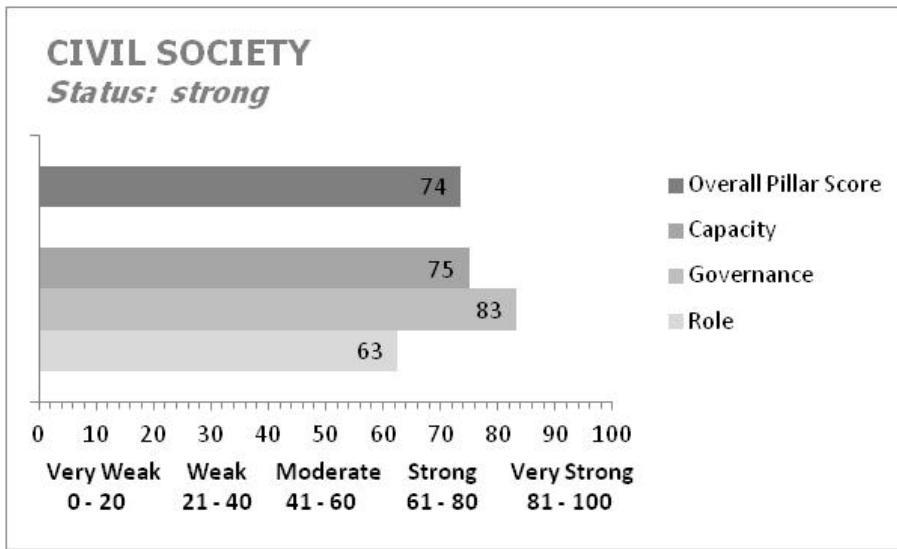
The government should commit funds to increasing information technology capacity in CSOs to assist their service role as well as their communication with funders.

Community and voluntary organisations can flourish in New Zealand, and there is high public participation. They are characteristically flexible and independent. CSOs are significant in holding the government to account over a wide range of its activities.

Transparency is variable with some organisations providing a high level of disclosure about their activities and others much less. Because New Zealanders are not well informed about what information they should expect from their CSOs, it would be valuable to clarify what they should disclose to the public and/or their members to assist in assuring their integrity, and then inform the public accordingly. Chapter 6 recommends on these issues.

There is merit in using CSOs more effectively as vehicles for integrity and civics education and training, both in their own organisations and at least indirectly for wider civil society. This could also meet the need for education about the role of CSOs and what should be expected of them, thus enhancing their ability to engage effectively with government in policy development consultations. However many CSOs need to consider their own situation first and take a proactive role in adopting corruption prevention practices, strengthening their codes of ethics, engaging in anti-corruption training and addressing the risks of corruption in the sectors in which they work.

Figure 13: Civil society scores



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

The term “civil society” is not in general use in New Zealand, and it is hard for citizens to understand and engage with the concept. People in the street are unlikely to respond to a question such as “How is civil society progressing in New Zealand?”, but would talk energetically about their involvement with their local sports group, club, community initiative, religious group or other community activities they know about and value. Talking about community groups, interests, and activities is more accessible.

CSOs play an important and complex role in New Zealand society. They cover a wide variety of activities from community connection and social profit, to service delivery, to advocacy and direct challenge to the government and business. They represent New Zealanders across all non-government and non-business aspects of society – community, cultural, sport, faith, education, interest groups, philanthropy, community development, and specific-issue lobby groups – and are the glue holding society together. In 2005, there were 97,000 not-for-profit institutions of which 45 per cent were concerned with culture, sports, or recreation; 11.6 per cent with social services; 10.2 per cent with religion; 7.8 per cent with development and housing; and 7.6 per cent with education and research.<sup>1197</sup> The remainder operated in the areas of health,

<sup>1197</sup>In 2018 there were 27,886 not-for-profit institutions registered with Charities Services of which 15.8 per cent were concerned with culture, sports, or recreation; 7.1 per cent with social services, 18 per cent with religion, 9.3 per cent with development and housing; and 21.1 per cent with education and research. These statistics do not cover the full range of CSOs, as many, such as trade unions, business and professional associations are not registered charities.

environment, trades unions, business and professional associations, law, advocacy, and politics.<sup>1198</sup>

New Zealanders are very active in their communities because of smaller populations, fewer degrees of separation, and a strong cultural and pioneering history where voluntary assistance is expected as part of society. Volunteering is estimated to be worth 2.3 per cent of gross domestic product (NZ\$4.8 billion per year) to the New Zealand economy.<sup>1199</sup> Some communities rely on local CSOs such as local social service agencies for their survival.<sup>1200</sup> The emergence of social enterprise is bringing new enthusiasm, technology, and financial support to these activities.

Māori society has strong expectations based on the Treaty of Waitangi. Māori have shared expectations, as well as diverse perspectives across tribal areas and rural and urban groupings, about the nature of society and how components within communities should be functioning to ensure society is meeting the needs of the people. The general expectations and definitions of civil society in the context of the Treaty principles, including partnership and active protection (of taonga),<sup>1201</sup> are a work in progress by both Treaty partners.

Pasifika communities are well engaged in many areas of civil society, contributing to wider society while also retaining some independence in their association, with benefits to their maintenance of identity. Pasifika leaders are active in politics, academia, social services, education, ethnic and language issues, and churches.

Many CSOs such as the Association of Non-Governmental Organisations of Aotearoa (ANGOA)<sup>1202</sup> consider that separation from government and business influence is critical for their success, while others rely on service funding from the government or donations from business to do their work.

International literature and experience confirm that increased social engagement and cohesion drives growth in CSOs. “Just as current roles of civil society actors vary widely in the turbulent present, across and within the unique contexts of countries and cultures, the future roles of civil society will be diverse and multiple. However, individual factors such as technological change, demographic shifts, environmental pressures and political and economic uncertainty, as well as the demands of multi-stakeholder models strongly suggest that the roles that civil society plays

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<sup>1198</sup> Statistics New Zealand, “Counting non-profit institutions in New Zealand 2005”, [www.stats.govt.nz/browse\\_for\\_stats/people\\_and\\_communities/Households/Non-ProfitInstitutionsSatelliteAccount\\_HOTP2005/Commentary.aspx](http://www.stats.govt.nz/browse_for_stats/people_and_communities/Households/Non-ProfitInstitutionsSatelliteAccount_HOTP2005/Commentary.aspx)

<sup>1199</sup> Office for the Community and Voluntary Sector, *Key Facts*; Statistics New Zealand. No comparable statistics are available for 2018 but the General Social Survey for 2016 found that volunteers contributed over 13.5 million hours working for organisations over a period of 4 weeks. At the adult minimum hourly wage rate of \$15.75, this would come to \$213 million for the period<sup>1199</sup>, <https://www.stats.govt.nz/tereo/reports/volunteering-and-donations-by-new-zealanders-in-2016>

<sup>1200</sup> For example, Wesley Community Action, Cannons Creek, Porirua, runs budgeting services, food banks, and a community garden and promotes relationship skills.

<sup>1201</sup> State Services Commission, *All about the Treaty* (Wellington: State Services Commission, 2005), [www.nzhistory.net.nz/files/documents/All\\_about\\_the\\_Treaty.pdf](http://www.nzhistory.net.nz/files/documents/All_about_the_Treaty.pdf)

<sup>1202</sup> ANGOA no longer (2018) exists, but has been partly replaced by Hui E! Aotearoa

will gain in importance".<sup>1203</sup> CSOs can be the bulwark of local, regional, and national political stability; can build community assets and resilience; can provide a community mandate to government processes; and can be trusted means for the delivery of a variety of social services as well as advocating for social and political change.

There is no significant national debate on whether New Zealand is providing an enabling environment for CSOs (for example, in terms of legal, governance, funding, and disclosure requirements). New Zealanders like and value the work of CSOs, and want them to continue. New Zealanders generally have a passion for contribution, but are less interested (even passive) in ensuring that the best arrangements are in place to enable these organisations to do their work. They seem to take the view the current systems work adequately and will just continue to work.

### **11.1.1 Resources (law)**

#### **To what extent does the legal framework provide an environment conducive to civil society?**

Score: 4

*The legal framework is generally sound.*

The soundness of the legal framework was confirmed by those interviewed and by New Zealand's 87 per cent ranking at the top of the Civicus Enabling Environment Index 2013.<sup>1204</sup> There are areas of concern around definition and disclosure. Addressing these areas would improve the medium- and long-term performance of the framework.

Those interviewed found the legal environment largely enabling for CSO formation and development, and accepted the various legal requirements as necessary safeguards.

The fundamental legal protection for freedom of association, expression, and assembly is the New Zealand Bill of Rights Act 1990. The legal framework for CSOs is provided by law through statutes such as the Charities Act 2005, Incorporated Societies Act 1908,<sup>1205</sup> and Income Tax Act 2007. In addition, there are contractual requirements from funders, and sector best practice requirements such as adhering to codes of conduct or practice. Many CSOs operate across a wide variety of community activities, so they must comply with a wide variety of organisational and sector requirements.

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<sup>1203</sup> World Economic Forum, *The Future Role of Civil Society*, World Scenario Series, January 2013.

<sup>1204</sup> CIVICUS, "CIVICUS 2013: Enabling Environment Index". [civicus.org/what-we-do-126/2013-05-06-10-38-39](http://civicus.org/what-we-do-126/2013-05-06-10-38-39). This index has not been updated since 2013 but the Civicus Civil Society Monitor 2018 reported that "New Zealanders are generally free to express their views, gather peacefully, and to form and join associations, as civic freedoms are widely respected in both law and practice. Civil society organisations can operate freely, and most protests are peaceful and well-policed. The media is free and free expression constitutionally-protected. Current concerns amongst rights groups include provisions in counter-terror legislation which would unduly limit the right to protest at sea and potentially undermine the right to privacy"  
<https://monitor.civicus.org/newsfeed/2016/11/01/new-zealand-overview/>

<sup>1205</sup> The Incorporated Societies Act has been updated and the amended Act was expected to be submitted for Cabinet approval in late 2018 but it appears to have been delayed, <https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/incorporated-societies-act-review/>,

The Charities Commission, now the Department of Internal Affairs – Charities Services,<sup>1206</sup> completed several reviews in recent years and made changes to improve the framework within which CSOs operate, including promoting the enactment of the Charities Act 2005 (now (2018) under review),<sup>1207</sup> developing financial reporting standards, researching the characteristics of charities in New Zealand, promoting tax changes, and clarifying audit requirements. While those interviewed respected the results of these activities in some administrative improvements and clarity around reporting, they raised issues relating directly to transparency and integrity, which have not been addressed. These issues are described in the relevant sections of this pillar report.

CSOs can have a variety of legal structures (significantly as incorporated societies), and there is little that prevents them from doing the work they are set up to do as long as their objects relate to social and community benefits. The Law Commission is reviewing trust structures and may recommend new structures.<sup>1208</sup> The Commission also recommended updating the Incorporated Societies Act 1908.

A problem with the Charities Act 2005 is that it denies the benefits of registration as a charity to those organisations whose main purpose is advocacy.<sup>1209</sup> The intent may have been to exclude organisations fronting (or advocating) on behalf of industry and business, but the National Council of Women was de-registered in 2010 when it stated that advocacy was its primary purpose and then reinstated in 2013 when it declared purposes such as community education.<sup>1210</sup> Legislative change to exclude advocacy by charities was considered and abandoned during the development of the Charities Act and again in 2012. Debate remains live in this area<sup>1211</sup>.

There are no legal limits or disclosure requirements on administration overheads as a percentage of donations to CSOs. It is reasonable for the donating public to expect that a high proportion of their donation would be used for the purpose stated (that is, to provide services) and not be used up in administration costs. It would be possible to regulate for limits on registered charities' overheads as a proportion of donated funds.

Government contracting, which is a major source of income for many CSOs, can be complex, with different requirements between government agencies, particularly for accreditation, monitoring, and auditing. The combination of requirements is often excessive for the amounts involved and results in extra demands on community organisations' limited resources. Those interviewed felt strongly that if registration processes and standards could be improved for

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<sup>1206</sup> The Charities Commission was disestablished and its functions transferred to the Department of Internal Affairs, taking effect from 1 July 2012. Since most of the 2013 information in this pillar report refers to the previous administration of charities, the former name has been retained where relevant.

<sup>1207</sup> See <https://www.dia.govt.nz/charitiesreview>

<sup>1208</sup> Law Commission, *Review of the Law of Trusts: A Trusts Act for New Zealand*, NZLC R130 (Wellington: Law Commission, 2013) was tabled in Parliament on 11 September 2013, <https://lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R130.pdf>

<sup>1209</sup> Charities Act 2005, section 5.

<sup>1210</sup> Interview with Dr Judy Whitcombe, New Zealand Federation of Graduate Women (Wellington), Zonta (Mana), and National Council of Women (Wellington), March 2013.

<sup>1211</sup> A comprehensive review of the Charities Act, expected to take two to three years, was announced in February 2018. It is currently underway and includes CSO representatives on the review team.

community organisations and then relied on to streamline contracting, more value would be generated from government funding. An integrated contract has long been an objective of many community organisations.

The above issues generate mixed service and charity business models for many community organisations. Service activity often subsidises representation or advocacy activity, and funders often fund community organisations at lower rates and for shorter terms than they fund commercial providers (relying on the organisation obtaining donations to bridge the gap). This situation creates very unclear and short-term operating conditions, resulting in lower medium-term value from a given funding stream. Faced with these uncertainties, community organisations are less likely to put effort and investment into arrangements with medium-term beneficial results (for example, internal efficiencies, collaborations, alliances, and mergers) to help them build sustainable business.

### **11.1.2 Resources (practice)**

#### **To what extent do CSOs have adequate financial and human resources to function and operate effectively?**

Score: 3

*In practice, there are problems with the clarity of funding arrangements, the definition of advocacy and service activities, and the influence of funding agencies over CSO activities.*

CSOs obtain resources from different sources – government, private funders, business, and the public. It is relatively easy for these organisations to appeal to the public through requests for donations, street-collection days, and other fund-raising activities. The administration costs of obtaining these funds differ widely between organisations and can be a high proportion of funds collected (see the administration overhead point above). Funding sources can be multi-layered, depending on which part of the CSO is being funded, and funding can be from multiple sources for the same service.

Some CSOs raise concerns that the issues they deal with are intergenerational such as violence, gambling, abuse, and lack of adequate housing, and require long-term interventions. Reliance on annual funding cycles creates uncertainty about the continuation of long-term programmes and puts extreme pressure on limited resources with a requirement to constantly fund-raise.

Short-term funding is a particular problem for CSOs that need to employ and train staff. “We need well-trained, well-qualified people, especially for our field staff, who work under very little supervision. Even if we can get staff who are well qualified, it may take up to six months for them to be fully effective in their role. But because we only get government funding on an annual basis we can only offer them year-to-year contracts. It is almost impossible to get good staff under such conditions.”<sup>1212</sup> Access to ongoing funding from government continued to be seen as a major challenge by many organisations in 2018. Reliance on often short-term project

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<sup>1212</sup> Interview with Raewyn Fox, Chief Executive, New Zealand Federation of Family Community Budgeting Services, 21 August 2013.

contracts leads to insecurity among staff as chief executives are reluctant to employ staff members who might have to be laid off if further contracts or extension to contracts do not eventuate.

For some CSOs, independence from government funding is a core principle, particularly those involved in social change and new social entrepreneurship models. These organisations have seen the restrictions placed on advocacy and innovation that can result from significant government funding, so have decided to avoid this funding source, even if it limits their funding options.

CSOs that rely on government funding can become important allies to government agencies involved in social change. Examples can be found in the areas of family violence, compulsory seat-belt use, and immunisation campaigns, and in new social entrepreneurship models such as young enterprise schemes, youth parliament, and those addressing climate change issues. These organisations state that service provision is their primary activity and advocacy is a secondary activity, so they are not restricted from receiving funding from central and local government for their activities.

For many CSOs, government funding is supplemented by strong relationships with companies, local businesses, and philanthropic organisations. However, there are some sources of funding that raise ethical issues and are not acceptable to all CSOs. Examples include pub charity funds, which may arise from gambling, and sponsorship by agencies associated with the alcohol industry.

While most CSOs consulted certainly say they are under-funded, this may simply reflect their desire to carry out additional activities valued by their community. Most organisations confirm that they have sufficient funding to operate in their current situation, albeit on a short-term planning horizon. However, many small CSOs, especially diaspora groups in the international sector, closed when their prospects for funding disappeared in 2008 with the absorption of NZAID into the Ministry of Foreign Affairs and Trade and the replacement of the KOHA/Partnerships for International Community Development Scheme with another funding scheme with more stringent accessibility conditions.<sup>1213</sup>

Community organisations often rely on volunteers and dedicated employees who are prepared to work at lower rates of pay than they would receive elsewhere. Generally, organisations report no difficulty in attracting enthusiastic people knowledgeable about the cause,<sup>1214</sup> but say that attracting business skills can be difficult, including at board level. These constraints, together with the short-term funding environment, deliver organisational structures and processes that are less effective and efficient than they might otherwise be, resulting in reduced output from available resources.

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<sup>1213</sup> Banks, G., Murray, W., Overton, J. and Scheyvens, R. (2012), Paddling on One Side of the Canoe? The changing nature of New Zealand's development assistance Programme. *Development Policy Review*, 30: 2010, pp.169–186, doi: 10.1111/j.1467-7679.2012.00570.x.

<sup>1214</sup> Though Increasingly, government agencies are requiring staff qualifications that may not be held by, or are difficult to obtain for, volunteers

Several government agencies offer training and mentoring resources to build CSO capability (the Charities Commission; Te Puni Kōkiri (the Ministry of Māori Development); the Office of Ethnic Communities; and the Ministries of Social Development, Pacific Peoples, Health, and Education)<sup>1215</sup>, as well as the Institute of Directors (governance), businesses (through community work days), and philanthropic organisations. The government also delivers a workforce development agenda of training and support to CSO service providers through the Department of Internal Affairs; the Ministries of Health and Justice; Child, Youth and Family (now (2018) entitled Oranga Tamariki), which is a division of the Ministry of Social Development; and district health boards. Even the Electoral Commission provides funding to CSOs to meet common objectives,<sup>1216</sup> especially where the government relationships with local communities are weak. Some major philanthropic organisations provide training, information, advice, and support to client CSOs to assist their development and achieve positive outcomes.<sup>1217</sup> Some banks provide practical support, which can generate more funding for CSOs.

Use of technology is improving but still lags behind the government and business. Administration systems are typically labour intensive (not automated) and high cost for low volumes, with a risk of loss of intellectual property and institutional knowledge when staff leave. Community organisations have much to gain from modern information technology, because it allows more effective dispersed membership activity, creates efficiencies in administration processes, and permits new areas of activity and innovation to be introduced in a sustainable way. It also assists communication with funders.

Some CSOs duplicate services and activities in their regions and local communities, and some CSOs are overly burdened by multiple reporting requirements to multiple funders. The government is slowly addressing these issues by considering improved funding models – with input and advice from CSOs – where multi-agency funding would be pooled and service tendering and contracting processes would be more transparent and streamlined across various government agencies. Whānau Ora is an example of such a model,<sup>1218</sup> combining resources from multiple agencies and establishing national models for commissioning CSO delivery of services that meet specific whānau (extended family) needs.

Improved models are long overdue and would significantly increase the value CSOs could generate from a given level of resources. Flow-on effects would include CSOs clustering services

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<sup>1215</sup> It appears (2018) from consultation with CSOs that the only training or resources available from the Ministries of Health, Education and Justice are information materials. Areas where training needs were indicated were governance, office management, employment practice and support with research and evaluation. MSD, for example, provides a training fund, which is administered by InclusiveNZ and available to all staff of CSOs with MSD contracts. The Ministry of Health has a similar fund administered by Te Pou o te Whakaaro Nui, a national centre of evidence based workforce development for the mental health, addiction and disability sectors.<sup>1215</sup>

<sup>1216</sup> Electoral Commission, "Resources and learning". [www.elections.org.nz/resources-learning](http://www.elections.org.nz/resources-learning)

<sup>1217</sup> CareerForce is not a philanthropic organisation but as an Industry Training Organisation for the health and wellbeing, social and community sectorsit offers workforce-based support as well as facilitating Government grants for Hauora Maori and Mental Health (2018) training [www.careerforce.org.nz](http://www.careerforce.org.nz)

<sup>1218</sup> Whānau Ora is an inclusive interagency approach to providing health and social services to build the capacity of all New Zealand families in need. It empowers whānau as a whole rather than focusing separately on individual family members and their problems: Te Puni Kōkiri, "Whānau Ora", <https://tpk.govt.nz/mi/whakamahia/whanau-ora> [accessed 2018].

into networks and combining administration functions. Fragmentation in government funding contracts is a major impediment to this goal.

CSOs find that it can be difficult to attract employees and volunteers. While some CSOs pay expenses, many volunteers are not reimbursed. People accepting a voluntary or partially paid role with a community organisation are providing a donation to that organisation. It is noted that donations of money to registered charities attract a tax rebate while donations of time do not, and many of those interviewed would like to see a tax rebate for voluntary time.

Many government departments regularly complete environmental scans of the CSO sector to plan for future investments and supports. The Ministry of Foreign Affairs and Trade, for example, has an extensive registration process for eligibility for its Partnerships Fund. These scans are usually conducted by individual departments whereas many CSOs provide services for multiple government agencies, so have to participate in multiple similar exercises, taking time from their core business.

#### **11.1.3 Independence (law)**

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

Score: 5

*Legal safeguards exist, and there are no significant or immediate concerns.*

CSOs enjoy a high level of independence through several legal safeguards.

- Human rights law allows New Zealanders to form and engage in groups regardless of political ideology, religion, or objectives.<sup>1219</sup>
- The law on trusts requires trustees to make decisions independently, and incorporated societies must have constitutions or rules that require them to act in the interest of their members (through the stated objects of the society).

Government intervention is limited by law to legitimate areas of national security, public order, public health, and the protection of the rights of others.<sup>1220</sup>

- The Charities Commission can investigate whether a registered charity is acting in line with its objects and has the power to de-register a charity.
- There are no regulations stipulating government membership of community organisation boards.
- There are no regulations allowing for mandatory government attendance at community organisation meetings.

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<sup>1219</sup> New Zealand Bill of Rights Act 1990.

<sup>1220</sup> Human Rights Act 1993.

- Consultation and tendering requirements for government agencies<sup>1221</sup> ensure processes for awarding contracts are carried out according to best practice. Complaints about poor practice on the part of government agencies (including influence from external parties) can be made, in which case they are investigated by the relevant government agency. There is also the right to complain to the Ombudsman.

Those consulted report no other issues or actions relating directly to legal safeguards.

#### **11.1.4 Independence (practice)**

##### **To what extent can civil society function without undue external interference?**

Score: 4

*Civil society is generally independent in practice, with improved performance possible through better disclosure of influences affecting CSOs and the clarification of funding arrangements to enhance the public's knowledge of civil society and CSOs' ability to act independently in practice.*

On a practical level, most of those consulted felt their organisation enjoyed a high level of independence, and that they could build necessary relationships on their own terms. Many community organisations reported that they were able to engage with other organisations in the community, the government, and business as they needed to deliver their role. Many felt quite well established and did not report any constraints on their independence.

For some, however, independence is limited by political relationships and funding uncertainty, as noted above. A funder (whether the government or business) can influence the activity of a community organisation in non-transparent ways.

Government service contracts can include contractual terms prohibiting the provider from contradicting or criticising government policy in that contract area or from speaking publicly about it. Even if there is no such contractual term, there can be pressure felt by a community organisation, leading it to refrain from comment or to limit its comments for political reasons, including uncertainty around future funding and the need to compete effectively for scarce government funds. These factors can limit a community organisation's ability to represent and advocate for its members and to hold the government to account – a core role of CSOs.<sup>1222</sup>

Businesses or private interests may support organisations that understand their views and interests with the expectation that the organisation will help influence public opinion and gain

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<sup>1221</sup> See Bill Paterson, *Integrity Plus 2013: New Zealand National Integrity System Assessment – Public procurement*, supplementary paper 4 (Wellington: Transparency International New Zealand, 2013), [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>1222</sup> In 2016, there was a rather different problem with contracts., The Ministry of Social Development stated that future contracts would require community agencies to provide individual client level data. This aroused major concerns about privacy and trust, especially among those CSOs working in sensitive areas such as sexual violence or budget advice. Following an outcry led by ComVoices, a network of CSO peak bodies, and advice from the Privacy Commissioner that MSD "should consider alternative methods for accomplishing its goals implementation of the policy was delayed. After the 2017 elections, the new Minister stated that she would not continue the policy. A working group with CSO representation, has been set up to advise the Social Investment Agency on a new approach to the policy. (Information from Brenda Pilott, former chair of ComVoices).

them commercial advantage. They may fund an organisation directly to represent their interests, engage on their behalf, and advocate for them with government and the public to put their businesses or industry in a more positive light. These organisations play an important role representing their industries (for example, Federated Farmers of New Zealand, the New Zealand Forest Owners Association, Aquaculture New Zealand, and the Researcher Medicines Industry Association) or providing services (for example, the Aged Residential Care Association, IHC,<sup>1223</sup> the Paediatric Society of New Zealand, and the New Zealand Disability Support Network). These organisations may claim to act in the public interest, publish good research, and even seek public donations.

It can be difficult for the public to tell in whose interests a CSO is operating or to differentiate between advocates for industry, business, or the government and organisations that clearly represent the interests of a community group (such as Diabetes New Zealand, the Disabled Persons Assembly, the Association of Blind Citizens, Women's Refuge, and TINZ). Effectively, the lack of transparency in the arrangements creates the potential for external interference in the operation of the more genuine CSOs or for self-imposed limitations.

CSOs must maintain their work and reputation across a broad range of stakeholders, including the public. They guard their brand and services against being associated with undue external influence. The variety of mechanisms that ensure this includes transparent appointment processes and strong governance and management processes.

### **11.2.1 Transparency (practice)**

#### **To what extent is there transparency in CSOs?**

Score: 4

*Transparency is generally good, with improved performance possible through better education of CSOs and citizens to help them interpret the available information, for example, from financial reports. This would increase public expectations about their operations, reduce variability in performance across CSOs, and identify poor-performing CSOs that should close.*

There are some legal requirements for transparency. The Charities Commission has supported or promoted regulatory changes to improve transparency in the operation of charities and other CSOs, including the External Reporting Board's programme of setting financial reporting standards for registered charities.<sup>1224</sup> The Law Commission has recommended that these standards also apply to incorporated societies. The Fair Trading Act 1986 now requires third-party organisations that raise funds on behalf of charities to disclose the remuneration they receive for the service they provide to the charity.<sup>1225</sup>

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<sup>1223</sup> IHC is the organisation formerly known as the Intellectually Handicapped Children's Parents' Association and New Zealand Society for the Intellectually Handicapped.

<sup>1224</sup> The External Reporting Board is an independent Crown entity established under section 22 of the Financial Reporting Act 1993 and subject to the Crown Entities Act 2004.

<sup>1225</sup> Fair Trading Act 1986 section 28(a)

The Charities Act 2005 allows for information on the register of charities to be restricted if it is in the public interest to do so (such as for the protection of individual privacy).<sup>1226</sup> The criteria for restriction are available on the Charities Commission website and include the right to challenge the decision. Those consulted felt satisfied with this process.

Disclosure requirements for non-registered community organisations are minimal, covering the basic legislative reporting requirements for their legal form, and do not reflect any wider interest that the public may have in these organisations.

The OIA assists the public to find information about government dealings with community organisations. Community organisations are not subject to the OIA, but the government agencies with which they deal have disclosure obligations (unless information can be withheld under OIA provisions, perhaps to protect commercial confidentiality or to avoid affecting the provision of free and frank advice), and may be required to disclose information about their dealings with the organisations.

CSOs are subject to the Privacy Act 1993 and must release personal information about individuals to those individuals on request (unless withholding provisions apply).

Comment from those interviewed focused on the problem of ensuring that the public has clear information about the many CSOs in order to make informed decisions when dealing with CSOs. There is a case for providing CSOs with education on best practice disclosure for organisations of their type and size, such as an easy check-list or self-assessment process, together with links to education advice through the websites of the Charities Commission, the Institute of Directors, and the Ministry of Social Development.

Those consulted described a wide variety of activity and engagement approaches with their communities of interest. Common approaches involve the use of annual general meetings, strategic plans, audited accounts and financial reports, appointment processes, customer and client surveys, public gatherings and events, and clinical and service audits. The internet has significantly increased public access to information about individual CSOs. The public can access a substantial amount of information from many CSOs because their nature as community organisations is built on principles of openness and transparency. The media also plays a significant role through its reporting activity and through specialised outlets and blogs that take watchdog roles on specific social issues.

Communities can be the strongest critics of their CSOs. They can require a CSO to review its overall agenda and processes in response to a new issue or event. The growing awareness of the effects of climate change, especially on small Pacific nations, and requests from their communities for assistance require organisations such as Oxfam New Zealand and Caritas to be ready to adapt plans and respond to such emergencies. The CSO needs to be flexible and dynamic in its approach to remain relevant to its community and supporters.

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<sup>1226</sup> Charities Act 2005, section 25.

Parliamentary process offers several ways to profile and investigate concerns about undue influence – through a local MP, opposition parties, and the media attention such issues can attract.

Some registered charities maintain a high level of transparency, with most reporting that they disclose more than legally required – “everything” is available to members, usually through annual reports with audited accounts. Incorporated societies with an active membership also generally report that they have very open and transparent processes as demanded by their members (irrespective of whether they are a registered charity). The pattern is one of regular newsletters, updates, and web content with members active in raising issues and expecting the organisation to respond quickly.

When seeking donations and public support, any organisation can present itself as a charity, whether registered with the Charities Commission or not. Unregistered charities face no requirement to disclose their use of funds. This raises transparency and credibility concerns.

Sporting clubs, independent schools, and faith-based organisations seem to be generally less transparent, with a small number of active officers at the core of the organisation and the wider membership uninvolved. Sometimes, this is a result of smaller size and resources, but often it is simply a lack of discipline or knowledge, or a desire to avoid questions (and the time required to answer them). The risk of inefficiency, tax problems, fraud, and poor accounting is still real for these organisations. Publicised examples include a religious organisation making large profits from donations from its congregation but not using them for charitable purposes, and a sports club spending a surplus on “investigatory” trips for club officials to international sporting events.

New Zealanders are not generally well informed about the levels of transparency and disclosure they should expect from their community organisations or even what disclosure to expect from registered charities. While some organisations provide a high level of information, greater public understanding of what to expect would create greater “pull” or demand for best practice disclosure and transparency. This is particularly relevant for sports clubs and faith-based organisations.

CSOs representing disadvantaged groups point out that many government agencies and many community organisations are uninformed about human rights requirements or ignore them. While attention is paid to equal employment opportunities and language requirements, attention to human rights overall is patchy. Examples for people with disabilities include access to sites, employment, interpreters, and the use of sign language. It would be helpful to define disclosure requirements on a CSO’s performance against human rights legislation. Such disclosure could be graduated from self-reporting to more direct requirements where problems are found or self-reporting fails.

### **11.2.2 Accountability (practice)**

#### **To what extent are CSOs answerable to their constituencies?**

Score: 4

*CSOs are generally answerable to their constituencies with improved performance possible through better education of CSOs on good governance.*

Information and training are available for CSOs to lift their capability and performance, but uptake is largely voluntary and the costs and format of training may be an inhibitory factor<sup>1227</sup>. Formal requirements (either legal requirements or strong industry standards) would improve governance performance.

Those consulted identified governance documents (constitution, rules, and memoranda) as the main form of accountability to constituents. Generally, their organisations feel very accountable because of high transparency and a high or very high level of engagement with and challenge from their members.

These highly connected community organisations often exceed legal requirements. However, there is still a need for educating community organisations on the value of good governance, external input, and training and board evaluation. The standards set by the Institute of Directors, including the Four Pillars of Governance, could be used as benchmarks for best practice.

Interviewees said the Department of Internal Affairs - Charities Service provides good guidance about “strengthening your charity” and covering the qualities of an effective charity in terms of governance, board composition, income, financial management, communications and information technology, human resources, planning, and evaluation. This information has been conveyed through a range of media including webinars and blogs.

New social media technology is enabling community organisations to engage more and at lower cost with their members and supporters. There is faster access to media, faster generation of views, and faster response to issues. Process improvements continue to refine this engagement and increase its effectiveness.<sup>1228</sup>

Community organisations that are not incorporated societies or registered charities often have very low levels of accountability to their constituencies. Examples include independent schools, churches, and business associations, which do not report financial and performance information, preferring to keep it private. Legal structures, such as some forms of trust, intended for private organisations require very little transparency about their purpose, members or beneficiaries, performance, or financial audit information. It is not always easy to distinguish between a semi-private organisation of this kind presenting as a CSO and a fully accountable CSO.

Those consulted described mixed results when asked about external membership of their boards and external review of board and organisation performance. Most reported that monitoring reviews by their funder provided some useful information, but were focused on

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<sup>1227</sup> Hui E! reported that a digital approach disadvantaged many community organisations, especially Māori and minority ethnic groups, with limited access to new technology. Conversation with Anaru Fraser, 20/06/18

<sup>1228</sup> Video conferencing and Skype, for example, can include members from all parts of the country at little expense. In developments since 2013, Webinars, Instagram, Facebook and Twitter can convey messages rapidly while fund-raising for specific projects through Givealittle has proved effective. Crowdsourcing is used to bring together a demonstration to support a cause.

monitoring a particular contract rather than overall board or organisational performance. Some organisations have no external input, satisfied that their diverse membership provides all the critique they need. Others who could benefit from external input (see above on attracting business skills) may be prevented from doing so by internal politics or the belief that only members can fill board roles. Some organisations have active external input and review as well as board governance training and performance assessments.

### **11.2.3 Integrity (practice)**

#### **To what extent is the integrity of CSOs ensured in practice?**

Score: 5

*CSOs generally display high integrity in practice with no significant or immediate concerns identified. There is a wide variety of CSOs and smaller CSOs may be limited in delivering on their integrity aspirations by factors such as limited resourcing and governance capability.*

All those interviewed reported that integrity was of prime importance to them, their organisations, and their members. Community organisations with high engagement reported that membership trust and confidence and a wider public profile were paramount, and any issues around integrity were swiftly addressed. The quality of governance and management had a direct impact on delivering and maintaining a high integrity organisation.

As with all businesses, there have been occasional cases of fraud in CSOs. The manager of a women's refuge, for example, was convicted in 2013 of stealing NZ\$100,000 from refuge funds.<sup>1229</sup> The 2013 NIS assessment found no evidence of corruption or bribery in CSOs, even in the area of sport, where problems in Australia prompted the Crown to conduct an investigation into corruption, crime, and doping.<sup>1230</sup><sup>1231</sup> However other forms of undesirable behaviour, along with overseas experience, has led to a review of sports integrity by Sport NZ, with a discussion document issued in October 2018.<sup>1232</sup>

Most CSOs rely on their constitution or rules to define their objectives and way of working. Several have a code of conduct for their membership and regularly review compliance with it. The New Zealand Red Cross, for example, adheres to the Code of Conduct of the International Committee of the Red Cross. Other CSOs working in international disaster relief also follow this code.<sup>1233</sup> The use of codes of conduct seems to be a growing trend, possibly enabled by the useful guidelines and training on offer from the Charities Commission and other agencies (noted

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<sup>1229</sup> Kirsty Johnston and Rob Kidd, "No jail for Refuge manager who stole \$100k", *Stuff*, 1 October 2013, [www.stuff.co.nz/auckland/local-news/western-leader/9226290/no-jail-for-Refuge-Manager-who-stole-100k](http://www.stuff.co.nz/auckland/local-news/western-leader/9226290/no-jail-for-Refuge-Manager-who-stole-100k)

<sup>1230</sup> Simon Plumb, "Crown's probe into dope, corruption nears end", *Stuff*, 13 October 2013, [www.stuff.co.nz/sport/other-sports/9277518/Crowns-probe-into-dope-corruption-nears-end](http://www.stuff.co.nz/sport/other-sports/9277518/Crowns-probe-into-dope-corruption-nears-end) [accessed 13 October 2013].

<sup>1231</sup> (2018) Although no New Zealand teams or sporting organisations have been accused of sports corruption, individual New Zealanders playing cricket for overseas teams have faced charges of corruption, <https://www.tvnz.co.nz/one-news/sport/cricket/lou-vincent-receives-life-ban-for-match-fixing-6016515>

<sup>1232</sup> See <https://sportnz.org.nz/assets/Sport-Integrity-Review/Sport-Integrity-Review-Discussion-Document-30-October-2018.pdf>

<sup>1233</sup> See <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-1067.pdf>

above).<sup>1234</sup> All those interviewed reported active complaints processes, some through normal membership engagement and about half through formal complaints processes. Small and unregistered CSOs that do not have constitutions or rules, however, are less likely to have codes of conduct or any sort of complaints process. Issues may also arise within these CSOs over management procedures, conflicts of interest, weaknesses such as lack of financial literacy and poor accountability to donor communities.

Integrity also comes from credible (fast, informed, and forward-looking) responses to issues, enabled by social media technology. A community organisation's use of social media has a significant and increasing impact on the public's (especially young people's) views of an organisation's integrity.

Other community organisations and organisations seeking to be perceived as community organisations in order to influence public opinion for their stakeholders and funders are likely to allow the public to make positive assumptions about their integrity and public purpose by suppressing information to the contrary. As noted above, there is public benefit in tightening disclosure requirements for these organisations and tightening definitions around community or charity, service provider, and industry or business lobby group.

### **11.3.1 Hold government accountable**

#### **To what extent is civil society active and effective in holding government to account?**

Score: 4

*Civil society is active and effective in holding government to account with few significant or immediate concerns identified. There have been some significant successes. Overall, New Zealand CSOs are very capable in identifying and promoting issues with the public to hold government to account. A range of mechanisms is available, and CSOs are relatively free to utilise them.*

CSOs take on advocacy and public watchdog roles, and some are set up explicitly for that purpose. Representing groups in the community and advocating for them are core activities in civil society. Lobby groups working for business or the narrow interests of a few individuals are outside civil society, so it should be made easy for the public to identify them.

New Zealanders are proud of their ability to challenge the government through the usual political processes or through more overt public action such as marches, petitions, and public debate. New Zealand's political process is very open to this and generally responsive.

There is a strong history and many examples of community organisations influencing government. Notable campaigns have involved women's suffrage, Māori land, nuclear-free

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<sup>1234</sup> The Council for International Development (CID), for example, has adopted a Code of Conduct a voluntary, self regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations.<sup>1234</sup> A Code Committee of the CID Board monitors adherence to the Code and investigates complaints.

policies and legislation, the Springbok Tour 1981 (anti-apartheid action), women's rights, smoke free New Zealand, gay and lesbian rights, whistle-blower legislation, the introduction of MMP representation, the UN Convention on the Rights of Persons with Disabilities, sign language as an official New Zealand language, and same-sex marriage. Recent challenges to the government have occurred on asset sales, a minimum or living wage, and charter schools. Pasifika have campaigned for a Pacific language framework and early childhood education.<sup>1235</sup>

Citizens can access independent commissioners or ombudsmen responsible for protecting their rights and advising the public in the areas of human rights, privacy, health and disability, children, judicial conduct, environment, financial services, and utilities such as electricity. Citizens can also access the Office of the Ombudsman with complaints about central and local government agencies, requests for official information that have been refused or ignored by government agencies, and whistle-blowing.

2013 examples where concerns raised by the public were not addressed quickly enough included paedophiles in schools, an Accident Compensation Corporation security breach, and the Ministry of Education pay system (Novopay). These issues have generated considerable political heat and pressure on the government to address them and act more quickly in future.

Technology enables community organisations to drive more and more public engagement, debate, and comment. This poses a challenge to government to keep up to date and fully utilise new technology. There are complex issues about the role of media – whether commercial media models are reducing the standard of investigative journalism and making it harder to raise public debate. These issues are addressed in the media pillar report.

### **11.3.2 Policy reform**

#### **To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?**

Score: 3

*Government engagement with CSOs appears haphazard and often late or non-existent. Greater clarity is needed about how government gains high-value CSO input into policy development.*

The main anti-corruption focus comes from TINZ, which is very active. In addition to conducting this NIS assessment, it monitors and comments on government activity, especially in relation to progress towards adopting international best practice, has developed an anti-corruption training programme in conjunction with the SFO, and actively recruits members and allies in the public and private sector. It also holds regular public forums, seminars and workshops, works closely with the other five TI chapters in the Pacific, and has a strategy to work in partnership with the public sector, CSOs and business to strengthen integrity systems.<sup>1236</sup>

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<sup>1235</sup> Action Station is currently (2018) a very effective on-line campaigner for social justice issues and has had notable successes, for example, from polling, opinion surveys and group submissions to the Tax Working Group, and restoring funding to the Wellington Citizens' Advice Bureaux, <https://www.actionstation.org.nz>

<sup>1236</sup> See [www.transparency.org.nz](http://www.transparency.org.nz)

There is less general focus on anti-corruption in New Zealand, because the country considers itself to enjoy low levels of corruption. Although there is, therefore, little civil society activity that is directly linked to anti-corruption policy, it is likely that any such activities would face the same problems as other attempts to participate in government policy reform.

CSOs are involved in policy activity when the opportunity arises – either they are asked to participate in policy development or they respond to formal consultation processes. Given the variety of community organisations and interests, some are very engaged in policy processes while others only become involved if there is an issue of specific interest to them. The result is a variety of examples of engagement across all aspects of government activity.

Organisations with representative or advocacy roles for their members, such as disabled peoples organisations, report that it is often hard to gain involvement and input early in policy processes.<sup>1237</sup> They believe the government could better use their intimate knowledge of the subject-matter and their members' views at an earlier stage, resulting in better policy advice and lower costs. As these organisations build up their credibility through more effective online functionality, increased transparency, and faster responses, they are likely to demand greater and earlier input into policy processes.

Input is improving for disabled peoples organisations following acknowledgement in the UN Convention on the Rights of Persons with Disabilities (which New Zealand ratified in 2008) that they have a partnership role with government in policy development, service design, decision-making, and reviews of effectiveness.<sup>1238</sup> New Zealand also agreed to the Optional Protocol to the Convention on 5 October 2016. This protocol means that if a New Zealand disabled person has their rights breached under the Convention, they may be able to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities. The purpose of these measures is to ensure that "lived experience" informs policy development from the outset. This is an innovative approach, and New Zealanders were closely involved in developing the convention (for example, Don Mackay chaired the Ad Hoc Committee drafting the convention) and the action plan following the first review of the Convention in 2011. This approach places community organisations representing and advocating for people with disabilities at the centre of policy development, and is a significant challenge for the government, requiring new approaches to community engagement and the use of modern technology.

The key issue is ensuring community organisations are resourced to provide effective input into policy processes and that this input occurs at early stages. As noted earlier, there is much that can be done to assist in the capacity of CSOs, especially by way of clarifying the funding of representation and advocacy services as distinct from service delivery.

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<sup>1237</sup> The current (2018) coalition government has embarked on a range of policy reform in areas such as health, education, taxation, social welfare and justice, establishing advisory groups tasked to carry out wide consultation. All of these groups include CSO representatives. The process varies according to which Ministry is involved, Education is seen as the most collaborative. Conversation with Michael White, InclusiveNZ, an umbrella group for the disability sector, 28/06/18r.

<sup>1238</sup> UN Convention on the Rights of Persons with Disabilities: Article 4.3.

Clear government process and timing, with early involvement from representative groups in policy development is key. Often government agencies use tight timeframes and the need for confidentiality as reasons to avoid seeking early input from representative groups, thereby missing the opportunity for highly informed input early in the process. These groups are then disadvantaged by trying to address poorly formulated policy late in the process or, worse, through formal consultation processes. The government would gain significant value from designing processes for early input from highly informed representative groups.

#### **11.4.1 Te Tiriti o Waitangi**

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What do the institutions that make up the civil society sector do to partner with Māori, to respect and affirm Māori rights to make decisions and to enhance Māori participation in their field of activity? In particular, where civil society institutions have legal rights and obligations in this respect given to them by the Crown, how well do they honour them, including any Treaty obligations passed on by the Crown?**

*Civil society generally gives effect to the spirit and principles of the Treaty of Waitangi. There is large variation across CSOs given their diversity. Continued effort by Māori and the government to define the status of the Treaty and set performance standards for government organisations will, in turn, provide greater clarity for CSOs. Education remains a key first step towards increasing overall community awareness of and attention to Treaty partnership in the direction and progress of Aotearoa (New Zealand).*

There is no overall legal requirement for community organisations to observe the Treaty and its principles of partnership, respect, and participation, but there are requirements within specific legislation. Organisations established by Māori and those focused on Māori issues will obviously have tikanga Māori at their core, and many other community organisations see incorporation of Treaty principles and tikanga as essential to their integrity and credibility within the community. Treaty principles are accessible, but organisations need to create shared understanding with iwi and Māori generally as relevant to the community of interest.

There are views within Māori society that the principles of the Treaty<sup>1239</sup> are a set of themes that, while valuable, can take the emphasis away from the core of the Treaty contained in its articles. The articles were signed up and agreed to by Māori and the Crown in 1840, and it is the articles that define the relationship that should exist between Māori and the Crown. The reduction of the Treaty articles to a set of principles occurred because the SSC was required to define the application of the articles to other government agencies. The current complexities of the constitutional debate about the place of the Treaty and differing Māori views on the Treaty mean it is difficult to describe what community organisations should do to appropriately reflect Treaty principles and tikanga in their work. Most Māori advocate for their rights as tangata whenua who have a sense of obligation to all who live in Aotearoa.

The Human Rights Commission reports survey results that show low levels of public awareness about the Treaty – only 55 per cent of New Zealanders considered the Treaty New Zealand's

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<sup>1239</sup> State Services Commission, 2005.

founding document, and only 25 per cent rated the Māori–Crown relationship as healthy.<sup>1240</sup> The commission is working actively to make Treaty status and principles more accessible to New Zealanders mainly to raise the base level of awareness<sup>1241</sup>.

To increase the level of integrity in the debate about a better understanding of the Treaty, an approach needs to be centred on strong education initiatives and, as a first step, focused on why it is important to engage in a culturally appropriate manner. Such an approach would look at building the sustainable relationships required to lift overall understanding across the population, and create a more fertile base for further improvement.

More and more community organisations are taking account of local tikanga when forming, choosing a relevant organisation name, and defining their kaupapa. A recent example is the Charitable Trust Deed of Hui E! Aotearoa which uses a Treaty relationships framework.<sup>1242</sup>

These organisations may not incorporate Treaty principles into their work, but many will recognise and practice Māori greeting protocols (waiata, mihi, pōwhiri) and te reo Māori (language) in their signage and websites. Māori is one of two official New Zealand languages (the other being New Zealand Sign Language). Interestingly, English is not an official language, but a convention from its wide use. Several organisations reported that they had, or were introducing, tikanga workshops for staff and members. Almost all stated that their efforts to learn and practise tikanga Māori were increasing each year, and a few indicated attention to assisting staff to develop te reo Māori and use it in their organisation.

Education should be provided for CSOs on minimum and proficient levels of achievement in attending to Treaty principles and tikanga Māori, including self-assessment tools. Consideration could be given to including these requirements in the information on registered charities that the Department of Internal Affairs – Charities Service holds. CSOs that work in this area could provide Treaty education.

Many government funding contracts contain requirements for providers to incorporate Treaty principles into their work, to make their information available in te reo Māori, and to ensure staff are trained in tikanga Māori.

Māori are active in providing volunteer workers throughout New Zealand society including marae activities, the Māori Woman's Welfare League, sports clubs, youth groups, justice organisations, Māori wardens, and others. Māori identification with their traditional area (tūrangawaewae) as well as with whānau, hapū, and iwi is a strong driver of this volunteerism. Volunteering and political involvement at all levels involves Māori in the growth and development of Aotearoa New Zealand.

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<sup>1240</sup> UMR survey results: *The Treaty Relationship in 2011*. Human Rights Commission.

<sup>1241</sup> However, this information is now (2018) available through an on-line portal with a video so may be less widely available than previously especially as there is no current appointment of a Commissioner of Māori descent, reversing a situation that had prevailed since 1987.

<sup>1242</sup> See <http://www.huie.org.nz/wp-content/uploads/2010/03/FINAL-Hui-E-Trust-Deed-191020.pdf>

Special occasions such as Waitangi Day and the annual event at Ratana Pa provide opportunities for ordinary citizens, predominantly Māori in these cases, to present their views on issues of the day directly to politicians.

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## Business (pillar 12)

### Summary

*The 2018 update to the Business pillar has been amended through updating of the data, and additional analysis of risks to business integrity.*

This pillar report examines the role, governance and capacity of the business sector in terms of the strengths of its integrity systems to address corruption. An enabling legal environment allows companies to form and businesses to operate. The regulatory settings generally promote competition. In 2012/13, there was practically no evidence of corruption in government dealings with business. Since then, the case of Auckland Transport against Borlase and Noone<sup>1243</sup> has exposed corruption between business and government, leading to a legal decision by Justice Sally Fitzgerald that found there had been bribery, corruption, fraud, and conflicts of interest. Even so, this may be evidence of better detection rather than evidence of an increase in corruption.

In both 2013 and 2018, the World Bank found New Zealand to be the best place to do business.<sup>1244</sup>

Business is largely free from unwarranted interference from government agencies with variation between the more highly regulated sectors (transport) and those that previously had little regulation (the financial sector). The regulatory frameworks in the financial sector have been significantly overhauled, both before and since the beginning of the global financial crisis, and now include stronger disclosure measures and enhanced licensing, prudential oversight, and governance requirements.

Within that overall positive conclusion, however, findings in this pillar report suggest a low level of anti-corruption awareness and behaviour both domestically and in dealings in offshore markets. Though awareness since 2013 has increased through the publication of the Panama Papers in 2016 and the Paradise Papers in 2017, the introduction of anti-money laundering (AML) legislation and the rise in prevalence of computer scams, the business sector continues to treat practices to manage corruption as low priority. Far too many remain defensive in the face of questions about their approach.<sup>1245</sup>

A 2012 SFO survey found only 37 per cent of respondents thought the country was “largely free” of serious fraud and corruption.<sup>1246</sup> The 2013 NIS assessment found that there had been numerous significant fraud cases in the financial sector in the previous six years and this update has found increased detection of bribery and corruption in the five years to 2018. For this reason it seems likely that, in addition to the new stronger oversight and regulatory frameworks,

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<sup>1243</sup> R v Borlase and Noone [2016] NZHC 2970

<sup>1244</sup> World Bank, “Ease of doing business in New Zealand”, 2018,  
<http://www.doingbusiness.org/en/data/exploreeconomies/new-zealand>

<sup>1245</sup> Various surveys Deloitte, PwC, interview Cameron Smith, Omni-corp 3 July 2018.

<sup>1246</sup> Reg Birchfield, “The Director: Cover story – Boards blase about management”, *New Zealand Management*, September 2012.

maintaining regulatory vigilance and enforcement will be an important factor in restoring public trust in the financial system. Risks are still evident in the extent to which private companies, including all but the largest foreign-controlled companies, need not disclose their beneficial ownership and other financial matters. In its 2018 Annual Report, the SFO listed several cases of fraud and corruption involving the business sector. Many of these cases related to actions that took place in earlier years, raising again the question whether there is an increase in corruption in New Zealand or an improvement in detection.

Also relevant to this assessment of bribery and corruption, there appears to be a substantial domestic black economy, which supports organised criminal activity and has given rise to concerns about tax evasion, procurement practices, interference in housing markets, trade in high-value goods to launder money, and illegal employment (modern slavery) and immigration practices. There are grounds to argue that these activities are capable of being defined as corrupt, as they all go to the potential to “cultivate an atmosphere in which the bottom line justifies criminal activity”.<sup>1247</sup> Evidence found by the New Zealand Initiative in 2018 suggests, however, that the black economy is decreasing.<sup>1248</sup>

In export markets, qualitative interviews conducted for TINZ in 2013, supported by anecdotal evidence, suggest some business people, particularly in smaller exporting enterprises, view potentially corrupt or unethical business ‘norms’ in other markets as acceptable as long as they are conducted by third-party, in-country agents who do not inform the New Zealand company of their activities.<sup>1249</sup> For both large and small enterprises, there is the slightly different risk that, even if they find such activities unacceptable, they may not have sufficient oversight of their overseas agents. While the review of the Saudi Arabia Food Security Partnership by the Office of the Auditor General found no evidence of illegal activity, it did find evidence of unacceptable conduct.<sup>1250</sup>

The suite of company and securities laws and systems is reasonably comprehensive and effective, given New Zealand’s small size. There has generally been little sign of corruption in government dealings with businesses in New Zealand, and prior to the Panama Papers, the mainstream business community was not well informed about the criminalisation of bribery of foreign public officials. Up to that time it took a passive approach to managing its exposure to risks from bribery and corruption. Also, an overly permissive regime for company incorporation allowed some ‘shell companies’ involved in questionable activities, including potentially laundering money obtained through corruption offshore, to incorporate in New Zealand.

With the publication of the Panama Papers in 2016, much has changed between the 2013 edition and this update of the NIS in terms of knowledge about money laundering and other

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<sup>1247</sup> Jeremy Pope, *Confronting Corruption: The elements of a national integrity system*, TI Source Book (Berlin: Transparency International, 2000).

<sup>1248</sup> New Zealand Initiative, NZ Initiative Reports and Media, <https://nzinitiative.org.nz/reports-and-media/opinion/new-zealands-relatively-modest-shadow-economy/>

<sup>1249</sup> UMR Research with Transparency International, *Experiences of Corruption in Export Markets*, 2012. See also Chapter 3.

<sup>1250</sup> Office of the Auditor-General *Inquiry into the Saudi Arabia Food Security Partnership*, 26 October 2016, <https://www.oag.govt.nz/2016/food-security>

offshore corrupt behaviour. The 2016 Shewan Inquiry led to a change in the registration of foreign beneficial ownership of trusts domiciled in New Zealand and the following year, the number of registered foreign trusts fell from more than 13,000 to 3,000.<sup>1251</sup>

The 2013 recommendations in Chapter 6 that flow from the concerns at that time, sought to raise awareness of the changing rules about corruption in overseas markets and generally to ensure adequate training on, and, awareness of corruption and integrity risks and their management. One way to address this problem is through good governance, and recommendation 6(a)(iv) was about the business sector working with the Institute of Directors to encourage the highest standards of governance. Another specific recommendation that flowed from this pillar report was directed at the executive and the public service who need to establish stronger disclosure requirements about the beneficial owners of companies registered in New Zealand.

By 2018, the government was publicly consulting on measures to increase transparency of beneficial ownership of New Zealand companies and limited partnerships. The Ministry of Business, Innovation and Employment released two discussion documents in June 2018:

1. a discussion document seeking feedback on increasing the transparency of the beneficial ownership of New Zealand companies and limited partnerships,<sup>1252</sup>
2. a discussion document seeking feedback on publication of directors' residential address in the companies register.<sup>1253</sup>

It is important that businesses strive to address the massive risks to New Zealand of overseas corrupt practices through engagement in the development of a public register for all legal entities.

Key lessons since the 2013 NIS assessment have been about the massive size of offshore transactions controlled by corrupt individuals sometimes involving previously innocent members of the public. New Zealand business is particularly exposed and vulnerable through an apparent lack of knowledge of the nature and magnitude of these transactions and perhaps because of this, a propensity to de-prioritise preventative policies and practices and to under-invest in strategies that would strengthen their integrity systems and culture of trust.

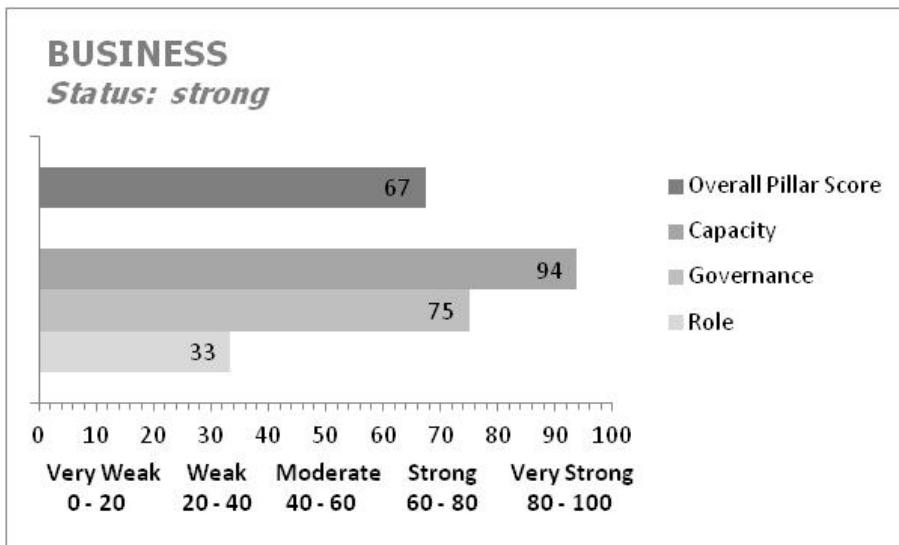
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<sup>1251</sup> See <https://www.stuff.co.nz/business/industries/94403144/foreign-trust-numbers-plummet-after-postpanama-papers-rules-kick-in>

<sup>1252</sup> See <http://www.mbie.govt.nz/info-services/business/business-law/supporting-the-integrity-of-the-corporate-governance-system/increasing-transparency-beneficial-ownership-nz-companies-and-ltd-partnerships>

<sup>1253</sup> See <https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/supporting-the-integrity-of-the-corporate-governance-system/>

Figure 14: Business scores



Source: Transparency International New Zealand, 25 October 2013. For an explanation of the scoring process, see the introduction to Chapter 5.

### Structure and organisation

According to the Statistics New Zealand Enterprise Survey, there were approximately 440,000 enterprises in New Zealand in 2012.<sup>1254</sup> Of these 97,000 were not-for-profit organisations.<sup>1255</sup> The latter are largely covered by the civil society pillar report.<sup>1256</sup>

Most enterprises were small, with five or fewer staff. In both 2013 and 2018, when enterprises with no employees are included in this group, more than 80 per cent of enterprises are of this size. Only 2.5 per cent of enterprises employed more than 50 staff, although a third of employees worked for organisations with 50 or more staff.<sup>1257</sup> By February 2017, the New Zealand Demography Statistics suggested growth in the scale of larger organisations with enterprises with 100 or more employees engaging 47% of all employees in New Zealand, while the proportion of the workforce in smaller-sized enterprises fell between 2012 and 2018.<sup>1258</sup>

<sup>1254</sup> Statistics New Zealand, "Business directory update survey: Annual", [www.stats.govt.nz/surveys\\_and\\_methods/a-z-of-our-surveys/bus-directory-update-survey-annual.aspx](http://www.stats.govt.nz/surveys_and_methods/a-z-of-our-surveys/bus-directory-update-survey-annual.aspx) (2018 this page is archived, at <http://archive.stats.govt.nz/survey-participants/a-z-of-our-surveys/bus-register-update-survey-annual.aspx>)

<sup>1255</sup> Statistics New Zealand, "Business directory update survey: Annual"

<sup>1256</sup> 2017 figures indicate an increase in for-profit enterprises, though the calculation basis may differ from that of 2012, [http://archive.stats.govt.nz/browse\\_for\\_stats/businesses/business\\_characteristics/BusinessDemographyStatistics\\_HOTPFeb17.aspx](http://archive.stats.govt.nz/browse_for_stats/businesses/business_characteristics/BusinessDemographyStatistics_HOTPFeb17.aspx)

<sup>1257</sup> Statistics New Zealand, "Business directory update survey: Annual".

<sup>1258</sup> See [http://archive.stats.govt.nz/browse\\_for\\_stats/businesses/business\\_characteristics/BusinessDemographyStatistics\\_HOTPFeb17.aspx](http://archive.stats.govt.nz/browse_for_stats/businesses/business_characteristics/BusinessDemographyStatistics_HOTPFeb17.aspx)

Most enterprises earn just sufficient revenue to continue trading. In 2012 only 6,000 earned NZ\$10 million or more per year.<sup>1259</sup> While the number of enterprises earning more than \$10 million had increased slightly by 2018, the incomes of those employing five or fewer remained relatively low.

Of the known top 200 enterprises by revenue, most are publicly listed companies and unlisted ones that are required to disclose their results. The 200th on the list in 2012 earned revenue of slightly more than NZ\$128 million. In that year 116 companies had more than 50 per cent overseas ownership, 48 were listed on the New Zealand stock exchange (NZX) (14 of which were more than 50 per cent overseas owned), 19 were co-operatives, 12 were state-owned enterprises, and one was a council-controlled organisation.<sup>1260</sup>

Of Deloitte's top 30 financial institutions in 2012, 19 had more than 50 per cent overseas ownership, four were listed on the NZX, and one was a state-owned enterprise.<sup>1261</sup> By 2018, foreign ownership in New Zealand equity markets had increased to 37.9 per cent.<sup>1262</sup>

New Zealand is heavily import-dependent both for final goods and for the raw materials that contribute to final goods. Almost all, if not all, enterprises rely on the import of some proportion of their inputs.

In contrast, only a few businesses are involved in exporting. In 2012 fewer than 14,000 of the enterprises exported products to overseas markets, and, of these, only 260 had revenue of NZ\$25 million or more. In the 1970s, about 50 per cent of New Zealand exports were destined for Europe. In 2012, about 50 per cent of New Zealand exports were destined for Australia or the Asia-Pacific region. China was vying with Australia to become the largest export destination.<sup>1263</sup> By 2017, China had become our top trading partner. Exports to China were valued at \$12.0 billion (22 percent of New Zealand's total exports) while imports from China were valued at \$10.9 billion (19 percent of New Zealand's total imports).<sup>1264</sup>

Other features of the New Zealand business sector as at 2018 are as follows.

- There are 186 NZX-listed companies<sup>1265</sup>
- There are 13 state-owned enterprises<sup>1266</sup>
- Other Crown-owned companies are Crown entities.<sup>1267</sup>

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<sup>1259</sup> Deloitte, "Top 200 companies", *Management*, 2012.

<sup>1260</sup> Deloitte, "Top 200 companies", 2012.

<sup>1261</sup> Deloitte, "Top 200 companies", 2012.

<sup>1262</sup> See <https://www.nzx.com/about-nzx/organization-structure/nzs-capital-markets>

<sup>1263</sup> Statistics New Zealand, *Overseas Merchandise Trade*, February 2013.

<sup>1264</sup> See

[http://archive.stats.govt.nz/browse\\_for\\_stats/industry\\_sectors/imports\\_and\\_exports/OverseasMerchandiseTrade\\_HOTPOct17.aspx](http://archive.stats.govt.nz/browse_for_stats/industry_sectors/imports_and_exports/OverseasMerchandiseTrade_HOTPOct17.aspx)

<sup>1265</sup> NZX, "NZX half year 2013 results", 19 August 2013, [www.nzx.com/companies/NZX/announcements/239821](http://www.nzx.com/companies/NZX/announcements/239821)

<sup>1266</sup> See <https://treasury.govt.nz/information-and-services/commercial-portfolio-and-advice/commercial-portfolio>

<sup>1267</sup> Kristin Mednis, *Integrity Plus 2013: New Zealand National Integrity System Assessment – Crown entities*, supplementary paper 1 (Wellington: Transparency International New Zealand, 2013), [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)

Besides government service providers, tourism, and international education and sporting bodies, New Zealand's main industries are primary sector-based, including dairy, red meat, wine, natural products, aquaculture, and horticulture. The Treasury and the Ministry of Business, Innovation and Employment oversee the regulation of businesses. The other main regulatory agencies are the Reserve Bank of New Zealand (financial regulation, including prudential supervision of registered banks, other deposit-taking institutions and insurance companies), Financial Markets Authority (financial market conduct), and Ministry for Primary Industries (biosecurity).

Other authorities regulate specifically for the environment, electricity and gas, and telecommunications.

Laws and regulations that pertain to business cover consumer rights, health and safety, environmental protection, biosecurity, importing and exporting, and employment. Codes of practice also pertain, for example, in advertising and the finance sector.

Business New Zealand is an organisation that represents the interests of its business members, who include larger businesses and exporters, but it also speaks for business in general. It works closely with the Employers and Manufacturers Association and regional Chambers of Commerce throughout New Zealand, the members of which tend to be small and medium-sized businesses.

New Zealand was protected from the worst effects of the global financial crisis because most of its banking is carried out through local subsidiaries of four of the Australian-owned banks that had credit ratings that put them in the top 13 in the world. They had few off-balance sheet sub-prime loans. On the other hand, until amendments were made just prior to the GFC, the Reserve Bank of New Zealand Act 1989 provided for prudential oversight only of registered banks, leaving other, largely New Zealand-owned organisations in the financial services sector exposed. Property price collapses impacted on the balance sheets of finance companies, the governance structures of many of which were too weak to respond to the rapid collapse in their revenues. In several cases, fraud and disclosure failures aggravated the situation. Developments noted in 2013 as a response to these events included amendments to the Reserve Bank of New Zealand Act to extend prudential supervision to finance companies, other changes to finance sector regulation, and the creation of the Financial Markets Authority to oversee (among other things) the governance of finance companies and their other advisory and financial management activities.

## Capacity

### 12.1.1 Resources (law)

**To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?**

Score: 5

*A comprehensive and enabling suite of companies and securities law<sup>1268</sup> governs the corporate environment, and the court system is free from corruption and unlawful influence.<sup>1269</sup>*

Private property, including intellectual property, has reasonable protection in law.<sup>1270</sup> The banking and insurance sectors are licensed and prudentially regulated by the central bank,<sup>1271</sup> and the Ministry of Justice oversees insurers to a limited extent.

As outlined in sections 12.2.1, 12.2.3, and 12.2.5 in this pillar report, banking law and regulation have been substantially upgraded recently,<sup>1272</sup> including new anti-money laundering legislation and changes to the disclosure obligations of private issuers. In 2015, comprehensive omnibus anti-corruption legislation was passed into law, improving New Zealand's ability to tackle money laundering and terrorism financing.<sup>1273</sup> The Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017 puts in place "Phase 2" of New Zealand's anti-money laundering and countering financing of terrorism laws.

### 12.1.2 Resources (practice)

**To what extent are individual businesses able in practice to form and operate effectively?**

Score: 5

*The overall economic environment is supportive of commercial enterprise so that new business start-ups can enter the market and businesses can generally operate effectively.*

The creation of a new company in New Zealand is very simple, is low cost, and can be achieved within about 30 minutes online, subject to provision of signed director and shareholder documents.<sup>1274</sup> There is no requirement for permission from a regulatory authority to register or operate a private company.<sup>1275</sup> New Zealand is the easiest country in the world to do business

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<sup>1268</sup> For example, the Companies Act 1993, Financial Reporting Act 1993, Limited Partnerships Act 2008, Overseas Investment Act 2005, Partnership Act 1908, Personal Property Securities Act 1999, Securities Act 1978, and Security Markets Act 1988.

<sup>1269</sup> See sections 13.1.4 and 13.2.6 in Chapter 5.

<sup>1270</sup> Birchfield, 2012.

<sup>1271</sup> Reserve Bank of New Zealand Act 1989.

<sup>1272</sup> Consolidation of market conduct regulatory functions previously shared across agencies, including the NZX under the newly constituted Financial Markets Authority (Financial Markets Authority Act 2011).

<sup>1273</sup> Anti-Money Laundering and Countering Financing of Terrorism Act 2015

<sup>1274</sup> Companies Office, "Starting a company", [www.business.govt.nz/companies/learn-about/starting-a-company](http://www.business.govt.nz/companies/learn-about/starting-a-company)

<sup>1275</sup> Author's recent experience.

in, according to the 2018 World Bank Doing Business survey.<sup>1276</sup> For starting a business, for example, New Zealand has the smallest number of procedures required (one) and the shortest time to fulfil them (0.5 days).

Concerns and evidence that this simplicity was being exploited to operate shell companies involved in commercially and legally questionable activity prompted the introduction of legislation in June 2013 requiring, among other elements, that at least one director be New Zealand-domiciled.<sup>1277</sup> Whether this proves sufficient to prevent criminal exploitation remains to be seen, and is discussed further in section 12.2.1. The 2016 Panama Papers release and subsequent Shewan Inquiry tightened up some of the lax practice while maintaining the simplicity of doing business, and further legislation is planned.<sup>1278</sup>

There are no significant barriers of a legal or regulatory nature to business operations, other than health, safety, environmental, professional registration, and employment law requirements. The World Bank's annual *Doing Business* report for 2018 gives New Zealand an overall ranking of first out of 185 countries surveyed against 10 indicators. On measures relevant to the National Integrity System, New Zealand ranked first in both 2013 and 2018 for "starting a business", second for "protecting minority investors", and 21st for "enforcing contracts".<sup>1279</sup> New Zealand is now first for "registering property", compared to its second-placed ranking in 2013. Both government and non-government agencies responsible for such licensing are in operation. There is no evidence of systemic abuse of power or corruption or susceptibility to bribes among such agencies.

Economic policy over the last three decades has removed most subsidies and price controls. Regulatory settings may have various policy objectives, but generally are intended to enable ease of doing business within a competitive environment.

At variance with this trend, some government decisions have favoured particular commercial outcomes to align with public policy or politically desired outcomes. For example, the government's choice of Chorus<sup>1280</sup> to roll out optic fibre nationally for most of the government-assisted ultra-fast broadband project led it to seek to overrule the actions of the telecommunications regulator and initiate a policy review process in conflict with the regulator's statutory mandate. The regulator proceeded as prescribed by legislation and is unhindered in legally doing so. It should be noted that this has been a source of uncertainty rather than commercial advantage for Chorus. The intent of this intervention was to encourage faster uptake of ultra-fast broadband, which in the process also preserved Chorus's profitability.<sup>1281</sup>

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<sup>1276</sup> See <http://www.doingbusiness.org/en/rankings>

<sup>1277</sup> New Zealand Parliament, "Legislation: Supplementary order papers – Companies and Limited Partnerships Amendment Bill", [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH\\_BILL11152\\_1/companies-and-limited-partnerships-amendment-bill](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL11152_1/companies-and-limited-partnerships-amendment-bill)

<sup>1278</sup> See above at p 332

<sup>1279</sup> World Bank, "Ease of doing business in New Zealand", 2013, [www.doingbusiness.org/data/exploreeconomies/new-zealand](http://www.doingbusiness.org/data/exploreeconomies/new-zealand)

<sup>1280</sup> Chorus is a telecommunications infrastructure company.

<sup>1281</sup> Paul McBeth and Chris Keall, "Investor, Labour, Tuanz slam govt as Chorus price regulation put on hold", 8 February 2013, [www.nbr.co.nz/article/chorus-gets-rerieve-government-puts-price-regulation-hold-pending-review-bd-135567](http://www.nbr.co.nz/article/chorus-gets-rerieve-government-puts-price-regulation-hold-pending-review-bd-135567)

There is no evidence at a central government level of any corruption in the way businesses are treated, although there are cases in which local government officials have shown preferment to certain businesses over others, notably the Auckland Transport case.<sup>1282</sup>

One source of potential risk to the capacity to operate effectively has been the integrity of the tax collection system, the information technology systems of which have been undergoing replacement and upgrade at an estimated cost of more than NZ\$1.5 billion.<sup>1283</sup> Difficulty achieving competent execution of government information technology projects has been a recurring issue in New Zealand.

The previous government made business-friendly government services a key priority, including a commitment to e-government initiatives with low-cost and free services and information available seamlessly online.<sup>1284</sup>

#### **12.1.3 Independence (law)**

##### **To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?**

Score: 5

*Companies, securities, and public sector laws protect the right of private businesses to operate freely. Public officials are empowered to enforce health, safety, environmental, and regulatory requirements in accordance with the law.*

In general there is very little scope for unwarranted external interference, and almost all constraints are for legitimate purposes such as health and safety. However legal safeguards in the area of information technology tend to lag behind the rapid advances in recent years.

Under legislation passed in 2013, the GCSB may monitor some New Zealand telecommunications traffic, including corporate email and data, in limited circumstances (for example, where critical national infrastructure is at risk because of sustained and sophisticated cyber-attacks). The bureau is an intelligence agency with ties to counterpart agencies in the United States, Canada, the United Kingdom, and Australia. Its mandate has recently been clarified under statute to explicitly include information assurance and cyber security.<sup>1285</sup> This change has arisen following a review of legislative compliance at the bureau (resulting in the Kitteridge Report).<sup>1286</sup>

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<sup>1282</sup> See <https://www.sfo.govt.nz/file/390>

<sup>1283</sup> Peter Dunne, “Dunne: Cabinet approves major IRD work”, 1 May 2013, [beehive.govt.nz/release/dunne-cabinet-approves-major-ird-work](http://beehive.govt.nz/release/dunne-cabinet-approves-major-ird-work)

<sup>1284</sup> State Services Commission, “Better Public Services: Improving interaction with government”, 2013, [www.ssc.govt.nz/bps-interaction-with-govt](http://www.ssc.govt.nz/bps-interaction-with-govt)

<sup>1285</sup> See section 5.2.2 In Chapter 5.

<sup>1286</sup> Rebecca Kitteridge, *Review of Compliance at the Government Communications Security Bureau*, 2013, <https://www.gcsb.govt.nz/assets/GCSB-Compliance-Review/Review-of-Compliance.pdf>

In the five years since then, new legislation has been implemented, that amongst other things clarified privacy rules and led to the establishment of an oversight agency, the Office of the Inspector-General of Intelligence and Security, headed by former Deputy Solicitor General Cheryl Gwyn.<sup>1287</sup> Gwyn has been active in her reviews.<sup>1288</sup> The DPMC brought in former Police Commissioner, Howard Broad, as deputy chief executive of the DPMC to build links between the intelligence agencies and other parts of the public service to ensure that New Zealand has the capability in place to address risks related to national security, civil defence, and cybersecurity. There was also an intention for the government committee of top civil servants, Official Committee for Domestic and External Security Co-ordination (ODESC), to become more transparent.<sup>1289</sup>

#### **12.1.4 Independence (practice)**

**To what extent is the business sector free from unwarranted external influence in its work in practice?**

Score: 4

*There is little evidence of unwarranted external influence on private businesses.*

As far as could be ascertained, there is no evidence of public officials abusing their office to exploit the private sector. There is also little evidence of unwarranted interference by public officials to influence the operation of businesses inappropriately, although the Chorus and SkyCity cases are examples of interventions by the executive.<sup>1290</sup> As reported in the Transparency International Global Corruption Barometer for 2013, a locally conducted survey of 1,000 people found 3 per cent of New Zealanders said they had paid a bribe. This was reported as a warning signal.<sup>1291</sup>

There are systems in place to protect business and consumers from unfair commercial practices and consultation is currently under way (2018) over proposed legislation to strengthen the systems.<sup>1292</sup>

According to the Commerce Commission's 2018 Annual Report, "well-functioning markets allow consumers and businesses to experience the benefits of competition. Effective competition creates incentives for businesses to improve efficiency and produce products and services at a price and quality demanded by consumers."<sup>1293</sup>

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<sup>1287</sup> See section 5.2.2. in Chapter 5.

<sup>1288</sup> David Fisher, NZ Herald, "The Big Read: How our spires wound up getting Kiwi data 'unlawfully', 14 December 2017, [https://www.nzherald.co.nz/hz/news/article.cfm?c\\_id=1&objectid=11959882](https://www.nzherald.co.nz/hz/news/article.cfm?c_id=1&objectid=11959882)

<sup>1289</sup> Andrea Vance, Stuff, "Former top cop becomes new security boss", <https://www.stuff.co.nz/national/10093809/Former-top-cop-becomes-new-security-boss>

<sup>1290</sup> See sections 13.2.1 and 13.2.2 in Chapter 5.

<sup>1291</sup> Transparency International, "Global Corruption Barometer 2013", <https://www.transparency.org/gcb2013>

<sup>1292</sup> See [ps://www.mbie.govt.nz/have-your-say/protecting-businesses-and-consumers-from-unfair-commercial-practices](https://www.mbie.govt.nz/have-your-say/protecting-businesses-and-consumers-from-unfair-commercial-practices)

<sup>1293</sup> See [https://comcom.govt.nz/\\_\\_data/assets/pdf\\_file/0019/109423/Commerce-Commission-Annual-Report-2018.pdf](https://comcom.govt.nz/__data/assets/pdf_file/0019/109423/Commerce-Commission-Annual-Report-2018.pdf)

## Governance

### 12.2.1 Transparency (law)

**To what extent are there provisions to ensure transparency in the activities of the business sector?**

Score: 4

*There are provisions to ensure annual reporting for public companies and requirements for continuous disclosure of listed companies.*

Public listed companies are governed by companies and securities law,<sup>1294</sup> which specifies minimum standards for annual reporting,<sup>1295</sup> and the Listing Rules of the NZX,<sup>1296</sup> which include requirements for the continuous disclosure of material information. NZX Market Supervision, a regulatory division of the exchange, polices the Listing Rules.<sup>1297</sup> These rules also specify reporting and assurance requirements. Inquiries into unusual price movements are reasonably common, as are exemptions from the Listing Rules, the reasons for which are published. The NZX Disciplinary Tribunal<sup>1298</sup> considers complaints against members and alleged breaches of the Listing Rules. The Commerce Commission,<sup>1299</sup> the Takeovers Panel,<sup>1300</sup> and the Financial Markets Authority<sup>1301</sup> provide further layers of capital markets supervision and regulation.

A significant change since 2013 is the increased transparency of the NZX, demonstrated by its investment in electronic share trading, moving the number of open transactions from less than a third of market transactions to a point where more than half of transactions take place openly.<sup>1302</sup>

Issuers of securities must comply with a variety of disclosure requirements.<sup>1303</sup> These include the requirement to issue a prospectus and provide an investment statement to investors. The prospectus must contain an auditor's report and a trustee's report. Trustees must be licensed and report to both the Reserve Bank of New Zealand and the Financial Markets Authority. Under the Financial Reporting Act 1993, approved accounting standards have the force of law.

The licensing regime for auditors of issuers of financial statements<sup>1304</sup> aims, among other objectives, to ensure auditors are up to the task. It addresses a concern that some small

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<sup>1294</sup> Companies Act 1993, Securities Act 1978, and Securities Markets Act 1988.

<sup>1295</sup> The Financial Reporting Act 1993 is being replaced by the Financial Reporting Bill, which is at its Second Reading in Parliament, 19 July 2013.

<sup>1296</sup> NZX, NSZX/NZDX Listing Rules, (updated 2019 <https://www.nzx.com/regulation/nzx-rules-guidance/main-board-debt-market-rules>

<sup>1297</sup> NZX, "Market supervision", <https://www.nzx.com/regulation/nzx-regulation/how-we-regulate>

<sup>1298</sup> NZX, "NZ markets Disciplinary Tribunal", <https://www.nzx.com/regulation/nzmd-tribunal-regulationP>

<sup>1299</sup> See [www.comcom.govt.nz](http://comcom.govt.nz)

<sup>1300</sup> See <http://takeovers.govt.nz>

<sup>1301</sup> See [www.fma.govt.nz](http://www.fma.govt.nz)

<sup>1302</sup> Meeting author with NZX (Mark Peterson) 21 July 2018

<sup>1303</sup> Financial Markets Authority, "Who needs to comply", <http://www.fma.govt.nz/compliance/amlcft/who-needs-to-comply/>

<sup>1304</sup> Financial Markets Authority, "Who needs to comply".

accounting firms lack the technical skills to effectively audit the accounts of complex financial institutions. From 1 July 2012, only licensed auditors or registered audit firms may conduct issuer audits.<sup>1305</sup>

In the finance sector, banks must issue quarterly public disclosure statements; the full-year report must have been the subject of a complete audit and the half-year report of a short-form audit. The four major banks in New Zealand are Australian owned and are regulated by the Australian Prudential Regulation Authority, the prudential oversight of which also covers the banks' New Zealand operations. Because these banks are listed on the stock exchanges in both Australia and New Zealand, specific reporting and assurance requirements also apply in both countries.<sup>1306</sup>

The Reserve Bank of New Zealand Act 1989 provides the framework for the registration and supervision of banks in New Zealand, and includes the power to recommend public disclosure requirements.<sup>1307</sup> New capital-related and associated disclosure requirements of Basel III have been introduced and these apply from 31 March 2013.<sup>1308</sup>

In 2017, the government initiated a review of the Reserve Bank of New Zealand Act including a review of its financial stabilisation and prudential supervision roles.<sup>1309</sup> In late 2018, the RBNZ circulated a discussion paper about the capital adequacy framework for registered banks in New Zealand.<sup>1310</sup>

In the finance sector, considerable work has been done to improve disclosure and investor protection following the collapse of numerous non-bank deposit takers before and during the global financial crisis. The crisis hit New Zealand as the country entered a recession and suffered substantial commercial property value corrections. The regulatory framework for finance sector entities is now broadly based, is consistent, and encompasses registration, reporting, and assurance components. All financial service providers (with some few exceptions) must be registered on a searchable register maintained by the Companies Office.<sup>1311</sup>

In addition to the general legislative requirements of the Companies Act 1993, finance sector entities are subject to explicit regulatory audit requirements. Compliance with reporting and disclosure standards is overseen variously by the Reserve Bank of New Zealand or the Financial Markets Authority or both. Trustee companies, statutory supervisors, and auditors, who are

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<sup>1305</sup> From 1 July 2012, the Auditor Regulation Act 2011 comes fully into force: Financial Markets Authority, "How to get licensed", <http://www.fma.govt.nz/compliance/licensing-and-registration/licensing-forms-and-resources/auditors/>

<sup>1306</sup> See Reserve Bank of New Zealand, "Memorandum of understanding", 2003, <https://www.rbnz.govt.nz/-/media/ReserveBank/Files/regulation-and-supervision/banks/relationships/4796879.pdf?la=en&revision=184bd896-8c37-4e2a-be78-e438b17a2c85>

See also the Australian Prudential Regulation Authority Act 1998: [www.comlaw.gov.au/Details/C2013C00076](http://www.comlaw.gov.au/Details/C2013C00076)

<sup>1307</sup> Reserve Bank of New Zealand Act 1989, section 81.

<sup>1308</sup> Reserve Bank of New Zealand Act 1989, Part 5.

<sup>1309</sup> The Treasury, "Reviewing the Reserve Bank Act", <https://treasury.govt.nz/news-and-events/reviews-consultation/reviewing-reserve-bank-act>

<sup>1310</sup> <https://www.rbnz.govt.nz/regulation-and-supervision/banks/consultations-and-policy-initiatives/active-policy-development/review-of-the-capital-adequacy-framework-registered-banks>

<sup>1311</sup> Companies Office, "About the Financial Service Providers Register", [www.business.govt.nz/fsp](http://www.business.govt.nz/fsp)

licensed, have a direct responsibility to satisfy themselves that regulatory requirements are being met. They report their findings to the Reserve Bank or the Financial Markets Authority or both.

Amendments to the Reserve Bank of New Zealand Act 1989 were enacted in September 2008 to add provisions for the regulation of non-bank deposit takers.<sup>1312</sup> The Non-bank Deposit Takers Act 2013 created a licensing regime and introduced suitability assessment of directors and senior officers. Many of these initiatives were a response to the poor governance in the sector that was exposed by the economic recession of the late 2000s.<sup>1313</sup> Non-bank deposit takers are not covered by the macro-prudential tools made available to the Reserve Bank of New Zealand in July 2013 to manage financial system stability.<sup>1314</sup> By 2018, the Review of the Reserve Bank Act was considering a range of topics including changes likely to widen the coverage of macro-prudential tools.<sup>1315</sup>

Changes to privacy regulation, effective from 1 April 2012, allow comprehensive credit reporting.<sup>1316</sup> This may improve credit assessments, lower credit risk, and permit greater financial inclusion for some consumers. Evidence published in 2018 found that this greater transparency is a factor that prevents corruption in financial transactions.<sup>1317</sup>

Public disclosure of information about financial products and providers and the right to take complaints to independent dispute resolution organisations were enhanced markedly under the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Both Acts have recently been reviewed and new legislation<sup>1318</sup> introduced to Parliament in 2018 will provide further protection for consumers.

These recent reforms are intended to offer improved protection for investors and depositors by providing greater transparency about the performance of companies, banks, and fund managers, but vigilance will be required to ensure the reforms are adequately resourced and working as intended.<sup>1319</sup>

Foreign-controlled corporations must file financial accounts annually with the Companies Office.<sup>1320</sup> A proposal to remove this obligation for all but foreign-controlled firms deemed to be

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<sup>1312</sup> Reserve Bank of New Zealand Amendment Act 2008.

<sup>1313</sup> Buddle Findlay, “Legal update on banking and commercial law”, 2011, [www.buddlefindlay.com/legal-update-on-banking-and-commercial-law-september-2011](http://www.buddlefindlay.com/legal-update-on-banking-and-commercial-law-september-2011) (link lost 2018)

<sup>1314</sup> Reserve Bank of New Zealand, “Macro-prudential policy”, <https://www.rbnz.govt.nz/financial-stability/macro-prudential-policy>

<sup>1315</sup> See <https://www.beehive.govt.nz/release/reserve-bank-act-review--terms-reference-phase-2-released>

<sup>1316</sup> Privacy Commissioner, “Credit Reporting Privacy Code”, [privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code](http://privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code)

<sup>1317</sup> The 10 April 2018 report, Comprehensive Credit Reporting Six Years On: Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code; is relevant for this section,

<https://www.privacy.org.nz/assets/Uploads/Report-on-Review-of-CRPC-Amendments-No-4-and-No-5-PDF.pdf>

<sup>1318</sup> The Financial Services Legislation Amendment Bill, [https://www.parliament.nz/resource/en-NZ/SCR\\_78895/b77b3afb44ae46b9b1c62a64789ad4e5f7c215c1](https://www.parliament.nz/resource/en-NZ/SCR_78895/b77b3afb44ae46b9b1c62a64789ad4e5f7c215c1)

<sup>1319</sup> Ministry of Business, Innovation and Employment “Trading securities and derivatives”, [www.med.govt.nz/business/business-law/trading-securities-and-derivatives](http://www.med.govt.nz/business/business-law/trading-securities-and-derivatives)

<sup>1320</sup> Financial Reporting Act 1993, section 19.

“large” was dropped, explicitly to improve transparency as a means of discouraging tax avoidance. New Zealand-owned private companies have no significant transparency obligations and are not obliged to file financial accounts with the Companies Office.<sup>1321</sup>

The 2013 NIS assessment noted a gap in the Companies Act 1993 that raised a serious corruption and bribery risk. It allowed companies to be established without requiring the companies’ beneficial owners (that is, the real people who own the companies) to be disclosed, thus facilitating the formation of companies as a cover for dubious or illegal purposes. Beneficial ownership can be further disguised by the use of nominees. Trust law in New Zealand also allows secrecy in dealings, and there is no central register, thus allowing property and funds to be hidden in New Zealand-based foreign trusts with no identification of beneficial owners. The gap has only partially been addressed by more adoption of 18 of the 19 recommendations of the Shewan Inquiry.<sup>1322</sup>

Tim Hunter, the Fairfax Business Bureau deputy-editor, wrote in 2012 that he could not help wondering why New Zealand “maintains a regime so obviously advantageous to tax dodgers and criminals. We’re not only not part of the solution, we’re a big part of the problem.”<sup>1323</sup> The 2016 Panama Papers provided evidence supporting Tim Hunter’s perspective.

There has continued to be a lack of political commitment to requiring beneficial ownership to be disclosed for all New Zealand companies and trusts. Amendments to the Companies Act and the Limited Partnerships Act in 2013 introduced a requirement that all New Zealand companies should have at least one director who lives in New Zealand or who lives in an enforcement country and is a director of a company in that country, and requiring the date and place of birth of company directors. Similar provisions apply to partners in limited partnerships. Companies need to disclose the details of their ultimate holding company if they have one. In addition, the Registrar of Companies was given more extensive powers to enquire about company ownership.

At the London Anti-Corruption Summit in May 2016, New Zealand agreed to consider establishing a central register of company beneficial ownership and a central database of companies with convictions for bribery and corruption.<sup>1324</sup>

The government is now publicly consulting on measures to increase transparency of beneficial ownership of New Zealand companies and limited partnerships. The Ministry of Business, Innovation and Employment released two discussion documents in June 2018:

1. a discussion document seeking feedback on increasing the transparency of the beneficial ownership of New Zealand companies and limited partnerships;<sup>1325</sup>

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<sup>1321</sup> Companies Office, “New Zealand companies”, [www.business.govt.nz/companies/learn-about/updating-company-details/financial-reporting/new-zealand-companies](http://www.business.govt.nz/companies/learn-about/updating-company-details/financial-reporting/new-zealand-companies)

<sup>1322</sup> Shewan Inquiry, <https://www.stuff.co.nz/business/industries/94403144/foreign-trust-numbers-plummet-after-postpanama-papers-rules-kick-in>

<sup>1323</sup> Tim Hunter, “NZ foreign trusts among global tax havens”, *Stuff*, 22 August 2012, [www.stuff.co.nz/business/opinion-analysis/7521775/nz-foreign-trusts-among-global-tax-havens](http://www.stuff.co.nz/business/opinion-analysis/7521775/nz-foreign-trusts-among-global-tax-havens)

<sup>1324</sup> See <https://www.ssc.govt.nz/tinz> at p4

<sup>1325</sup> See <http://www.mbie.govt.nz/info-services/business/business-law/supporting-the-integrity-of-the-corporate-governance-system/increasing-transparency-beneficial-ownership-nz-companies-and-ltd-partnerships>

2. a discussion document seeking feedback on publication of directors' residential address in the companies register.<sup>1326</sup>

The Financial Action Task Force emphasised the links between money laundering and corruption. Money laundering can help to facilitate corruption by providing the means to move and hide the proceeds of corruption and bribery.<sup>1327</sup>

Tightening New Zealand companies and trust law is a priority to avoid facilitating illegal activities and to minimise the potential for corruption and bribery in New Zealand but progress has been slow and as at 2018 is not yet satisfactory.

As a general point, the OIA and the Local Government Official Information and Meetings Act 1987 are available as transparency mechanisms for people who wish to obtain information about interactions between central or local government and business organisations. There are, however, withholding provisions that protect some commercial interests. Similarly, the Protected Disclosures Act 2000 is available for the disclosure of serious wrongdoing in businesses. These provisions are discussed in the public sector pillar report.

A significant deficiency exists in the level of financial literacy skills of consumers of financial products,<sup>1328</sup> which reflects the lack of education available for New Zealanders both in this area and in the wider frame of civics and ethics. If these areas of knowledge are not improved across the population, the benefits of enhanced transparency in the financial and business sectors will be limited. Serious attention must be given to improving financial literacy among a higher proportion of New Zealanders, to ensure a higher skills base among those whose dealings require knowledge to assess financial performance and use financial products. Improved financial literacy would complement enhanced transparency requirements.<sup>1329</sup> Some work is being done by the Commission for Financial Capability,<sup>1330</sup> banks have developed tables as part of their on-line banking that provide their customers with updates of the state of their bank accounts, and there is anecdotal evidence of an increase in financial literacy education by community organisations. Despite this, there is no measure in 2018 that indicates that there has been a major advance in financial literacy since 2013. Greater clarity could be gained from a classification of literacy as a whole into different subsets of literacy which could include civic, digital, and financial literacy.

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<sup>1326</sup> See <http://www.mbie.govt.nz/info-services/business/business-law/supporting-the-integrity-of-the-corporate-governance-system/publication-directors-residential-addresses-on-companies-register>

<sup>1327</sup> Financial Action Task Force, "Corruption", [www.fatf-gafi.org/topics/corruption](http://www.fatf-gafi.org/topics/corruption)

<sup>1328</sup> For example., investor knowledge of the online register of financial service providers is low and knowledge of dispute resolution services is seriously wanting.

<sup>1329</sup> Commission for Financial Literacy and Retirement Income (formerly the Office of the Retirement Commissioner), "Financial literacy research and reports", [www.cflri.org.nz/research-and-reports/financial-literacy](http://www.cflri.org.nz/research-and-reports/financial-literacy)

<sup>1330</sup> See, for example [https://www.cffc.org.nz/financial-capability/school-programmes/?gclid=CjwKCAjwio3dBRAqEiwAHWsnVYexzSNfuKjZ\\_p1RgU1HBxdZZ9OmgBPAGaPGJg57j9uZDyCBdrLNDxoCYHMQAvD\\_BwE](https://www.cffc.org.nz/financial-capability/school-programmes/?gclid=CjwKCAjwio3dBRAqEiwAHWsnVYexzSNfuKjZ_p1RgU1HBxdZZ9OmgBPAGaPGJg57j9uZDyCBdrLNDxoCYHMQAvD_BwE)

### 12.2.2 Transparency (practice)

#### To what extent is there transparency in the business sector in practice?

Score: 4

*Transparency in the business sector is covered by legislation, regulation, and guidelines. The NZX has strict disclosure rules for listed companies. The Commerce Commission actively polices price-setting practices in the retail sector, prosecuting where necessary.<sup>1331</sup> This is pursuant to the Commerce Act 1986, which regulates restrictive trade practices, including prohibiting practices substantially lessening competition such as cartel-type behaviour and price fixing.<sup>1332</sup> The commission is also deeply involved in monitoring regulated pricing for monopoly network services, including telecommunications, electricity transmission, shipping, airports, and pay television. The Reserve Bank oversees disclosure in the financial sector.*

Listed companies produce six-monthly and 12-monthly reports of their profitability and balance sheets, while NZX continuous disclosure rules appear effective in ensuring all shareholders are equally informed of listed company material events. Sanctions for non-compliance are available and used. Exemptions are publicly sought and granted.<sup>1333</sup>

The introduction of registration requirements for most finance sector entities provides for online public access to current data at no cost and at any time.<sup>1334</sup> The Financial Service Providers Register also contains details of the dispute resolution organisation to which the provider belongs.

The Reserve Bank of New Zealand's financial stability reports<sup>1335</sup> provide an accessible insight into the regulator's perceptions of strengths and weaknesses, and allows for informed debate. The Financial Stability Report published 28 November 2018 was live streamed to be accessible to a wider audience.

Numerous practical information resources are available that detail compliance with legislative requirements. Some are provided by regulatory agencies; much is accessible from market participants or from the Companies Office. This information is internet based, available at all times, and available at no cost.

Again, higher levels of financial literacy would increase public awareness of these resources. Regulatory requirements introduced as a result of the finance sector review have operated for only a short time, and some refinements are likely as experience accumulates. The Commission

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<sup>1331</sup> For example, Commerce Commission, “Nufarm’s prosecution brings fines in NZ’s biggest cartel case over \$7.5m”, media releases, 12 February 2008, [www.comcom.govt.nz/media-releases/detail/2008/nufarmsprosecutionbringsfinesinnzs](http://www.comcom.govt.nz/media-releases/detail/2008/nufarmsprosecutionbringsfinesinnzs)

<sup>1332</sup> Commerce Act 1986, sections 27 and 30.

<sup>1333</sup> For more, see NZX, *Guidance note: Continuous disclosure*, April 2011, [www.nzx.com/files/static/GN\\_contin\\_disclosure.pdf](http://www.nzx.com/files/static/GN_contin_disclosure.pdf) (2019 link broken, alternative <https://www.nzx.com/regulation/listing-rule-guidance>

<sup>1334</sup> Companies Office, “About the Financial Service Providers Register”, [www.business.govt.nz/fsp](http://www.business.govt.nz/fsp)

<sup>1335</sup> Reserve Bank of New Zealand, “Financial stability report”, <https://www.rbnz.govt.nz/financial-stability/financial-stability-report>

for Financial Capability describes its refined approaches to enhance financial literacy in its annual reports.<sup>1336</sup>

Recent growth in equities market trading suggests a combination of economic factors (for example, low global interest rates) is encouraging private investors back into investment areas in which they lost confidence over the last 20 or more years as a result of high-profile commercial failures and perceived inadequate regulation. This growth in trust needs to be sustained, but also balanced to avoid a situation of overconfidence that unscrupulous operators could use. Maintaining regulatory vigilance and enforcement will be important in restoring and retaining public trust.

“The practice of companies changing their annual financial reports to ‘integrate’ wider concepts of sustainable development and financial stability, is taking hold in New Zealand”.

That is the message from Richard Howitt, Chief Executive of the International Integrated Reporting Council (IIRC), on a two-day visit to Wellington and Auckland, in October 2017. At that meeting it was noted that eight of the N100 companies have now adopted the practice, with a further 40 organisations in public and private sector also producing the reports.<sup>1337</sup>

In 2013, transparency issues relating to the interactions between the executive and business were raised by a supplementary order paper creating an exclusion zone around offshore oil industry infrastructure in New Zealand’s exclusive economic zone. The supplementary order paper<sup>1338</sup> followed representations from the oil industry about threatened protest actions against deep-sea drilling proposals. Subsequent disclosures under the OIA showed meetings between a multinational company and the Minister of Energy and Resources to discuss the change had been under way for months before the relevant legislation was passed.<sup>1339</sup> The issues are not the policy decision or the lobbying, but the avoidance of select committee scrutiny by using a supplementary order paper to insert late provisions into legislation close to its passage and the lack of transparency about lobbying.

Similar issues relating to the transparency of interactions between the executive and the business sector were raised in the Sky City project.<sup>1340</sup> In both cases, the concern primarily relates to transparency in the activities of the executive. There is no suggestion Sky City or the oil industry acted inappropriately in their dealings with the executive. In terms of the role of corporate lobbying in New Zealand’s political process, there were many examples in 2018.

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<sup>1336</sup> Commission for Financial Literacy, CFF Annual Report 2018, <https://www.cffc.org.nz/news-and-media/news/annual-report-2018/>

<sup>1337</sup> <https://www.acuitymag.com/finance/integrated-reporting---the-future-of-accounting>

<sup>1338</sup> New Zealand Parliament, “Legislation: Supplementary order papers – Crown Minerals (Permitting and Crown Land) Bill”, 2013, [www.parliament.nz/en-nz/pb/legislation/sops/50DBHOH\\_SOP1646\\_1/crown-minerals-permitting-and-crown-land-bill](http://www.parliament.nz/en-nz/pb/legislation/sops/50DBHOH_SOP1646_1/crown-minerals-permitting-and-crown-land-bill)

<sup>1339</sup> Moana Mackey, “Joyce backroom deal led to sea protest ban”, *Labour*, 30 May 2013, (May 2019 link broken, alternative: <http://www.scoop.co.nz/stories/PA1305/S00607/joyce-backroom-deal-led-to-sea-protest-ban.htm> ban?utm\_source=twitterfeed&utm\_medium=twitter – confirming documents released under the Official Information Act 1982 sighted and held by author.

<sup>1340</sup> See sections 4.2.2 and 8.3.2 in Chapter 5.

“Former Labour Party president and lobbyist Mike Williams smoothed the way for the Lime [scooter] roll out in Auckland City. There was evidence in 2015 about the role Sir Peter Jackson played in the Government’s rejection of official advice recommending taxpayer support for the sector be curbed.”<sup>1341</sup>

### **12.2.3 Accountability (law)**

**To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?**

Score: 5

*The Ministry of Business, Innovation and Employment enforces rules and laws governing the oversight of the business sector and the governance of individual companies. In the finance sector, governance requirements in terms of board composition (the proportion of independent directors, their suitability for the role, and the required focus of their work), are detailed in or under the Reserve Bank of New Zealand Act 1989 and apply to registered banks<sup>1342</sup> and non-bank deposit takers.<sup>1343</sup> The Institute of Directors has taken a leadership role on the responsibilities of directors.*

Persons who do not meet “fit and proper” requirements cannot register or be involved in the management of financial service providers. “People who have been convicted of crimes involving dishonesty under the Crimes Act 1961, in the last five years, such as fraud, as well as anyone convicted of a money laundering, or financing of terrorism offence, will be excluded from registering or from being involved in the management of a registered financial service provider. Undischarged bankrupts and banned directors will also not be able to register.”<sup>1344</sup>

Insurance companies must also meet fit and proper standards for board members, relevant senior officers, and appointed actuaries as part of their licensing requirements.<sup>1345</sup> Full licensing obligations have applied to continuing insurers from 7 September 2013, when the transitional provisions ended.

These are additional to public company legislative requirements. Companies listed with the NZX (and the Australian Securities Exchange, where dual listing is involved) face specific requirements that may repeat or be in addition to these requirements. Issuers require director certification in numerous circumstances.<sup>1346</sup> Certification is generally required when an issuer produces advertisements – the certificate acknowledges that the directors of the issuer have read, seen, or listened to the advertisement and that the advertisement complies with the relevant securities legislation.

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<sup>1341</sup> NZ Herald: <https://www.nzherald.co.nz/nz/news/article.cfm?cid=1&objectid=12209186>

<sup>1342</sup> Reserve Bank of New Zealand Act 1989, s157L.

<sup>1343</sup> Reserve Bank of New Zealand Act 1989, s157L.

<sup>1344</sup> Companies Office, “Who cannot register? [www.business.govt.nz/fsp/about-the-fspr/frequently-asked-questions-faqs/registration-who/who-cannot-register](http://www.business.govt.nz/fsp/about-the-fspr/frequently-asked-questions-faqs/registration-who/who-cannot-register)

<sup>1345</sup> Reserve Bank of New Zealand Act 1989, s157L.

<sup>1346</sup> Institute of Directors, “Company directors’ course”, [www.iod.org.nz/DirectorDevelopment/Courseprogramme/CompanyDirectorsCourse.aspx](http://www.iod.org.nz/DirectorDevelopment/Courseprogramme/CompanyDirectorsCourse.aspx)

Disclosures in offer documents, annual reports, and reports to supervisors must all be signed off by a director.<sup>1347</sup> Personal liability attaches to these. Assurance is also reinforced by audit and, where appropriate, trustee attestations. Directors of listed companies must disclose share purchases and disposals.<sup>1348</sup> In some circumstances trustees or auditors or both<sup>1349</sup> must also comment on non-compliance with regulatory requirements in offer documents to regulators.

Specific disqualifications under many statutes operate to exclude unsuitable people from being a director, irrespective of and before any positive qualifying attributes are assessed.<sup>1350</sup>

New legislative requirements have been created, and existing requirements are being made more explicit and uniform, as a result of the review of finance sector regulation over the five years to 2018. Current requirements set higher minimum standards. As an example, inadequate prudential requirements previously agreed by some trustees with non-bank deposit takers are no longer possible, because all must now meet regulatory minimum requirements.<sup>1351</sup> Trustees continue to be free to set higher standards.

Incidents of unacceptable behaviour, however, continue to occur. Regulation was too late to stop serious financial loss being incurred by creditors and sub-contractors as a result of reckless trading by Mainzeal.<sup>1352</sup> It took a whistle-blower to uncover fraud of at least \$350 million at Fuji Xerox.<sup>1353</sup> A dairy industry scientist and business owner (Nubiotics Limited and Nu-Brands Limited) was found guilty of 18 Crimes Act charges and two SFO Act charges.<sup>1354</sup> A former employee of Fisher & Paykel Healthcare (F&P Healthcare), was found guilty of receiving secret commissions from Middle Eastern clients of F&P Healthcare and for deceiving his employer.<sup>1355</sup> Two businessmen were jailed for fraudulently obtaining a large bank loan (\$41 million) to build an Auckland inner-city apartment block.<sup>1356</sup>

#### **12.2.4 Accountability (practice)**

##### **To what extent is there effective corporate governance in companies in practice?**

Score: 3

*Interviewees for this section expressed concern that New Zealand's pool of experienced company directors is small and requires active development; a relatively small number of professional directors serve on the boards of numerous companies of substance. Diversity initiatives are only*

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<sup>1347</sup> Securities Regulations 2009.

<sup>1348</sup> Companies Act 1993, Schedule 4.

<sup>1349</sup> Financial Markets Authority, "Who needs to comply?" <http://www.fma.govt.nz/compliance/role/auditors/who-needs-to-comply/>

<sup>1350</sup> See <https://companies-register.companiesoffice.govt.nz/help-centre/company-directors/banned-directors/>

<sup>1351</sup> See <https://www.rbnz.govt.nz/regulation-and-supervision/non-bank-deposit-takers/requirements>.

<sup>1352</sup> <https://www.stuff.co.nz/business/industries/110903717/mainzeal-subcontractors-say-protections-still-weak>, and <http://www.scoop.co.nz/stories/BU1902/S00663/reckless-trading-claim-against-mainzeal-directors-upheld.htm>

<sup>1353</sup> See [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11895147](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11895147)

<sup>1354</sup> <https://www.sfo.govt.nz/fraud-threatened-industry>

<sup>1355</sup> <https://www.sfo.govt.nz/actions-risked-new-zealand-s-reputation>

<sup>1356</sup> <https://www.sfo.govt.nz/developer-and-company-director-jailed-for-41-million-fraud>

*partially successful, although the issue is actively recognised.<sup>1357</sup> Succession planning for the current generation of experienced company directors and greater targeting and training of the next generation of company directors warrant further effort.*

The 2013 NIS assessment found that the vast majority of New Zealand businesses were at a micro scale (ten or fewer employees) by global standards. In most instances, these businesses were owner-operated and could lack formal governance arrangements.<sup>1358</sup> This same business structure largely pertained in 2018, though there was a slight increase in the number of enterprises with 50-99 employees. Despite the significant increase in the number of members of the Institute of Directors, the majority of owner-operated businesses lack formal government arrangements.<sup>1359</sup>

The Institute of Directors has set standards including the ‘Four Pillars of Governance’, as benchmarks for governance best practice in setting the tone at the top. More extensive and uniform adoption of these standards would lead to improved corporate governance.<sup>1360</sup>

The NZ SuperFund focusses on responsible investment:

“The Guardians has a long-standing commitment to Responsible Investment based on the view that environmental, social and governance (ESG) factors are material to long term returns. Our governing legislation also requires us to avoid investments that would prejudice to New Zealand’s reputation in the world community.

ESG considerations are therefore integrated into all aspects of the Fund’s investment activities, from investment selection and due diligence to ownership activities such as monitoring external investment managers, exercising voting rights and engaging with companies to improve their ESG policies and practices. Our responsible investment work programme is closely aligned to the United Nations’ Principles for Responsible Investment.”<sup>1361</sup>

The Financial Market Authority’s 2017 Code of Conduct was designed to specify conduct for financial organisations and has wider application.<sup>1362</sup> “As a conduct regulator, a critical part of the FMA’s work is to look for market conduct that poses a risk to investors or consumers, and change that conduct for the better.”<sup>1363</sup>

The numerous finance company failures after 2007 highlighted inadequate past governance practices and a failure (by trustees and investors) to adequately recognise investment risk. They also brought to light many instances of failures of integrity and transparency. There were a

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<sup>1357</sup> Women on Boards, “About Women on Boards New Zealand”, [www.wob.org.nz](http://www.wob.org.nz) See also <https://www.nbr.co.nz/article/why-diverse-boards-are-good-us-and-good-new-zealand-215985>

<sup>1358</sup> Capital Market Development Taskforce Secretariat, *The Structure and Ownership of New Zealand Companies and its Impact on Capital Market Development*, 2012, [www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-taskforce-research/structure-of-nz-companies.pdf](http://www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-taskforce-research/structure-of-nz-companies.pdf) (note 2019 link broken, no clear alternative)

<sup>1359</sup> See [https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2018](http://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2018)

<sup>1360</sup> See [https://www.iod.org.nz/FourPillars](http://www.iod.org.nz/FourPillars)

<sup>1361</sup> See [https://www.nzsuperfund.co.nz/how-we-invest/responsible-investment](http://www.nzsuperfund.co.nz/how-we-invest/responsible-investment)

<sup>1362</sup> See [https://www.fma.govt.nz/news-and-resources/reports-and-papers/conduct-outcomes-report/2017/](http://www.fma.govt.nz/news-and-resources/reports-and-papers/conduct-outcomes-report/2017/)

<sup>1363</sup> See [https://www.fma.govt.nz/news-and-resources/reports-and-papers/](http://www.fma.govt.nz/news-and-resources/reports-and-papers/)

substantial number of successful prosecutions and as at 17 April 2018, 12 cases were still before the courts.<sup>1364</sup>

This area of weakness has tainted the non-bank deposit taker sector, and, although regulatory deficiencies have been addressed, it will take time for confidence to be restored. It is noted, for example, that the Reserve Bank of New Zealand list of licensed non-bank deposit takers is short, and a continuing move by such entities away from public deposit taking toward bank or wholesale funding is evident.

The successful prosecutions were undertaken under the legislation that existed in 2007. Enforcement was not lacking, but fraud is usually detected after the event and securities enforcement for wrongful disclosure is no exception.

#### **12.2.5 Integrity mechanisms (law)**

**To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?**

Score: 4

*As outlined in sections 12.2.1 and 12.2.3, a comprehensive overhaul of financial and securities markets law and regulation was already under way before the global financial crisis and local finance company collapses. These efforts were strengthened following finance company non-bank deposit taker collapses between 2008 and 2011.*<sup>1365</sup>

Financial advisers must now be registered with the Financial Markets Authority, under legislation that imposes obligations broadly proportional to investor risk.<sup>1366</sup> Authorised financial advisers who deal with more complex matters must meet a minimum educational requirement.<sup>1367</sup> Securities trustee companies and statutory supervisors must also be licensed with the Financial Markets Authority.<sup>1368</sup> This area continues to attract regulatory attention and further legislation is currently before Parliament.

The Financial Markets Authority replaced the Securities Commission and has a more explicit enforcement mandate than the commission had.

The insurance prudential supervisory regime<sup>1369</sup> came in the aftermath of the Christchurch earthquakes in 2010 and 2011, reputedly the fourth-largest insurance claim event ever. While

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<sup>1364</sup> See <https://fma.govt.nz/news-and-resources/fma-cases-before-the-courts/finance-company-cases/>. This site does not appear to have been updated since April 2018.

<sup>1365</sup> Simon Power, "Once-in-a-generation re-write of securities law introduced", 12 October 2011, [beehive.govt.nz/release/once-generation-re-write-securities-law-introduced](http://beehive.govt.nz/release/once-generation-re-write-securities-law-introduced)

<sup>1366</sup> Financial Markets Authority, "Financial Advisers Act 2008", <http://www.fma.govt.nz/about-us/what-we-do/legislation/>

<sup>1367</sup> Financial Markets Authority, "AFA competence and assessment", <http://www.fma.govt.nz/compliance/licensing-and-registration/licensing-forms-and-resources/afas/>

<sup>1368</sup> Financial Markets Authority, "Trustees", <https://www.fma.govt.nz/compliance/licensing-and-registration/licensing-forms-and-resources/independent-trustees/>

<sup>1369</sup> Reserve Bank of New Zealand, "Register of licensed insurers in New Zealand", <https://www.rbnz.govt.nz/regulation-and-supervision/insurers/licensing/register>

the sector was ‘stress tested’ by these events, the new legislative framework appears to be soundly based and well received.

The Secret Commissions Act 1910 criminalises private sector bribery and corruption, including giving or offering a gift, inducement, or reward to gain business advantage.<sup>1370</sup> ‘Corruption’ is not defined in the Act, and it is, therefore, difficult to prosecute. Until recently, the penalties were minor.<sup>1371</sup> They were substantially increased in 2015, but the Act has not otherwise been amended. It may, however, receive attention as part of the anti-corruption work programme that began in mid-2018.<sup>1372</sup>

Since 30 June 2013, a new regime covering money-laundering has been in force. The Anti-Money Laundering and Combating Financing of Terrorism Act 2009 sets in place regulations intended to be underpinned by a risk-based approach to allowing businesses to make decisions about how to best manage and mitigate their money-laundering and terrorist-financing risks.<sup>1373</sup> The regulations appear, where possible, to set thresholds to align with Australia for trans-Tasman harmonisation, to comply with the Financial Action Task Force’s recommendations, and to minimise compliance costs to the industry. The new regime for anti-money laundering and combating financing of terrorism is intended to have a significant impact on those entities designated as ‘reporting entities’, which, at the start, were all financial organisations<sup>1374</sup> with an extension in 2017 to many other businesses such as most lawyers and accountants<sup>1375</sup> and sellers of high value goods. Anti-money laundering legislation took effect for real estate agents from 1 January 2019. It is probably still too early to judge the Act’s impact. In addition to domestic oversight by supervisory agencies, country compliance will be assessed on a periodic basis against international standards.

Assurance requirements exist in law and regulation for most companies, particularly securities issuers. These have widened in scope over recent years and set a high standard.

#### **12.2.6 Integrity mechanisms (practice)**

##### **To what extent is the integrity of those working in the business sector ensured in practice?**

Score: 3

*Large corporates operate internal audit procedures which increasingly include a module for testing for corrupt practices, but, as a nation of small businesses, checks and balances to guard against corrupt or unlawful practice tend to be ad hoc and highly variable.*

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<sup>1370</sup> Secret Commissions Act 1910, section 3.

<sup>1371</sup> Matt Nippert, “NZ companies in overseas bribery spotlight”, *Stuff*, 13 May 2013, [www.stuff.co.nz/business/industries/8666764/New Zealand-companies-in-overseas-bribery-spotlight](http://www.stuff.co.nz/business/industries/8666764/New-Zealand-companies-in-overseas-bribery-spotlight)

<sup>1372</sup> See <https://www.justice.govt.nz/assets/Documents/Publications/cab-an-anti-corruption-work-programme-for-new-zealand.pdf>

<sup>1373</sup> Updated link 2019 <http://www.fma.govt.nz/compliance/amlcft/>

<sup>1374</sup> <http://www.fma.govt.nz/compliance/amlcft/>.

<sup>1375</sup> Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017

Explicit and detailed regulation applies to the finance sector, much of it resulting from the review of finance sector regulation and securities law. The oversight and supervision of regulated organisations take different forms, depending on size and scope (see, for example, the differences between bank and non-bank deposit taker supervision) but are extensive in nature and undertaken by government agencies established for the role. NZX requirements are applied to listed entities and are subject to public scrutiny.

Several significant cases were brought by the SFO and the Financial Markets Authority in 2013, dealing in particular with non-bank deposit taker failures,<sup>1376</sup> and some with a wider range since 2013.<sup>1377</sup> The weakness of the rating on this indicator in part reflects the extent of offences and failures observed in the (formerly) lightly regulated finance company sector and the fact that in 2013 legislative and enforcement initiatives intended to prevent recurrence were too recent to allow judgement.

It is possible that a higher rating would now (2018) be warranted. Certainly, this was reflected in the OECD's 2018 Exporting Corruption Report that showed an improvement in New Zealand's rating because of the additional evidence available to detect corruption. "In New Zealand, in response to the Panama Papers scandal and the ensuing government inquiry, the government introduced reforms to increase compliance and disclosure obligations, including that trusts reveal their beneficiaries and other details to regulatory agencies through a register. In countries such as Argentina, Colombia, Greece, Korea, New Zealand and Spain, the regime for corporate liability has been strengthened".<sup>1378</sup>

Instances of fraud have been company specific rather than systematic.<sup>1379</sup> Bribery has not been a feature in the finance sector.

More widely, in the 2012 Deloitte New Zealand Bribery and Corruption Survey, the then General Manager of the SFO, Nick Paterson, was quoted as saying, "It would be easy to sit back and say that New Zealand is the country perceived to have the least corruption, and that it only happens to others. However, we are seeing more instances of domestic corruption such as bribes paid to public officials, and corrupt payments made within the private sector. Organisations need to be awake to the changing environment as well as the legal and reputational risks and consequences associated with engaging in corrupt practices."<sup>1380</sup>

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<sup>1376</sup> Financial Markets Authority, "FMA releases Investigations and Enforcement Report 2013", news release, 1 July 2013, [www.fma.govt.nz/keep-updated/newsroom/media-releases/2013/fma-releases-investigations-and-enforcement-report-2013](http://www.fma.govt.nz/keep-updated/newsroom/media-releases/2013/fma-releases-investigations-and-enforcement-report-2013)

Serious Fraud Office, "Media releases", [sfo.govt.nz/mediacentre](http://sfo.govt.nz/mediacentre)

<sup>1377</sup> See [https://fma.govt.nz/assets/Reports/\\_versions/10491/Conduct-outcomes-report-2017.1.pdf](https://fma.govt.nz/assets/Reports/_versions/10491/Conduct-outcomes-report-2017.1.pdf)

<sup>1378</sup> OECD 2018 Exporting Corruption Report:  
[http://files.transparency.org/content/download/2318/14294/file/2018\\_Report\\_ExportingCorruption\\_English.pdf](http://files.transparency.org/content/download/2318/14294/file/2018_Report_ExportingCorruption_English.pdf):  
Page 18, Improvements

<sup>1379</sup> See section 13.2.4.

<sup>1380</sup> Deloitte, *Deloitte Bribery and Corruption Survey 2012 Australia and New Zealand: A storm on the horizon?* (Sydney: Deloitte, 2012), p. 4, [www.deloitte.com/assets/Dcom-NewZealand/Local%20Assets/Documents/Services/Forensics/nz\\_Bribery\\_and\\_Corruption\\_Survey\\_2012.pdf](http://www.deloitte.com/assets/Dcom-NewZealand/Local%20Assets/Documents/Services/Forensics/nz_Bribery_and_Corruption_Survey_2012.pdf)

Regrettably little changed in the 2017 Deloitte Bribery and Corruption Survey.<sup>1381</sup> This found that “The tone of public discourse in both New Zealand and Australia is clear – bribery and corruption are in focus, and not acceptable ways of doing business. Whether your organisation chooses to adapt to developing expectations or deploys the bare minimum to remain compliant in a regulatory sense, will determine whether it stays one step ahead. Even so, for respondents for whom foreign bribery was relevant, only 20% of respondents rate foreign corruption as a top five risk to their operations in the next 5 years. Of even more concern is that just 55% of all respondents expect to implement or upgrade their ABC compliance framework within the next five years.”<sup>1382</sup>

The 2013 NIS assessment found that occasional instances of bureaucratic corruption were prosecuted under existing law and freely reported in the news media.<sup>1383</sup> It also found that the SFO had been proactive since the Canterbury earthquakes of 2010 and 2011 in seeking evidence of fraudulent commercial behaviour in an environment where reconstruction costs of NZ\$40 billion were estimated and opportunities for fraud were deemed greater than usual because of the scale, complexity, and urgency of the task.<sup>1384</sup> The SFO had been investigating two cases relating to the Christchurch rebuild since March 2013.<sup>1385</sup> However, the investigation (and others since then) found that the fears of widespread fraud have generally proved unfounded.<sup>1386</sup>

In the five years since 2013, New Zealand has seen the Serious Fraud Office lay charges with respect to bribery and corruption investigations elsewhere. The investigation and prosecution of perpetrators for this type of conduct is a reality. With this change, we are also seeing new instances of bribery and corruption emerging within the marketplaces where we operate. There is no evidence there is more offending rather we are starting to get better at identifying the symptoms of commercial and political bribery or corruption, and then having both the skills and appetite to address it.<sup>1387</sup>

New Zealanders were early and enthusiastic adopters of electronic payments systems and cash is less used than in many comparable economies, thus limiting the opportunities for untraceable payments. Nonetheless New Zealand has a so-called ‘black economy’. Its size is not officially estimated, and there is no internationally recognised methodology to measure this

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<sup>1381</sup> See <https://www2.deloitte.com/nz/en/pages/risk/articles/2017-bribery-and-corruption-survey.html>

<sup>1382</sup> Deloitte, *Deloitte Bribery and Corruption Survey 2017 Australia and New Zealand*, <https://www2.deloitte.com/content/dam/Deloitte/nz/Documents/risk/bribery-and-corruption-survey-report.pdf>

<sup>1383</sup> For example, Michelle Duff, “WINZ unit fails to stop staff fraud”, *Stuff*, 2 April 2001., [www.stuff.co.nz/national/crime/4839741/WINZ-unit-fails-to-stop-staff-fraud](http://www.stuff.co.nz/national/crime/4839741/WINZ-unit-fails-to-stop-staff-fraud)  
Phil Kitchin, “Honeywell contract not disclosed”, *Stuff*, 23 December 2010, [www.stuff.co.nz/national/politics/4487828/Honeywell-contract-not-disclosed](http://www.stuff.co.nz/national/politics/4487828/Honeywell-contract-not-disclosed)

<sup>1384</sup> Serious Fraud Office, “Serious Fraud Office focus on Christchurch”, 21 March 2013, [www.sfo.govt.nz/n345,24.html](http://www.sfo.govt.nz/n345,24.html)

<sup>1385</sup> Serious Fraud Office, 2013.

<sup>1386</sup> See for example, <https://www.stuff.co.nz/business/industries/70184147/serious-fraud-office-clears-christchurch-rebuild-firm> and <https://www.nbr.co.nz/article/christchurch-rebuild-fraud-not-bad-predicted-risks-remain-tolley-says-bd-157182>

<sup>1387</sup> Deloitte, *Deloitte Bribery and Corruption Survey 2017 Australia and New Zealand*, <https://www2.deloitte.com/content/dam/Deloitte/nz/Documents/risk/bribery-and-corruption-survey-report.pdf>

underground market. A 2013 news report estimated the amount of undeclared tax from the shadow economy to be in excess of \$1 billion per year.<sup>1388</sup> Australia has attempted to measure its underground economy, estimating it at about 2 per cent of gross domestic product.<sup>1389</sup> The Commissioner of Inland Revenue has noted that a rise in the hidden economy in New Zealand could be attributed in part to the large increase in cash paid work in the wake of the Christchurch earthquakes.<sup>1390</sup>

"There is a vast underground economy in New Zealand, always has been: mate's rates, cash jobs, jobs in kind, all of those sort of things which are very hard to track down", said Minister of Revenue Peter Dunne in December 2011. "There will be some high-level corporate evasion ... but I think in the New Zealand context, it is more likely to be those ingrained sorts of things – the mate's rates, the 'do a mate a favour', which has been part of our informal system forever really."<sup>1391</sup>

The evidence available in 2018 suggests that the underground economy (also referred to as black, grey or shadow) has reduced since 2013. According to the New Zealand Initiative, a "2018 IMF paper finds that between 1991 and 2015, New Zealand's shadow economy averaged 11.7% of GDP. The shadow economy widely lost share during this period. The estimated proportion for New Zealand declined from 15.0% of GDP in 1991 to 9.0% of GDP in 2015. So how can New Zealand have both a high tax revenue ratio to GDP and a low shadow economy ratio? We have a broader tax base and lower tax rates at the margin than many other countries."<sup>1392</sup>

Cash for service payments to and by small businesses appears to be the main form this hidden economy takes and is widely tolerated. This is at odds with the country's self-image as an open, tax-paying democracy. Businesses operating in this way are breaking tax laws if they fail to declare income. Activities covered in this part of the economy also include illicit drug dealing and human trafficking by organised criminal gangs and the employment of illegal migrants at wage rates and employment conditions below the legal minimum.

Some 2013 interviewees suggested New Zealand's relatively small and close-knit commercial community acts as a discipline in itself on unethical or corrupt behaviour. While this may be true, it is somewhat belied by the then recent experience in the finance company sector. Other interviewees suggested that there is a degree of complacency about the potential for both known and unacknowledged conflicts of interest to persist in such a relatively small economy.

Civics and business education in the New Zealand school system is weak, leading to poor general knowledge of the legitimate expectations of ethical business practice.<sup>1393</sup> There is evidence of

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<sup>1388</sup> See [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=12045113](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12045113)

<sup>1389</sup> Australian Bureau of Statistics, "Feature article: The underground economy and Australia's GDP," 2003, [www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1350.0Feature%20Article3Oct%202003?opendocument&abname=Summary&prodno=1350.0&issue=Oct%202003&num=&view=](http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1350.0Feature%20Article3Oct%202003?opendocument&abname=Summary&prodno=1350.0&issue=Oct%202003&num=&view=)

<sup>1390</sup> Clio Francis and Michael Field, "Economy's \$7 billion black hole", *Dominion Post*, 1 December 2011, [www.stuff.co.nz/dominion-post/business/6065399/Economys-7-billion-black-hole](http://www.stuff.co.nz/dominion-post/business/6065399/Economys-7-billion-black-hole)

<sup>1391</sup> Francis and Field, 2011.

<sup>1392</sup> NZ Initiative Reports and Media, <https://nzinitiative.org.nz/reports-and-media/opinion/new-zealands-relatively-modest-shadow-economy/>.

<sup>1393</sup> Commission for Financial Literacy and Retirement Income, "Financial literacy research and reports", [www.cflri.org.nz/research-and-reports/financial-literacy](http://www.cflri.org.nz/research-and-reports/financial-literacy)

an increase in the resources available to schools to improve financial literacy with 59,000 students involved by the end of 2018.<sup>1394</sup>

There is some evidence that there is a cohort of migrant-owned businesses operating in relative isolation from the mainstream (for language or other reasons), and in ignorance of New Zealand business practices and norms. The government needs to get information about ethical expectations to this group.

Since 2013, the Ministry of Business, Innovation and Employment has been more proactive in identifying and progressing cases against human trafficking.<sup>1395</sup> Also, a collaborative effort is needed for government to better connect with small businesses. Research is lacking on the practices of small and medium-sized enterprises, which makes it difficult to assess how to connect with these businesses and identify the drivers relevant for them. Changes in tax treatment for small and medium-sized enterprises around the timing of goods and services tax and provisional tax payments demonstrate that the IRD is starting to get this message.<sup>1396</sup>

## Role

### 12.3.1 Anti-corruption policy engagement

**To what extent is the business sector active in engaging the domestic government on anti-corruption?**

Score: 2

*The issue of corruption is of such little apparent relevance in the New Zealand context that it is not a major consideration by the business sector and consequently, the business sector engages little with the government, with professional services providers or with TINZ on anti-corruption. In 2018 there are some slightly encouraging signs that this may change as business moves beyond grappling with anti-money laundering regulation to a recognition that there are real risks that it is designed to address.*

TI suggests that this indicator question should be used only in countries where corruption has been identified as a key problem. New Zealand's place near the top of the Corruption Perceptions Index, therefore, suggests this indicator should not be especially relevant to New Zealand.

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<sup>1394</sup> CFF Annual Report 2018, <https://www.cffc.org.nz/news-and-media/news/annual-report-2018/>

<sup>1395</sup> Modern day slavery and human trafficking, 26 September 2014,  
<https://www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-851/modern-day-slavery-and-human-trafficking>  
Fijian woman charged with human trafficking to New Zealand, 20/08/2018,  
<https://www.newsroom.co.nz/home/new-zealand/2018/08/fijian-woman-charged-with-human-trafficking-to-new-zealand.html>

Guilty: First human trafficking convictions in New Zealand, 15 September 2016 ,  
<https://www.nzherald.co.nz/nz/news/article.cfm?cid=1&objectid=11710423>, "Faroz Ali found guilty of 15 human trafficking charges in scam that enticed and exploited Fijians to work in New Zealand."

<sup>1396</sup> IRD document, November 2014: <https://www.ird.govt.nz/resources/f/d/fde1befa-3ffd-4a47-90b2-bc75e5e2fac8/sme-tax-compliance-cost.pdf>.

However, some evidence suggests a level of naivety is contributing to the low priority given to anti-corruption activities among New Zealand businesses. This is especially relevant to those who assume they are not complicit because in foreign markets they use local agents (whose own standard of business ethics may be subject to question). This is not to say that New Zealand businesses are corrupt or unethical, but that the issue is perceived to be of such little apparent relevance in the New Zealand context that it is not a major consideration. Consequently, the business sector engages little with the government on anti-corruption.

Turning to New Zealand businesses' engagement with the rest of the world, either as exporters or importers of goods and services, and with the government's resources and power to support these businesses in offshore markets, research conducted for TINZ in 2012 clearly shows that New Zealand exporters put a good deal of faith in the support offered by New Zealand government organisations in overseas markets.<sup>1397</sup> New Zealand Trade and Enterprise, for example, is often seen as a primary source of information on operating in overseas markets, including the best ways to access markets and to deal with corrupt practices in those markets.<sup>1398</sup>

In 2010, a small to medium-sized exporter in a recent start-up, said, "Because of the language barrier I take a lot of information from New Zealand Trade and Enterprise, the New Zealand Embassy and some other organisations like the Asian New Zealand Business Association. They're good organisations to connect with. Most of the information I get is in Japanese so it's good to get that information, and others may already have had similar experiences. Having good advice is a short cut into the system."<sup>1399</sup>

And a large food and beverage exporter said, "They won't get involved in a s\*\*\* fight but they're very good on advice. They know enough about the dodgy things that go on to know what to do".<sup>1400</sup>

That said, there is one notable recent example of a large New Zealand exporter affected by an agent's activities.

A subsidiary of Zespri, which controls exports of the country's kiwifruit crop under special legislation, was fined \$960,000 in a Chinese court, and two Chinese agents for the organisation were jailed for up to five years in March 2013 for their involvement in malpractice estimated to have involved \$11.6 million in gains from the practice of creating double invoices between 2008 and 2010 to avoid Chinese customs duties.<sup>1401</sup>

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<sup>1397</sup> UMR Research, *Exporters' Experiences*, qualitative research for Transparency International, 2010.

<sup>1398</sup> <https://www.mfat.govt.nz/en/trade/how-we-help-exporters/how-we-help-exporters/>

<sup>1399</sup> UMR Research, 2010: 22.

<sup>1400</sup> UMR Research, 2010: 22.

<sup>1401</sup> Bay of Plenty Times, 17 July 2013, [www.nzherald.co.nz/bay-of-plenty-times/news/article.cfm?c\\_id=1503343&objectid=11104983](http://www.nzherald.co.nz/bay-of-plenty-times/news/article.cfm?c_id=1503343&objectid=11104983)

"There are things we could have done better, but we're not corrupt", Zespri chief executive Jager told TVNZ in an interview in July 2013.<sup>1402</sup>

During the interview, Jager said he had no knowledge nor had he seen any suggestion that bribery was involved. The company has acknowledged it was warned there was a "reputation risk" associated with dual-invoicing in 2008.<sup>1403</sup>

The SFO confirmed in October 2012 that it had begun an investigation into unspecified matters relating to Zespri.<sup>1404</sup> The *Sunday Star-Times* newspaper claimed in a report after the SFO's confirmation that its earlier reports on the issue had led to the probe after publishing the text of a 2007 email in which a senior marketing manager for Zespri wrote "everyone in China ...does this [double invoicing] and we need to do this too to remain competitive".<sup>1405</sup>

After a four-year investigation, the SFO found insufficient evidence to warrant laying charges although it accepted that the practice of dual invoicing had facilitated criminal offending in China. The lower-valued invoice was used by Zespri's importer to evade duty and resulted in a conviction for the Chinese offence of smuggling.<sup>1406</sup>

Business does look to the government for support, indicating a level of respect for and reliance on the government.

Phil O'Reilly, chief executive of Duke Partner, wrote an article in the Dominion Post in 2017, with the title "NZ's low corruption status under threat" (25 April 2016, A15) in which he warns that, although businesses benefit from New Zealand's strong ethical reputation, smaller businesses in particular are unaware of the risks that international trade with new – more corrupt – countries bring for our corruption-free status.<sup>1407</sup>

In the case of New Zealand businesses operating offshore. Business New Zealand, Export New Zealand, the New Zealand Business Council for Sustainable Development, the Human Rights Commission and others have moved increasingly to adopt principles of corporate social responsibility that include building strong governance and integrity systems (see Appendix 7 for the United National Guiding Principles on Business and Human Rights).

At the same time, exporters do not seem to be actively pressuring the New Zealand government to do more to help them in overseas markets where corruption is demonstrably a problem. The research for TINZ cited earlier suggested that this seems mainly to be because exporters do not

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<sup>1402</sup> TVNZ Q&A, 28 July 2013, <http://tvnz.co.nz/q-and-a-news/susan-wood-interviews-zespri-ceo-lain-jager-5520727> (May 2019 link broken, reference to interview can be found at <http://www.scoop.co.nz/stories/PO1307/S00348/zespri-ceo-cant-rule-out-more-issues-in-china.htm>)

<sup>1403</sup> Tony Wall, "Zespri had invoice warning years ago", *Stuff*, 26 May 2013, [www.stuff.co.nz/business/farming/agribusiness/8718065/Zespri-had-invoice-warning-years-ago](http://www.stuff.co.nz/business/farming/agribusiness/8718065/Zespri-had-invoice-warning-years-ago)

<sup>1404</sup> "SFO confirms Zespri probe", *New Zealand Herald*, 22 October 2013. [www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11144151](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11144151)

<sup>1405</sup> Tony Wall, "Story leads to Zespri fraud investigation", *Sunday Star-Times*, 27 October 2013, May 2019 link broken, but outcome of investigation available at [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11941293](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11941293)

<sup>1406</sup> See [https://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11941293](https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11941293)

<sup>1407</sup> See <https://www.stuff.co.nz/business/86794945/phil-oreilly-nzs-history-of-low-corruption-no-longer-a-given>

believe there is much the New Zealand government could do – the size and importance of New Zealand relative to its export markets means it is assumed difficult for the New Zealand government to influence other governments.

The research suggests, however, that not all exporters are committed to action by the New Zealand government on corruption in overseas markets. It is not so much that they see government action as being wrong but as futile and possibly even poorly informed about the conditions that operate in international markets. They see the New Zealand government as too small to have any real influence. There is also a perception that people in many other countries see New Zealanders, and by extension the New Zealand government, as naive. These exporters, therefore, sometimes worry that overt government action will ultimately harm New Zealand's reputation by making the country seem quaint, overly optimistic, and able to be taken advantage of.

This reflects an acceptance by some exporters, particularly the smaller exporters participating in a UMR qualitative survey,<sup>1408</sup> of practices they would regard as being corrupt if they happened in New Zealand as being standard in certain export markets. These exporters often cite gifts and small facilitation payments as examples of this, especially those made by local agents. There is frequently a willingness to ignore such activities, often on a "don't ask, don't tell" basis where the local agent does "whatever is necessary" to make the deal or solve the problem without telling the exporter exactly what they have done. The key point here is that, while exporters often suspect that their local agents are engaged in corrupt practices, some are choosing not to investigate further. Such exporters believe that, if they did not ignore such activities, they might end up losing the contract or deal to a competitor who would ignore them.

Exporters often feel they are too small to have real power in some of these markets – even medium-sized New Zealand exporters are often fairly small in overseas markets.

The same research found no evidence that this finding applies to the larger New Zealand exporters. These companies often have enough gravitas in overseas markets to enforce their own standards. They expect the New Zealand government to help with this, but also expect to take on a lot of responsibility themselves.

Larger exporters may also be less susceptible than smaller exporters to the temptation to ignore the possibility of corrupt practices. Specifically, the costs of being involved in corruption and the benefits of not being involved are more likely to be seen as significant by large exporters.

Large exporters are typically involved in multiple markets, including some that have strict regulations on corruption. Some also have multiple contacts within the same market. Smaller exporters, on the other hand, are often involved in only one or two markets, and have limited numbers of contracts and contacts within each. Therefore, if a large exporter is found to be involved in corrupt practices in one market, they could be putting their reputation at risk in other markets. This risk is less likely to be present for the small exporter.

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<sup>1408</sup> UMR Research with Transparency International, *Experiences of Corruption in Export Markets*, 2012, UMR Research, *Exporters' Experiences*, qualitative research for Transparency International, 2011.

Similarly, if a large exporter loses a contract because it refuses to engage in corrupt practices, then it may well have other contracts on offer. Small exporters who lose contracts, however, may not have such alternatives.

Smaller firms tend to suffer from a lack of institutional depth, so that corrupt practices may not be recognised or addressed when they occur and may not have been planned for.

The findings above derive from 2013 interviews with exporters, and the TINZ research it draws from did not cover importers. However, other UMR Research projects, which cannot be cited as they were prepared under non-disclosure agreements for specific clients, give some insight into the likelihood of mirror-image issues for importers to New Zealand dealing in foreign markets.

On that basis, importers who are most at risk will most likely be small importers. New Zealand's relatively light border regulation and tariff structure<sup>1409</sup> and its acceptance of parallel imports, to some extent, facilitate the commercial viability of smaller import businesses.

Many of the same principles identified for exporters logically also apply to importers. Small importers will often need to work with local agents, and feel they need to rely on the recommendations of those agents to be able to get the best deal.

While the costs of avoiding corrupt practices may not be as large as for small exporters (in that there may well be other local companies they can buy through), it seems unlikely that many of these very small importers will have seriously considered the possible impact on their business from sourcing imported goods in a way that involved corruption in the foreign source market.

Small import businesses (including sole operators) are unlikely to have formal processes for dealing with corruption.

Large importers, like large exporters, are more likely to see the consequences of being caught as significant and to have procedures for dealing with corrupt practices. However, this area has not been tested.

In summary, New Zealand exporters of scale appear well attuned to the need to ensure their dealings in foreign markets are of a standard consistent with international best practice. However, interviews suggest New Zealand businesspeople dealing in export markets are insufficiently focused on the need to be sure their local agents are operating to a similarly high standard. The potential for a “blind eye” approach to local business agents’ commercial norms, where corrupt, has considerable potential to damage New Zealand brands and the country’s corruption-free reputation. Similar concerns exist for importers, especially those operating on a small scale.

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<sup>1409</sup> “Ease of doing business in New Zealand: Trading across borders”, *Doing Business*, 2013, [www.doingbusiness.org/data/exploreeconomies/new-zealand/#trading-across-borders](http://www.doingbusiness.org/data/exploreeconomies/new-zealand/#trading-across-borders)  
NZIER, *Tariffs in New Zealand*, working paper 2010/1 (Wellington: New Zealand Institute of Economic Research, 2010).

### **12.3.2 Support for or engagement with civil society**

**To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?**

Score: 2

*Considerable scope exists for CSOs, including TINZ, to work more closely with business, both as part of developing the ethics programme designed to strengthen business integrity systems and as part of the response to the OGP.*

Whether through complacency or a genuine belief that corruption is rare in this country, New Zealand companies tend not to engage at all with civil society in the task of combating corruption. Anecdotes, backed up by several surveys by professional services firms<sup>1410</sup> since 2013, suggest anti-corruption considerations are not rated highly as topics for a governance focus.

### **12.3.3 To what extent does the business sector engage with/provide support to civil society in fostering ethical business practice and maintaining a reputation for high integrity?**

Score: 3

*While the Institute of Directors' Four Pillars<sup>1411</sup> have become central to good governance over the past five years, New Zealand businesses are arguably still indifferent about their obligations to support civil society and foster ethical business practices that prevent corruption through strengthening integrity systems.<sup>1412</sup> This may indicate that New Zealand businesses are confident the country's relatively corruption-free environment makes this a second-order issue.*

On a case-by-case basis, examples can be found of businesses that comprehensively adopt TI's seven actions to prevent corruption through good governance, tone at the top, and public probity initiatives through sponsorship and education programmes, secondments of people with experience in integrity issues, or direct involvement. However, even with the Institute of Directors' Four Pillars and the passage of time since 2013, this is not an entrenched focus of business activity. Sponsorships are sought primarily for commercial advantage, or for community 'licence to operate' benefits. Since corruption is not a major public issue, being seen to combat it is not a natural focus for commercially advantageous sponsorship or educational initiatives.

Governance training is provided through voluntary agencies such as the Institute of Directors, and tertiary educational short courses are available.

### **12.4.1 Te Tiriti o Waitangi**

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What do the institutions that make up the business sector do to partner with**

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<sup>1410</sup> Deloitte 2013, 2015, 2017 Surveys of corruption, Australia and NZ. PwC 2017. KPMG 2017.

<sup>1411</sup> See <https://www.iod.org.nz/FourPillars>

<sup>1412</sup> IBID

**Maori, to respect and affirm Maori rights to make decisions and to enhance Maori participation in their field of activity? In particular, where business sector institutions have legal rights and obligations in this respect given to them by the Crown, how well do they honour them, including any Treaty obligations passed on by the Crown?**

*The Treaty of Waitangi is part of New Zealand's constitutional arrangements and creates a relationship between the New Zealand government (the Crown) and Māori. There is no legal requirement on private sector actors with respect to the Treaty as such but the principles enshrined in Article 3 regarding equality, non-discrimination, and participation are relevant.*

The Māori economic base has increased significantly in the last 20-plus years, spurred by a combination of recovery by iwi to economic health by the passage of time, higher educational attainment by younger Māori leaders, the impact of Treaty settlements on tribal assets, and the interest shown by certain classes of foreign investor in partnering with Māori for industry development and resource exploitation. In turn, this experience has provided a basis for Māori to gain experience and to fill positions on Crown entity, public sector, NGO and private sector boards.

In 2010, BERL, an economic consultancy, estimated the total Māori asset base at NZ\$36.9 billion, of which some NZ\$20.8 billion was the business of Māori employers, NZ\$4 billion was attached to Māori trusts and incorporations, and other Māori entities represented NZ\$6.7 billion.<sup>1413</sup> This information was updated when Te Puni Kōkiri (TPK – the Māori development agency) commissioned a BERL Report which was published in April 2015 finding that “the Maori economy asset base has increased \$5.7 billion (or 15.4% percent in nominal terms) from \$36.9 billion in 2010 to \$42.6 billion in 2013. The 2013 Māori asset base estimate comprises:

- \$12.5 billion in Māori trusts, incorporations, and other entities
- \$23.4 billion in assets of Māori employers
- \$6.6 billion in assets of self-employed Māori.”<sup>1414</sup>

In 2016, the Department of Statistics identified 1101 Māori enterprises with 11,320 employees.<sup>1415</sup>

Tribal asset-owning bodies are generally registered, with constitutions and associated reporting and fiduciary requirements, which govern collective Māori land ownership, Treaty settlement assets, and commercial ventures undertaken under tribal or sub-tribal entities.

The Federation of Māori Authorities, the Māori Trustee, and Te Ohu Kaimoana (the Māori Fisheries Commission) are charged with overseeing the governance arrangements of tribal commercial entities. The OAG has repeatedly raised concerns about relatively large numbers of

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<sup>1413</sup> See berl.co.nz/assets/Economic-Insights/Economic-Development/Māori-Economy/Presentation-to-Summit-050511.pdf (May 2019 link broken, alternative link: <https://www.mbie.govt.nz/assets/749791de0d/dec-2014-maori-in-business.pdf>)

<sup>1414</sup> See Maori Economy Report 2013: <https://www.tpk.govt.nz/documents/download/609/tpk-maorieconomyreport-2013.pdf>

<sup>1415</sup> See <https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2016>

late or incomplete audits of Māori incorporations, and although there has been continuous improvement since 2012,<sup>1416</sup> this was still a work in progress in 2018.<sup>1417</sup> With regard to the Māori Trustee, reforms are looking to drive a greater service level ethos and capability momentum amongst those entities who interact with the Māori Trustee.<sup>1418</sup>

Settlement of Treaty of Waitangi-based claims for historic injustices are delivering assets, both cash and physical assets, to most iwi. This often requires the establishment of new legally binding, but culturally appropriate, structures to ensure appropriate governance of those assets so that a variety of a variety of economic, social, and cultural aims can be achieved.

There is some evidence that asset-holding companies are better advanced than tribal incorporations in this process. It will be important for iwi to ensure that not only are asset-holding companies well governed, but that tribal authorities are able to exercise similarly skilled governance to ensure assets intended to help overcome historic economic, social, and cultural deprivation achieve their purpose. This is likely to create challenges arising from governance and accountability behaviours that are justified on cultural grounds and structures, but might conflict with the rights and needs of all stakeholders.

Hamiora Bowkett notes: “The reforms around Māori Land – Te Ture Whenua Māori – are also looking to enable landowners to utilise their assets through an enabling legislative and service framework. However, core questions of governance, management and business capability remain. There is a dialogue to be had around the extent to which Māori and iwi interests support economic development particularly around the exploitation of certain natural resources and what this means for guardianship and stewardship of these resources. Commercial and public sector partners have a journey to take now with Māori to explore these areas and understand what it means, through the Treaty relationship, to seek the types of economic and social outcomes business activities can contribute to.”<sup>1419</sup>

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<sup>1417</sup> Why Maori organisations need more accountability, <https://thespinoff.co.nz/atea/02-05-2018>

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## CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

Transparency, democratic participation, and accountability clearly have important roles to play in ensuring integrity. They also play key roles in ensuring social cohesion and the rule of law. As Professor Jeremy Waldron has said, “there is such a degree of substantive disagreement among us about the merits of particular proposals … that any claim that law makes on our respect and our compliance is going to have to be rooted in the fairness and openness of the democratic process by which it was made”.<sup>1420</sup>

In Jeremy Pope’s conception, the pillars of the National Integrity System form an interlocking system. When properly governed, regulated, and managed, each pillar will both support good performance in other pillars and provide checks and balances across the system that reduce and limit inappropriate behaviour. Supported by sound societal foundations, the result will be an overall system that is more likely to sustain integrity and promote public policies that are considered to be fair, effective, and sustainable.

This analysis of New Zealand’s NIS, then, is essentially a risk assessment. The focus of the 2013 report was mainly on developments over the 10 years since the first New Zealand NIS assessment report, which provides a useful benchmark for the analysis. In some areas, such as the detailed assessment of the public management system (pillar 4 report), the analysis spanned the period since the major reforms in the 1980s and identified deep-seated tensions in the system that suggest caution in concluding that recent reforms will ‘fix’ them.

The 2018 update of the NIS tends to confirm the conclusion expressed above. There have been promising developments in the past five years, but progress has been slow and in some areas, non-existent.

### Strengths and weaknesses of New Zealand’s National Integrity System

Figure 15 contains a summary of the main strengths and weaknesses in the individual pillars, drawn from the summaries of the pillar reports in Chapter 5. It has not been updated since 2013, but there is comment on changes elsewhere in this report. The most prominent of these are

- the steps taken to promote compliance with the OIA,
- some improvements in public procurement processes,
- progress in implementing international policies and laws for deterring and combating bribery and corruption,
- the development of an anti-corruption work programme
- increased resources for the Ombudsman,
- some attention to media regulation and an increase in investigative journalism,
- an improved regime for transparency in the beneficial ownership of companies and trusts.

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<sup>1420</sup> Jeremy Waldron, ‘Parliamentary Recklessness: Why we need to legislate more carefully’. Lecture given at the Maxim Institute, October 2008. New Zealander Jeremy Waldron holds a professorship at the New York University School of Law and is Chichele Professor of Social and Political Theory at All Souls College, Oxford University.

**Figure 15: Strengths and weaknesses of the National Integrity System pillars**

Strengths	Weaknesses
<b>Legislature (pillar 1)</b> <p>The work of the legislature is generally transparent, parliamentary debate is covered in full on television, and access by the public to select committee processes is particularly good. The New Zealand legislature has a long history of producing stable governments. Since the introduction of MMP representation it has been more representative of New Zealand society.</p>	<p>Parliament does not have specialised committees in some key areas (treaties, or human rights) and lacks independent technical capacity for oversight of public expenditure and fiscal policy. At times it resorts to urgency to pass important legislation without the opportunity for a full debate. Its administrative arrangements and officers are not subject to the OIA, nor is there a code of conduct for MPs or transparency of lobbying of MPs.</p>
<b>Political executive – Cabinet (pillar 2)</b> <p>Cabinet is uncontestedly the apex of government power, and its processes promote coherent national decision-making. The executive operates free from undue external influence, and the <i>Cabinet Manual</i> sets out clearly the behaviour expected of Ministers, reinforced through Cabinet collective responsibility. Cabinet Minister accountability is acute in areas of high political profile. Ministerial interactions with the public sector system are governed by laws and processes that promote transparency and accountability for policies and their implementation.</p>	<p>By developed country standards, there is a high concentration of power in the Cabinet, including power over key appointments. At times, this creates public mistrust. There is some resistance by Ministers (also in the public sector) to the spirit and intent of the OIA. Cabinet Minister accountability for the effectiveness of policies is relatively weak.</p>
<b>Judiciary (pillar 3)</b> <p>The judiciary is an important check on executive decision-making. It displays high standards of independence, accountability and integrity. The court system is seen to be free of corruption and unlawful influence</p>	<p>Financial disclosure by members of the judiciary is deficient, there are some weaknesses in public access to court information, there is no regular reporting to the public on the activities of the judiciary, and more transparency in judicial appointments is needed.</p>

Strengths	Weaknesses
<b>Public sector (pillar 4)</b> <p>Institutional arrangements are very effective in supporting ethical behaviour and suppressing corruption. Advanced levels of transparency are apparent in public financial management, including public procurement systems that are generally sound. High accountability exists for the use of resources to deliver outputs. By international standards, there is a high degree of public access to official information in practice. There are some strong integrity institutions for environmental governance.</p>	<p>Serious regulatory failures have occurred in recent years. The public service has a diminishing capacity for professional policy advice, and the convention of free and frank advice is under pressure. The public sector does not provide systematic analysis and information on the impact of policies (including public management policies), and there are gaps in “state of the nation” environmental and social reporting<sup>1421</sup>. There is resistance to the obligations imposed by the OIA, and transparency gaps exist in public procurement. There are concerns about the interface between central and local government.</p>
<b>Law enforcement (pillar 5)</b> <p>Overall, New Zealand law enforcement agencies maintain high standards of transparency, integrity, accountability, and independence.</p>	<p>The government has been slow to implement international policies and laws for deterring and combating bribery and corruption. In several key areas, legislation, resources, and government policy are inadequate for addressing bribery and corruption and little exists in the way of risk monitoring, preventative, or educational activity. Some concerns exist about transparency and accountability in respect of surveillance activity. There is concern about the extent of the over-representation of Māori in the criminal justice system and possible structural discrimination.</p>

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<sup>1421</sup> On 8 August 2013, the Minister for the Environment announced that legislation would be introduced that would provide for a “comprehensive synthesis [state of the environment] report covering all environmental domains’ to be prepared and ‘released every three years’. <http://www.beehive.govt.nz/release/govt-mandate-three-yearly-state-environment-reports>.

Strengths	Weaknesses
<b>Electoral management body (Electoral Commission) (pillar 6)</b>	<p>General elections have full integrity, reflecting in part the independence and integrity of the Electoral Commission, which has a strong reputation as a trustworthy institution and has credibility in administering general elections. The recent merger of three separate electoral agencies and consequent reconfiguration has strengthened electoral management.</p>
<b>Ombudsman (pillar 7)</b>	
<p>High standards of independence, integrity, and accountability are apparent. The Ombudsman operates as an effective check on the exercise of administrative power and recommendations are almost invariably accepted.</p>	<p>A backlog of cases will take some time to overcome, and recent increased funding may be insufficient. The Ombudsman is not mandated to have a general oversight role with respect to policy advice, review, statistical oversight, promotion of best practice, training, requester guidance, and annual reporting; nor is there a mandated function of educating the public or government agencies about their rights and obligations under the OIA and other relevant legislation. Some formal integrity and accountability mechanisms are absent.</p>
<b>Supreme audit institution (Auditor-General) (pillar 8)</b>	
<p>The Auditor-General is trusted and influential in maintaining public standards of integrity and accountability. The office plays a significant role in lifting standards of public financial management.</p>	<p>The direct responsiveness of Parliament to findings of the Auditor-General is variable. The office's performance audits pay limited attention to the effectiveness of government spending in achieving intended outcomes.</p>
<b>Media (pillar 9)</b>	
<p>The media is independent, free, and active in informing the public about the activities of the government. It is active and successful in exposing individual instances of maladministration and corruption.</p>	<p>Industry self-regulatory and regulatory bodies need to be more proactive in reviewing and promoting adherence to their integrity frameworks. The capacity for investigative journalism is lacking, and diversity is limited in terms of media industry ownership and content.</p>

Strengths	Weaknesses
<b>Political parties (pillar 10)</b> <p>Political parties play a strong role in highlighting and combating impropriety and potentially corrupt practices in public life. These have become a central theme of electoral competition. Political parties are able to operate independently and without unwarranted state intervention.</p>	<p>The most problematic features involve political finance – how politicians raise and spend their funds, including indirect state funding provided opaque to the parties in Parliament, and how the state attempts to regulate their activities. Legitimacy is a major problem, with low levels of membership of and public trust in political parties.</p>
<b>Civil society (pillar 11)</b> <p>The environment for community and voluntary organisations is favourable and enabling. High integrity is apparent through public involvement and through civil society organisations' flexibility and responsiveness. Generally, there is a high level of information disclosure to keep the public informed. Some significant successes in holding governments to account have occurred.</p>	<p>Some civil society organisations feel their independence is limited in practice by their reliance on government funding for service delivery. New Zealanders are largely under-informed about what transparency and disclosure they should expect from their civil society organisations. There is variability in information disclosure across civil society organisations, particularly about the funding of civil society organisations and the beneficiaries of their activities. Government consultation over new policies sometimes takes place too late.</p>
<b>Business (pillar 12)</b> <p>The suite of company and securities laws and systems is reasonably comprehensive and effective. Business regulation generally aims to promote competition in an open economic environment. There are no inappropriate barriers to establishing a business. The court system is free of corruption and unlawful influence, and there are legal protections for property.</p>	<p>An overly permissive regime for company incorporation has allowed 'shell companies' involved in questionable activities to incorporate in New Zealand. The business community is not well informed about the criminalisation of bribery of foreign public officials, and has to date taken a passive approach to managing its exposure to risks from bribery and corruption. The domestic black economy is substantial, with links to organised crime.</p>

New Zealand's NIS remains fundamentally strong, and by international standards, there is very little corruption. It is clear that New Zealand remains legitimately highly rated against a broad range of international indicators of transparency and quality of governance. Successive governments have taken further actions to increase transparency and accountability since the 2003 NIS assessment, and this progress has continued post-2013. The 2010 and 2011 Canterbury earthquakes represented a severe test of governance systems, in terms of compliance with building standards and integrity in reconstruction, and (with two tragic exceptions, the collapses of the CTV and Pyne Gould Corporation buildings)<sup>1422</sup> systems have generally held up well.

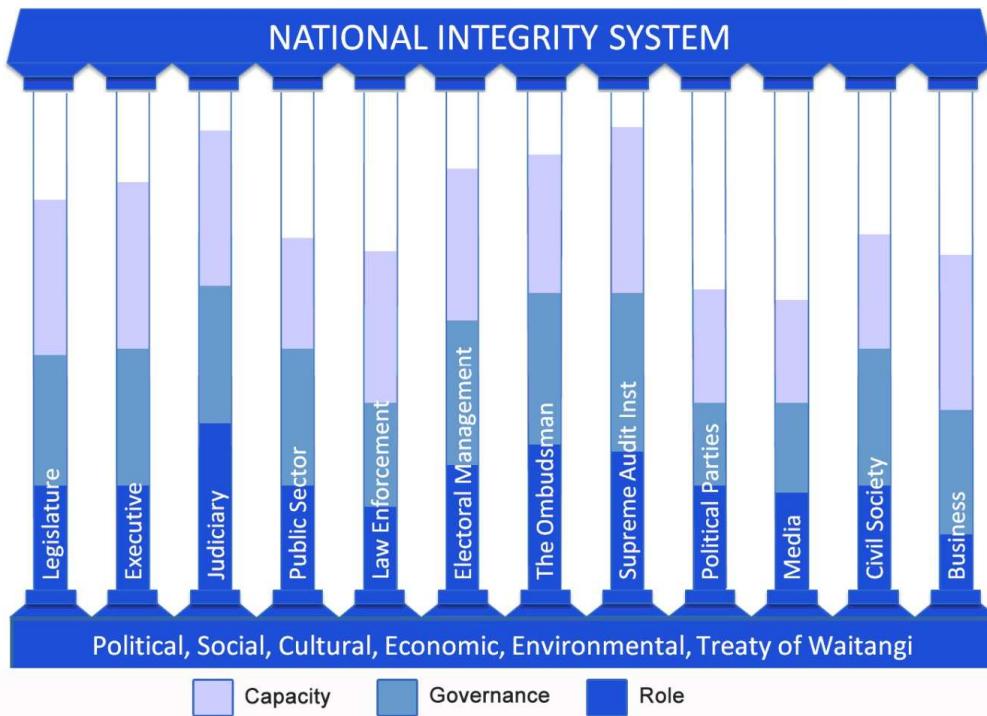
A number of areas of concern, weakness, and risk highlighted in 2003 and 2013, however, remain in the face of ongoing and new challenges to integrity. In some key areas progress has been slow or incomplete.

Figure 16 presents the findings from the 2013 pillar-by-pillar analysis in Chapter 5 in the form of the “temple diagram”. The diagram incorporates the overall pillar scores: the height of the shaded bar columns represents the full pillar score. The diagram also displays the scores for the sub-components used to assess and score each pillar – capacity, governance, and role within the system. The scores applied to the assessment are derived from the reasoning behind answers to the NIS assessment questions. Note, however, that the scores are indicative only, and the findings and recommendations draw largely on the in-depth qualitative analysis.

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<sup>1422</sup> “With the exception of the two building collapses, and the design of stairs in multi-storey buildings, modern commercial buildings generally performed in accordance with the key objective of life-safety set by the Building Code.” Canterbury Earthquakes Royal Commission, *Final Report: Volume 6: Canterbury Television Building (CTV)*, p. 6, <https://canterbury.royalcommission.govt.nz/Final-Report-Volume-Six-Contents>

**Figure 16: Assessment summary, showing pillar scores and components**



The diagram shows that the relatively strong pillars are the supreme audit institution (OAG), the judiciary, the electoral management body (the Electoral Commission), and the Ombudsman. The weakest pillars are political parties and the media. Of these, political parties are of the most concern, as discussed further below. The media score reflects some weaknesses in terms of diversity of ownership and content, lack of capacity for in-depth investigative journalism, and the need for attention to accountability and integrity mechanisms. The 2018 update of the NIS did not address the scoring of individual pillars, but it is worth noting that better resourcing for the Ombudsman and developments in the media could warrant a higher score for these two pillars. Continued weakness in the political parties pillar might warrant a lower score.

Comparing the pillar scores in Figure 16 against the synthesis of NIS reports in 25 European states in 2011 (discussed in Chapter 1), the similarities include the relative strength of the supreme audit institution and of electoral management, and the relative weakness of political parties, particularly political party financing.

In addition to the pillar-by-pillar analysis, key strengths arise from interactions between specific pillars.

- The effectiveness of the officers of Parliament and other key watchdog institutions in acting as a check on the executive. More specifically, the effectiveness of:
  - the judiciary as a check on executive action
  - the OAG in supporting parliamentary oversight of the public finances – the Auditor-General's public reputation carries sufficient weight for political office-holders to take the office's recommendations seriously and, on occasion, to implement its

- recommendations for changes to the rules relating to spending by elected officials (sections 8.3.2, and 9.2.4)
- the Ombudsman as a restraint on the exercise of administrative power and in enforcing citizens' rights of access to information under the OIA
  - the Office of the Parliamentary Commissioner for the Environment in strengthening transparency and accountability for environmental governance.
  - When instances of corruption or unethical behaviour by those in power become public, they are usually pursued vigorously. In varying degrees and circumstances, the media, political parties, the OAG, law enforcement agencies, and the judiciary all play a part in that pursuit.

Some significant weaknesses also arise from the interactions between specific pillars.

- Problems exists at the interface between political party financing and public funding. The combination of continuing concerns about the transparency of party financing and of donations to individual politicians, a long-term decline in party membership, increased party reliance on public funding, and a lack of full transparency of public funding of the parliamentary wings of the parties interacts with the refusal to extend the coverage of the OIA to include the administration of Parliament.
- Weaknesses in parliamentary oversight of the executive include the use of urgency to pass controversial legislation, and the lack of specialist expertise or specialist committees to hold the executive to account.
- The interface between the political executive and public officials shows evidence of an erosion of the convention that public servants provide the government of the day with free and frank advice, an apparent weakening over the last decade or so of the quality of policy advice that public servants provide to Ministers, and public concern about perceived non-merit-based appointments.
- Problems at the interface between central and local government include concerns about intervention by central government in the decision-making authority of local government bodies and weaknesses in the design and implementation of regulations.

Sources of strength and weakness are also identified through the assessment of the NIS foundations.

Key strengths in the foundations include:

- support from the foundations of the integrity system for a high-trust society, economy and polity, and a general culture that does not tolerate overt corruption
- overall, democratic institutions are widely supported by New Zealanders, and elections are free and fair
- overall, the political and civil rights of citizens are assured
- significant social, ethnic, religious, and other conflicts rarely occur in New Zealand, and diversity is accepted with differences normally resolved or ameliorated

- the role of the Treaty of Waitangi as a founding document that creates citizenship rights for all, seeks to protect the rights of Māori, and contributes to social cohesion.

Key weaknesses in the foundations include:

- the presence of significant socio-economic inequalities, which has the potential to strain social cohesion and, international experience suggests, creates some risk of increased corruption<sup>1423</sup>
- 44 per cent of respondents in the New Zealand Survey of Values 2005 thought the country was run by a few big interests looking after themselves rather than for the benefit of all people<sup>1424</sup>
- a 2013 survey of trusted professions in New Zealand ranked politicians 46th out of 50 professions<sup>1425</sup>, but trust in politicians may have improved since 2013
- only 37 per cent of respondents to a recent SFO survey thought the country was “largely free” of serious fraud and corruption<sup>1426</sup>
- only 55 per cent of those surveyed by the Human Rights Commission consider the Treaty of Waitangi to be New Zealand’s founding document, and only 25 per cent rate the Crown–Māori relationship as healthy<sup>1427</sup>
- the extent of the over-representation of Māori in the criminal justice system with research indicating that suspected or actual offending by Māori has harsher consequences than suspected or actual offending by non-Māori.

## Six system-level cross-cutting themes

The analysis of the 12 pillars and the societal foundations of the NIS identified six broader themes that cut generally across the whole NIS. These cross-cutting, system-level themes characterise integrity in the exercise of authority in New Zealand. These themes are as relevant in 2018 as they were in 2013.

**New Zealand has a strong culture of integrity, with most activities conforming to a high ethical standard, but this culture is coming under increasing pressure.** The culture of integrity helps sustain the formal and informal frameworks that support New Zealand’s integrity systems in the context of a relatively small society where citizens are often close to decision-makers and there is relatively high adherence to the law. The need to take the Treaty of Waitangi into account in many areas of national life also helps to sustain integrity by acting as a restraint on some elite

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<sup>1423</sup> You Jong-Sung and Sanjeev Khagram (2005). “A comparative study of inequality and corruption”, *American Sociological Review*, 70: 136–157.

<sup>1424</sup> 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>1425</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>1426</sup> Reg Birchfield, “The Director: Cover story – Boards blase about management”, *New Zealand Management*, September 2012.

<sup>1427</sup> *UMR survey results: The Treaty Relationship in 2011*. Human Rights Commission.

influences and vested interests, and by providing a framework for the recognition of the position of Māori as equal Treaty partners. However, several recent developments may threaten the strength of this broad culture. These include increasing incidents of fraud and corruption, particularly fraud in the finance sector; trend shifts in the direction of New Zealand's trade, business, and other international interactions to countries where corruption is relatively high; trend falls in voter turnout and political party membership; and the Canterbury earthquake rebuild, where the volume of transactions between stressed people and various government agencies and private businesses has put real pressure on normal operational systems and on standard expectations for responsiveness and behaviour.

**The relative structural dominance of the executive branch of government.** Some of the checks and balances on the executive that are typical of other countries are not part of New Zealand's institutional landscape:

- constitutional provisions are not entrenched, in the sense of requiring more than a simple majority in Parliament to amend them<sup>1428</sup>
- there is no second house of Parliament
- there are some weaknesses in parliamentary oversight of the executive, as evidenced by the use of urgency to pass some contentious legislation, a lack of follow-up to some reports of the Auditor-General, and a lack of specialised technical support for Parliament in key areas
- the role of local government *vis-à-vis* central government is not entrenched.

These factors are ameliorated somewhat by the experience of coalition governments, which have become the norm under MMP representation and which have enhanced the role of Parliament, and by the short three-year parliamentary term. There remains, however, a real risk in New Zealand's Westminster-based system that the executive may become too powerful and that potential abuses of power or breaches of integrity may not be effectively constrained. For example, the role of local government in general, or of a specific local authority, can be changed through an Act of Parliament passed by a simple majority. More recently, the passage of legislation removing rights of access to the courts for family carers to appeal administrative decisions represents an executive constraint on judicial review. In these circumstances, any deficiencies in the transparency or accountability of the executive branch assume added importance (see recommendations 3–6 of the 2013 assessment).

**A lack of transparency is a concern in a number of areas,** and this raises questions about accountability and the potential for undue influence or bias in decision-making. As well as the gaps in the coverage of the OIA and some resistance to compliance with disclosure obligations under the Act, examples include the absence of public registers of trusts and of the beneficial owners of companies, some deficiencies in the transparency of public procurement, a lack of transparency about the impacts of government regulation and spending and of environmental indicators, inadequate transparency in the finances of political parties and of lobbying of

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<sup>1428</sup> While section 268 of the Electoral Act requires a 75% majority in Parliament or a plurality in a referendum to amend certain provisions, section 268 itself can be changed by a simple majority in the House.

politicians, and gaps in the transparency of the judiciary. With respect to the absence of a public register of trusts, *Fairfax Business Bureau* deputy-editor Tim Hunter wrote in late 2012 that he could not help wondering why New Zealand “maintains a regime so obviously advantageous to tax dodgers and criminals. We’re not only not part of the solution, we’re a big part of the problem.”<sup>1429</sup> This is probably the area in which most progress has been made since 2013, with more resource allocated to transparency through the OIA and legislative changes in the law relating to companies and trusts.

**The degree of formality in the frameworks that regulate the pillars in New Zealand’s NIS varies considerably** from legislation to self-regulatory or co-regulatory codes or even judicially recognised behavioural conventions. This is both a potential strength and a potential weakness. A trade-off exists between the flexibility and adaptability to changing circumstances that this structure can bring to governance, and the potential for such flexibility to be hostage to political expediency rather than to promotion of the public interest.

Constitutional law expert Matthew Palmer has observed, “While I am comfortable … with an unwritten constitution I am very concerned that we pay attention to what it is. It may be harder to change aspects of an unwritten constitution if they exist only in implicit practices which are not articulated as ‘constitutionally’ important. More importantly having our constitution located in many different elements is that it is easier for those elements to change, and for some groups of people to consciously change them, without serious public discussion, or even awareness, that a change is contemplated.”<sup>1430</sup>

To continue operating well, constitutional and administrative conventions need to be well known and widely understood. To this end, the recommendations in this report place some weight on civics education and training. Conventions need the reinforcement that comes from good transparency and ongoing evaluation, because without these features the quality of conventions and practices may be at greater risk of erosion. In the face of new challenges, and if we are less able to rely on our traditional broader norms of fairness and integrity, New Zealand may need to formalise in law some of its conventions, practices, and codes. This observation underpins the recommendations in this report to close integrity gaps by introducing new or strengthened codes and rules, enforcing them better, and subjecting behaviour to more scrutiny through improved transparency.

**Conflicts of interest are not always well managed.** Many of the gaps and deficiencies identified in the pillar reports open the prospect of officials using their power or influence to favour personal, private, or political interests rather than acting in the public interest. The relatively small size of New Zealand’s population facilitates mutual monitoring of behaviour but, by the same token, also creates frequent potential conflicts of interest. Public officials need to know how to deal with such conflicts, whether by recusal or by informing senior officials if the conflict cannot be avoided. A lack of transparency aggravates the situation, as it can create a suspicion that conflicts of interest are hidden and not being properly managed, even if the facts of the

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<sup>1429</sup> See [www.stuff.co.nz/business/opinion-analysis/7521775/New Zealand-foreign-trusts-among-global-tax-havens](http://www.stuff.co.nz/business/opinion-analysis/7521775/New-Zealand-foreign-trusts-among-global-tax-havens)

<sup>1430</sup> Matthew Palmer, “NZ constitutional culture”, *New Zealand Universities Law Review* vol. 22, p. 565, 2007.

individual case give no grounds for such suspicions. The fact that there is inadequate transparency, central monitoring, or reporting of suspected and proven conflicts of interest or similar favouritism within the public sector is a cause for concern (recommendation 4(2)).

Specific examples of conflicts of interest referred to in the pillar reports include concerns about the management of conflicts of interest in procurement, the potential for political influence in appointments to boards of government entities, and the small pool of listed company board directors with overlapping directorships in the private sector. Conflicts of interest can also exist at the institutional level, and this report raises concerns about the exclusion of the administration of Parliament from the OIA and the role of the Parliamentary Service Commission in setting the rules for public spending by the parliamentary wings of the parties.

**New Zealand would benefit from greater emphasis on prevention of fraud and corruption.** Enforcement of anti-corruption and related measures tends to be reactive, and there is little focus on educational or preventive effort by the law enforcement agencies. Attention to prevention is needed in a number of pillars and, indeed, across society as a whole, where more civics and financial literacy education should be undertaken. Also, legal provisions that support prevention, such as the implementation of anti-corruption treaties and international agreements, and improvements in transparency (as noted above), should be brought into effect positively and speedily. Overall, a more pro-active approach is required, exemplified by the need for a comprehensive national anti-corruption strategy (recommendation 1). While progress in this area continues to be slow, there has been more pro-activity since 2013, including the ratification of UNCAC, the production of National Action Plans under the OGP, the development of an anti-corruption work programme and steps towards a national anti-corruption strategy.

## 2013 Recommendations

The core message of the 2013 report was that stronger action to promote and protect integrity in New Zealand was overdue. It was hoped that New Zealand's then recently announced decision to join the OGP would provide the opportunity and impetus to launch a concerted national effort to this end.

The 2013 recommendations drew on the findings in each of the pillar reports, the analysis of interactions between pillars, and the support from societal foundations, and on the six cross-cutting themes. An attempt was made to identify the concerns, interests, institutions, or interventions that would be the most likely triggers for change.

Seven primary recommendations were specified in the 2013 report, supported with more detailed recommendations. The evidence-based research supporting the recommendations is in the relevant pillar report (Chapter 5) or foundation section (Chapter 2) of the report. There are cross-references in the text of each recommendation to the relevant numbered indicator questions in Chapter 5. These high-level recommendations were prioritised to represent seven key areas for change. Recommendations were addressed to a specific pillar, sector, or institution in an attempt to ensure clarity and to promote accountability for considering, responding to, and implementing the recommendations.

The table below sets out the 2013 recommendations and the progress up until December 2018 against the recommendations.

<b>Recommendation 1:</b> Ministry of Justice to lead the development of a comprehensive National Anti-Corruption Strategy, developed in partnership with civil society and the business community, combined with rapid ratification of the UN Convention against Corruption (UNCAC).	
<b>General Progress</b> <ul style="list-style-type: none"> <li>• The necessary legislative changes have been made and Parliament unanimously ratified UNCAC in 2015.</li> <li>• Hon Andrew Little has been appointed by the coalition government as Minister with specific responsibilities for leading their Anti-Corruption Strategy and progressing anti-corruption pledges.</li> <li>• The Serious Fraud Office has led a cross-agency Anti-Corruption Work Programme to strengthen New Zealand's anti-corruption framework. The work programme has very recently been made public. Public officials have involved civil society and business experts in the formulation of some of the components of the work programme.</li> </ul>	
Specific recommended aspects of an anti-corruption strategy	Progress on recommended aspects
Updating and strengthening anti-bribery legislation, substantially increasing penalties for bribery and corruption, and considering the value of the offence of misconduct in public office	<p>Anti-bribery legislation has been amended. The Secret Commissions Act now provides for a penalty of up to 7 years imprisonment. However apart from some minor updating it has not otherwise been amended. The Crimes Act has also been amended. It still specifically exempts facilitation payments, though it does narrow the definition of them. Penalties have been increased to a fine of up to \$5 million or up to 7 years imprisonment. There has been no apparent consideration of the offence of misconduct in public office.</p> <p>A national anti corruption work programme has been drawn up and work began in 2018 although the programme was only made public early in 2019.</p>
Introducing public registers of trusts and of the beneficial owners of companies	<p>Foreign trusts are now required to be registered and to have at least one trustee resident in New Zealand. In addition, the Companies Act 1993 and Limited Partnerships Act 2008 now contain requirements for companies and limited partnerships to provide an identifiable and accessible point of contact and to disclose their ultimate holding company (if they have one) to identify relationships between companies. This information is not publicly available but can be disclosed by the Registrar of Companies to law enforcement agencies. Further measures are proposed to increase transparency of beneficial ownership of New Zealand companies and limited partnerships.</p>
Where there are gaps, extending requirements for public office holders in all branches of government to register	There has been no obvious progress in remedying the gaps in requirements to register pecuniary interests, declare

pecuniary interests, declare assets, face restrictions on post-public office employment, and declare acceptance of gifts and hospitality	assets, face restrictions on post-public office employment, and declare acceptance of gifts and hospitality.
Reviewing the regulation of political party and candidate campaign financing, and the enforcement of the regulations	There been no review of the regulation of political party and candidate campaign financing, and the enforcement of the regulations.
Reviewing organisational and other options to improve the effectiveness of anti-corruption law enforcement and education	Progress on this and the following two items is expected in the context of the Ministry of Justice/State Services Commission anti-corruption work programme and the State Services Commission's integrity work programme.
Promoting more actively the importance and role of ethics	See above
Identifying priority areas for further research, monitoring, evaluation, and policy development with respect to identifying, measuring, preventing and reducing corruption	See above
<b>Recommendation 2:</b> The government should initiate an ambitious cross-government programme in support of wide public consultation under New Zealand Action Plan 3 for the Open Government Partnership.	
<b>General Progress:</b>	
Three National Action Plans have been developed since the 2013 NIS. It is encouraging that one of the commitments in the first Action Plan was to provide a response to the recommendations made in the 2013 NIS assessment. However the Independent Reporting Mechanism progress report on the 2016-18 period found that civil society participation in the planning process was low and knowledge of the engagement was unknown beyond the usual participants. Stakeholders felt the consultation timeline limited their impact.	
In 2017, for the first time, a Minister for Open Government was appointed.	
<b>Recommendation 3:</b> Transparency and integrity need to be strengthened in a range of priority areas. (Parliament, the political executive (Cabinet) and local government were named as priority areas).	
Parliament: Specific recommended priorities	Progress on recommended priorities
Extend the coverage of the Official Information Act 1982 to the Parliamentary Counsel Office, officers of Parliament, the Speaker in the role of Responsible Minister for parliamentary agencies under the Public Finance Act 1989, the Office of the Clerk, and the Parliamentary Service.	There has been no extension of the OIA to Parliament

Strengthen parliamentary oversight of the executive. Measures should include a review by Parliament of its select committee structure with consideration of establishing new cross-cutting specialist committees for public accounts treaties, and human rights. They should also include providing select committees with more independent analytical support.	The Government has indicated that it believes there are sufficient measures in place to ensure the openness of Parliament. Changes to the select committee structure have not included the establishment of cross-cutting specialist committees. Nor has there been an increase in resources for independent analysis.
Enhance the quality of legislation by more public disclosure of draft bills before the start of the legislative process and by the adoption by select committees of tests for legislative quality	Departments are now required to prepare legislative disclosure statements for Government Bills and substantive Supplementary Order Papers (SOPs). A Legislation Design and Advisory select committee has been set up and has produced legislation guidelines.
Introduce a code of conduct for members of Parliament	No code of conduct for MPs has been introduced
Introduce measures that provide an adequate degree of transparency to ensure that public officials, citizens, and businesses can obtain sufficient information on, and scrutinise lobbying of members of Parliament and ministers.	Ministers have agreed to open their diaries to the public. Other Parliamentarians have not yet followed suit.
Political executive: Specific recommended priorities	Progress on recommended priorities
Commission an independent review of the respective responsibilities of Cabinet, ministers, and public servants to clarify the conventions governing the duty of, and capacity for, free and frank advice between the political executive and the public sector. The review could mark the centenary of the introduction of the merit-based public service in New Zealand	No independent review has been commissioned, but the State Sector Act is being reviewed
Introduce a centralised approach to the systematic proactive release of official information, including Cabinet papers, by all public entities.	Steps have been taken towards a more pro-active approach to the release of official information but there is no centralised approach.
Initiate discussions with civil society and the business community on a general government-wide framework for timely consultation on the development of new policy initiatives and for encouragement of direct public participation in policy development and implementation.	There has been little progress on facilitating greater public participation in policy development and initiation.
Local Government: Specific recommended priorities	Progress on recommended priorities
Initiate a national conversation on the constitutional place of local government	

Develop a central government/local government protocol on the design and implementation of regulations where regulation-making powers have been delegated to local authorities	There has been little action on these recommendations apart from some updating of guidelines. In 2015, the SSC advised that the government had committed to developing a non-statutory allocation framework to guide decisions on which regulatory functions are best undertaken by local and central government.
<b>Recommendation 4:</b> The integrity of the permanent public sector, and its role in promoting integrity should be strengthened in a range of priority areas.	
<b>General Progress</b>	
In 2017 the SSC appointed a Deputy Commissioner Integrity, Ethics and Standards, who has since led a team that provides advice to support integrity, and to build New Zealanders' trust in public services.	
Public Procurement: Specific recommended priorities	Progress on recommended priorities
<p>Strengthen transparency and accountability for public procurement by:</p> <ul style="list-style-type: none"> <li>Extending proactive disclosure of project information;</li> <li>Incorporating explicit anti-corruption provisions in procurement procedures and documents;</li> <li>Building capacity, especially in smaller entities.</li> <li>Improving requirements for record-keeping, including complaint mechanisms</li> <li>Publishing principles, objective criteria, and a robust management framework for 'hybrid procurements';</li> <li>Conducting periodic reviews of transparency and integrity of spending and procurement in the Canterbury earthquake re-build in view of the scale of the procurements.</li> </ul>	<p>There is now more clarity and structure to the framework and its application to all government agencies and entities.</p> <p>The new rules of sourcing have a strong focus on integrity, fairness, value and accountability. Transparency upstream has been enhanced and capacity issues are being addressed. However the publicly disclosed procurement appears to account for only about a quarter of the total value.</p> <p>Consolidated all-of-government contracts have resulted in the majority of spending being made through larger contracts which can provide good efficiency gains. However, there are also signs that unbalanced risk-sharing between client and supplier may undermine key firms and ultimately the market itself.</p>
Public Sector Entity Operations: Specific recommended priorities	Progress on recommended priority
Greater transparency in the process for public appointments to boards of public bodies.	SSC advises that its Board Appointment and Induction Guidelines were updated in 2015 and provide greater clarity about the roles and responsibilities of Ministers, Monitoring departments and Boards.
Strengthen the Protected Disclosures Act	The Protected Disclosures Act has not been amended but is currently under review.
Central reporting and monitoring of all misconduct and breaches of integrity	No progress

Regular and ongoing integrity and conduct surveys across the public sector	No progress
Central reporting, monitoring and knowledge-sharing between agencies on ‘best practice’ options and initiatives in fulfilling Treaty of Waitangi obligations	No progress
Increased fiscal transparency and accountability by deepening the reporting of tax expenditures, publishing a Citizens’ Budget, and investigating options for an independent body to advise Parliament on key fiscal strategy reports	Some improvements have been made to the accessibility of budget information but they fall short of a Citizens Budget. The government announced in Budget 2018 that public consultation would be launched in August on establishing an independent fiscal institution to provide the public with an assessment of government forecasts and to cost political parties’ policies.
Public entities to publish management letters from the Office of the Auditor-General, and report to Parliament their responses to issues of significance identified in these letters	No progress
Promote the importance of ethics, transparency, accountability, and financial literacy among the public in New Zealand through civics education.	Some work has been done on financial literacy by the Commission for Financial Capability.  The OGP National Action Plan 3 includes a commitment to provide young people with access to civics education and financial literacy education, and preparation of a School Leavers Kit is underway.  The Electoral Commission provides teaching tools on civics education
Review the status of Government Communications Security Bureau evidence provided to domestic law enforcement agencies	There have been major changes to the GCSB, but apparently no consideration of the evidential status of information provided to domestic law enforcement agencies
Public Policy Processes: Specific recommended priorities	Progress on recommended priority
Implement a government strategy to promote ‘evidence-based policy making’, including enhanced monitoring and evaluation of the impacts of government policies.	There has been some progress in this area. In 2013 amendments to the State Sector Act 1988 codified the obligation of officials to provide free and frank advice to Ministers and obliged chief executives to steward the capacity of their agencies to be able to continue to provide free and frank advice.
Introduce greater transparency about the anticipated effects of proposed departmental restructuring and institutional reform exercises in the public sector;	There has been no progress on this recommendation, but there has also been a much lower level of restructuring
Enhance reporting on the social, economic, and environmental impacts of government regulation and spending	The next Budget will be based on the Wellbeing index

Commence regular, technically independent, reporting on State of the Nation environmental indicators, and reintroduce regular publication of the Social Report	The Environmental Reporting Act 2015 provides for environmental reporting. Work is in progress to improve the environmental indicators and to resume regular publication of a report that is the equivalent of the social report.
<b>Recommendation 5:</b> Support, reinforce and improve the roles of key independent integrity agencies and bodies.	
Electoral Management: Specific recommended priorities	Progress on recommended priorities
Review public funding of political parties, the allocation of broadcasting time to political parties and the restrictions on parties purchasing their own broadcast election advertising.	No progress
Require greater transparency of the finances of political parties, including donations.	No progress
Strengthen the Electoral Act 1993 to make the lines clearer between legal and illegal activities and investigate the options for strengthening enforcement in response to complaints.	No progress
Judiciary: Specific recommended priorities	Progress on recommended priorities
The judiciary should publish an annual report on its activities and performance	No progress
Increase public access to information about the operation of the court system	The Senior Courts Act 2016 provides for some more access to information about the operation of the courts and for more transparency in the judicial appointment process.
Enhance the transparency of the judicial appointment process	Some transparency enhancement measures in the Senior Courts Act
The Ombudsman: Specific recommended priorities	Progress on recommended priorities
Promote enhanced compliance with and understanding of the Official Information Act 1982, and better processes for handling Official Information Act requests, and implementation of the Law Commission's recommendation for an Official Information Act oversight function.	Internal reorganisation and increased resourcing for the Office of the Ombudsman has enabled it to undertake more education and training activity for agencies under its jurisdiction. However there has been no further implementation of the Law Commission's recommendations on oversight functions.
Review in 2014/15 the adequacy of funding for the Office of the Ombudsman	Substantial further funding has been made available

**Recommendation 6:** The business community, the media, and non-government organisations should take a much more pro-active role in strengthening integrity systems and addressing the risks of corruption as ‘must-have’ features of good governance. Specific actions were recommended as below.

Business community: Specific recommended priorities	Progress on recommended priorities
Raise awareness and understanding of the implications of the criminalisation of bribery of foreign public officials in the Crimes Act 1961 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	Panama Papers publication by the media in 2016 played a major role in raising awareness of the magnitude of bribery of foreign public officials and as such led to the development of wider understanding of the implications of criminalisation of bribery. This awareness provides political support for the recruitment of members of the police force to focus on white collar crime.
Ensure adequate training on and awareness of corruption and integrity risks and their management and encourage the reporting of foreign and domestic bribery suspicions to the authorities.	Anti-money laundering legislation has resulted in more training on and awareness of corruption and integrity risks and their management. Even so, the ownership of some legal entities remains opaque and may hide bribery from the authorities.
Investigate and evaluate the costs and benefits to business from continual vigilance around maintaining and strengthening integrity systems	To date there has been little appetite by business to better understand the cost of its vulnerability to corruption.
Work with the Institute of Directors to encourage the highest standards of governance.	In 2018, the IOD followed a strong theme of ethics in governance including presentations on the topic and articles in its Boardroom Magazine.
Media: Specific recommended priorities	Progress on recommended priority
Media industry self-regulatory and regulatory bodies should review and strengthen their integrity frameworks and promote adherence to them	There have been changes in the self-regulatory/regulatory bodies to address issues raised by the rise of new media. Further change is likely to arise out of the work of the working party on proposals for a media commission
Civil Society: Specific recommended priorities	Progress on recommended priorities
Review the appropriateness of contractual and/or statutory restrictions on public advocacy by non-government organisations.	No progress
Educate the public on what information they should expect from non-government organisations.	No progress
Assess the need for capacity building of Māori organisations to enable them to contribute to local authority decision making in ways currently expected of them.	No progress

<b>Recommendation 7:</b> Public sector agencies should conduct further assessments and research to strengthen integrity systems over time.	
Research to investigate the actual incidence of corruption in New Zealand, why it is occurring, and how it might best be reduced. The research should supplement existing surveys on the management of bribery and corruption risks by exporters and importers of goods and services.	A national anti-corruption work programme has been drawn up and is being implemented
A review of possible causes of and responses to the role of structural discrimination in the over-representation of Māori in the criminal justice system	Although work has been done on this issue, there has been no review in the terms recommended. A Criminal Justice Summit was held in August 2018, and Justice Minister Andrew Little also announced a specialist advisory group to assist in shaping an overhaul of the criminal justice system. It is not clear whether this initiative will specifically address the over-representation of Māori in the system.
Important sectors and institutions not assessed in this study, notably the state-owned enterprise sector and the Reserve Bank of New Zealand, should be independently bench-marked in the next 12 months against relevant international standards of transparency, public participation, integrity, and accountability.	SSC indicated in 2015 that there was no intention to implement this recommendation. However, the Reserve Bank and FMA have carried out a major conduct review of financial organisations.  The TINZ Financial Integrity System Assessment, which includes questions for independently assessing the regulators of the financial system including RBNZ, FMA, MBIE, DIA, has been discussed and workshopped with staff from the regulators
Transparency and awareness relating to the Treaty of Waitangi	As part of the third National Action Plan under the Open Government Partnership, the Ministry of Education and DIA have made commitments in regards to civics including the Treaty of Waitangi. TINZ is facilitating a project to complement their activities

## 2018 conclusions and recommendations

The work on the 2018 update identified one major omission in the 2013 assessment. Although TINZ recognised the importance of environmental governance and in 2013 added it to the standard template for an NIS assessment, the 2013 assessment did not consider the threats to integrity posed by climate change. There is no doubt that perceptions have changed and that the magnitude of the risks has become more apparent since 2013, but it is an issue that has the potential to affect every aspect of our national integrity. The limited resources available for this 2018 update mean that it has not been possible to address the issue as it should be addressed, across every pillar of the system. Some limited material will be found in Chapter 2 (socio-environmental foundations), and it will feature prominently when a full NIS assessment is carried out in 2023.

To a large extent, the main findings of the 2018 update are represented by the table in the preceding section of this assessment. In general, it appears that since 2013 there has been an increased awareness of integrity issues and increased attention to the importance of combating bribery, corruption, and other threats to New Zealand’s reputation as a society with high integrity. This growing awareness has resulted in some important moves to strengthen New Zealand’s integrity systems including the ratification of UNCAC, the decision to join the OGP, and the creation of National Action Plans as required by the OGP.

*Combating bribery, corruption and other integrity threats*

Media activity around the Panama Papers research (released by the media in 2016) engaged the public about the real size of the problem of proceeds from corruption flowing into countries with loose processes for recording beneficial ownership.

Progress in addressing identified corruption issues was initially slow but the pace has recently increased. In 2018, a national anti-corruption work programme was drawn up and work has begun although the programme was only made public early in 2019.<sup>1431</sup> Some action has been taken to bring more transparency to foreign-owned trusts, although consultation about increased information requirements about the beneficial owners of some legal entities is still ongoing. A review of the Protected Disclosures Act is at last under way.

There has been an increase in Serious Fraud Office (SFO) activity including an increased willingness to prosecute. Convictions, including substantial fines and jail sentences, in the Auckland Transport case, were the subject of extensive publicity and legal analysis.

While there is increased awareness of integrity issues in the business sector, and robust policies in place for implementing anti-money laundering legislation, there needs to be greater recognition by business leaders of the importance of structures and processes that support integrity and greater adoption of recognised tools that help strengthen their integrity systems.

*Strengthening transparency and integrity practices*

Since 2018, officials working on the OGP National Action Plan (NAP) commitments have been actively supported by Cabinet and there has been increased collaboration between government agencies. This increased effort has led to greater originality, greater ambition and a greater number of NAP commitments. There are three times the number of commitments in NAP 3 compared with the high-level, first Action Plan. This offers much greater potential for more civil society and community participation.

Although there is clearly an increased willingness to consult, in most areas of policy formation, opportunities for public consultation could be better designed. The aim should be to reach the highest level on the spectrum of the International Association for Public Participation (IAP2) scale<sup>1432</sup> From the available evidence, it appears that government agencies are giving insufficient priority and funding to the development of expertise in and technology for public consultation.

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<sup>1431</sup> See <https://www.justice.govt.nz/assets/Documents/Publications/cab-an-anti-corruption-work-programme-for-new-zealand.pdf>

<sup>1432</sup> See [https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum\\_8.5x11\\_Print.pdf](https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum_8.5x11_Print.pdf)

Watchdog agencies such as the OAG and the Ombudsman remain strong, and in particular the increase of resources for the Ombudsman has the potential to greatly increase effectiveness. However there appears to be a reluctance to apply the same standards of integrity and transparency to Parliament as apply in other sectors.

The Treaty of Waitangi is still not formally recognised as New Zealand's founding document or formally incorporated into New Zealand law. Settlements of historic injustices have continued to occur but there has been no obvious progress towards integration of the Treaty in many areas of government and public life.

## 2018 Recommendations

The following recommendations do not replace those in the 2013 NIS assessment but build on the experience of the past five years to update and extend them in the areas that appear most in need of attention. The same methodology applies as used in the 2013 assessment, and supporting information and evidence will be found in the relevant pillar reports.

### Recommendation 1

**The outstanding recommendations from the 2013 NIS now be implemented with high priority given to:**

- a. Strengthening the transparency, integrity and accountability systems of Parliament. Particular attention to be paid to extending the coverage of the Official Information Act, introducing a code of conduct for members of Parliament, requiring publication of members' appointment diaries and providing greater transparency around lobbying of members of Parliament and Ministers.
- b. Achieving greater transparency in the appointment process for statutory boards.
- c. Reviewing public funding of political parties, including:
  - i. allocation of broadcasting time to political parties and the restrictions on parties purchasing their own broadcast election advertising; and
  - ii. requiring greater transparency of the finances of political parties, including donations.

### Recommendation 2

**A comprehensive national anti-corruption strategy be drawn up and implemented.**

The main elements of a national anti-corruption strategy would be:

- a. Implementation of the policy and practices recommended by the national anti-corruption work programme produced by the Ministry of Justice and the Serious Fraud Office that are based on UNCAC and other relevant international agreements.
- b. Each public sector agency with responsibility for an NIS pillar to develop a risk mitigation strategy aimed at preventing domestic corruption and protecting against offshore corruption that could impact on the daily lives of New Zealanders.
- c. The integrity of the public sector to be strengthened in a range of priority areas, and specifically by:

- i. corruption prevention training programmes as part of induction, and competency and staff development frameworks;
  - ii. refresher opportunities on relevant national and international legislation and regulation on integrity and transparency;
  - iii. policies and procedures, monitoring and greater stewardship where services are delivered by others on behalf of public sector agencies, with the specific goal of strengthening integrity and transparency through procurement chains and joint ventures;
  - iv. more extensive risk assessment, including assessment of bribery and corruption risk.
- d. Progress in these areas to be monitored, measured and publicly reported so that compliance can be demonstrated.
  - e. Public sector agencies to build and release publicly an evidence base of what works best to prevent and protect against corruption through further assessments and research about ways to strengthen integrity systems over time.

### **Recommendation 3**

#### **The government to fully implement the third National Action Plan (NAP3) for the Open Government Partnership**

The priority in planning and implementing NAP3 to be ensuring that government agencies fully and more deeply engage with the public and civil society organisations, including:

- a. setting ambitious targets for growing public engagement in NAP3 and polling to measure feedback on its implementation;
- b. securing civil society, local government and Māori organisation support as leaders or partners in parts of the consultation, public participation, and implementation of NAP3;
- c. striving to reach the highest (empower) level of the International Association for Public Participation (IAP2) spectrum as a standard in giving high priority to the commitments on public consultation in the third National Action Plan;
- d. taking steps to increase the capacity of organisations representing the diverse range of New Zealand society to respond effectively to consultation.

### **Recommendation 4**

#### **The public sector to take the opportunity offered by the reviews of the State Sector Act and the Protected Disclosures Act to implement in full the relevant recommendations of the 2013 NIS assessment.**

It should also:

- a. introduce policies to enhance and support tone at the top and governance leadership committed to integrity, including specific ethical leadership.
- b. ensure that codes of conduct and guidelines are embedded, used and continuously improved, moving towards strong staff engagement replacing conduct prescription with codes of ethics focused on doing the right thing.
- c. maintain speak up policies and procedures that include support for those who speak up,

- and positive and prompt organisational cultural and management engagement to support the reporting of wrongdoing.
- d. ensure policies and procedures, monitoring and greater stewardship where services are delivered by others on behalf of public sector agencies, with the specific goal of strengthening integrity and transparency through procurement chains and joint ventures.

### **Recommendation 5**

**Media organisations to recognise the benefits to them and to society that flow from operating in a high integrity society and to play their part in strengthening integrity systems.**

The programme of the ministerial advisory group investigating the establishment of a Public Media Funding Commission to be progressed, aiming towards independent oversight of the media system and publication of reports on the efficacy of government interventions, including funding for public broadcasting.

### **Recommendation 6**

**Civil society (non-government organisations and other associations) and the business sector also need to recognise the benefits to them and to society that flow from operating in a high integrity society and to play their part in strengthening integrity systems.**

- a. Business and Civil Society (including voluntary organisations, professional services providers, sporting organisations) to use the standards set by the Institute of Directors, including the Four Pillars of Governance, as benchmarks for governance best practice in setting the tone at the top.
- b. Business and Civil Society to put in place robust anti-corruption prevention practices, taking a pro-active role in:
- i. strengthening their codes of ethics,
  - ii. training,
  - iii. wider dissemination of knowledge about corruption and ways to protect against it to their staff, users, customers, investors, and other interested parties; and
  - iv. addressing the risks of corruption in the sectors they work with.
- c. Businesses and NGOs strive to better address the massive risks to New Zealand of overseas corrupt practice through engagement in the development of a public register of ownership for all legal entities.

## APPENDIX 1: ACRONYMS AND ABBREVIATIONS

AGAS	Auditor-General's Auditing Standards
APN	APN News and Media
CSO	Civil society organisation
DPMC	Department of the Prime Minister and Cabinet
EAG	External Advisory Group
FMA	Financial Markets Authority
GCSB	Government Communications Security Bureau
GIFT	Global Initiative on Financial Transparency
IACCC	International Anti-Corruption Co-ordination Centre
IAP2	International Association for Public Participation
IATI	International Aid Transparency Initiative
INTOSAI	International Organisation of Supreme Audit Institutions
IPCA	Independent Police Conduct Authority
IPRAG	Integrity Plus Research Advisory Group
ISSAI	International Standards of Supreme Audit Institutions
MMP	Mixed member proportional representation
MP	Member of Parliament
NAP	National Action Plan (under the OGP)
NIS	National Integrity System
NZX	New Zealand Stock Exchange
OAG	Office of the Controller and Auditor-General
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OIA	Official Information Act 1982
SFO	Serious Fraud Office
SSC	State Services Commission
TI	Transparency International
TI-S	Transparency International Secretariat (located in Berlin, Germany)
TINZ	Transparency International New Zealand (the New Zealand chapter of Transparency International)
TPK	Te Puni Kōkiri, the Ministry of Māori Development
TVNZ	Television New Zealand
UNCAC	United Nations Convention against Corruption

## APPENDIX 2: GLOSSARY OF MĀORI WORDS AND PHRASES

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

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

## APPENDIX 3: GENERAL GLOSSARY

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

**Beneficial ownership** where the beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

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

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

**Civil Society Organisations (CSOs)** are non-market, non-government entities formed by people with a common interest. The sector is defined by the OECD as “the multitude of associations around which society voluntarily organizes itself and which represent a wide range of interests and ties. These can include community-based organisations, indigenous peoples’ organisations and non-government organisations.” (OECD, 2006, DAC Guidelines and Reference Series Applying Strategic Environmental Assessment: Good Practice Guidance for Development Co-operation, OECD Paris.)

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

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

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

**Financial Action Task Force (FATF)**, is an intergovernmental organization founded in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001, the purpose expanded to act on terrorism financing.

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

**Impunity** is exemption from punishment when using power or self-appointed authority to take resources intended for another purpose.

**Integrity system** refers to the features of the entity's structure that contribute to transparency and accountability. This system is more effective in preventing corruption when the framework encompasses the whole organisation. In other words, good conduct is supported by policy, governance, financial performance, information and communication, personnel, customers, operations, monitoring and procurement practice of the entity or sector.

**New Zealand Story** (see [www.nzstory.govt.nz](http://www.nzstory.govt.nz)) is a government initiative to help New Zealand companies gain a competitive advantage in overseas markets by building a strong, consistent profile for New Zealand exporters in international markets. Its launch was funded in Budget 2013. The lead agencies for the New Zealand Story are Tourism NZ, NZ Trade and Enterprise, and Education NZ.

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

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

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

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

The **Tone from the top** is the way the top leadership – the chair and CEO as well as board members and senior management – communicate and support by their actions, the enterprise's commitment to values including openness, honesty, integrity, and ethical behaviour and in particular the anti-corruption programme.

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

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

people. As at 25 July 2013, 38 claims had been settled and By July 2018 a further 32 Acts had been passed with a further 5 before Parliament<sup>1433</sup>

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

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<sup>1433</sup> [http://www.legislation.govt.nz/all/results.aspx?search=ts\\_act%40bill%40regulation%40deemedreg\\_settlement\\_resel\\_200\\_y&p=1\\_](http://www.legislation.govt.nz/all/results.aspx?search=ts_act%40bill%40regulation%40deemedreg_settlement_resel_200_y&p=1_)

## APPENDIX 4: SCHEDULE OF INTERVIEWS FOR THE NATIONAL INTEGRITY SYSTEM ASSESSMENT 2013

### Alex Matheson, pillars 1, 2, and 4

David Bagnall, Office of the Clerk of the House. Email correspondence August 2013.

Jonathan Boston, Professor of Policy Studies, School of Government, Victoria University of Wellington. Interview 30 June 2013

Ross Carter, Parliamentary Counsel. Email correspondence July–August 2013.

Len Cook, former Government Statistician for New Zealand and Head of the UK Office of Statistics. Meeting 8 March 2013 and email correspondence.

Christopher Elder, author on New Zealand and China; former Ambassador to China, Russia, and Indonesia for the Ministry of Foreign Affairs and Trade. Meeting 1 August 2013.

Derek Gill, New Zealand Institute of Economic Research; former senior public servant with the Treasury, State Services Commission, and Ministry of Social Development. Meeting 12 December 2012 and email correspondence.

Rob Laking, School of Government, Victoria University of Wellington; former public service chief executive, former senior officer in Treasury. Meeting 5 February 2013.

Christine Lloyd, State Services Commission. Meeting 15 March 2013.

David McDonald, School of Government, Victoria University of Wellington; former Controller and Auditor-General. Interview 5 February 2013.

David McGee, expert and author on parliamentary affairs; former Ombudsman, former Clerk of the House. Meeting 5 February 2013.

Dr Elizabeth McLeay, Adjunct Professor of Political Science, Victoria University of Wellington, expert and author on Parliament and Cabinet. Meeting 14 February 2013.

Dr Ryan Malone, Director (Training and Research) Civic Square, constitutional expert. Telephone and email conversations 9 July to end July 2012.

Dianne Morcom, Remuneration Authority; former Cabinet Secretary. Meeting 14 February 2012.

Simon Murdoch, former Chief Executive of the Department of the Prime Minister and Cabinet and Ministry of Foreign Affairs and Trade. Email correspondence July 2013.

Sir Geoffrey Palmer, constitutional expert and author; former Prime Minister, Deputy Prime Minister, and Minister of Justice. Meeting 11 July 2013.

Dr Matthew Palmer, barrister and solicitor; former Deputy Solicitor-General (Public Law), Deputy Secretary for Justice (Public Law), and Dean of Law at Victoria University of Wellington. Meeting 4 December 2012.

Andrew Royle, Acting Chief Legal Adviser, State Services Commission. Meeting 15 March 2013.

Professor Bill Ryan, School of Government, Victoria University of Wellington. Meetings 16 April and 11 June 2013 and email correspondence.

Deborah Te Kawa, State Services Commission. Meeting 8 May 2013. Hon Hugh Templeton, former Minister of Revenue, former Minister for Trade and Industry, former public servant with the Ministry of Foreign Affairs and Trade. Meeting 8 July 2013.

Neil Walter, former chair of two Crown entity boards, former Chief Executive of the Ministry of Foreign Affairs and Trade. Meetings 3 December 2012 and 25 June 2013 and email correspondence.

Michael Webster, Deputy Secretary of the Cabinet, Department of the Prime Minister and Cabinet. Meeting 26 June 2013.

**Margaret Wilson, pillar 3**

Dame Sian Elias, Chief Justice. 1 February 2013, Wellington.

Christine Grice, Chief Executive, New Zealand Law Society. 29 January 2013, Hamilton.

Stephen Mills QC, President, New Zealand Bar Association. 13 February 2013, Auckland.

**Liz Brown, pillar 7**

Tim Clarke, Partner, Russell McVeagh. 12 December 2012, Wellington.

Doug Tennent, University of Waikato. Telephone interview 21 December 2012.

Dame Beverley Wakem, Chief Ombudsman. 11 December 2012, Wellington.

**Rob Laking, pillar 8**

David Macdonald, former Controller and Auditor-General. 13 December 2012 and 23 January 2013, Wellington.

David McGee, Ombudsman and former Clerk of the House of Representatives. 4 February 2013, Wellington.

David Parker, Member of Parliament, Labour Party finance spokesperson. 20 February 2013, Wellington.

Professor Wally Penetito, Te Kura Māori, Victoria University of Wellington. 11 June 2013, Wellington.

Dr Rt Hon. Lockwood Smith Member of Parliament, Speaker of the House of Representatives. 13 February 2013, Wellington.

Phillippa Smith, Deputy Controller and Auditor-General. 20 November 2012, 14 February 2013, and 7 March 2013, Wellington.

Nicola White, Assistant Auditor-General (Legal). 20 February 2013, Wellington.

Staff from Performance Audit Group, Office of the Auditor-General. 5 June 2013, Wellington.

**Murray Petrie, fiscal transparency**

Omar Aziz, John Creedy, and Alex Harrington (all with The Treasury) and Jim Gordon (Inland Revenue Department). 21 March 2013, Wellington (with Jonathan Dunn).

Carmel Peters, John Nash, David Corrigan, and Gordon Witte (all with Inland Revenue Department, Tax Policy). 26 March 2013, Wellington.

Ken Warren, Chief Accounting Advisor, and Becky Prebble, Senior Analyst, Treasury. 21 February 2013, Wellington.

**Bryce Edwards, pillars 6, 9, and 10**

Graeme Edgeler, Lawyer and expert in electoral law. Formerly employed by the Electoral Commission. 12 January 2013, Wellington.

Ian Fraser. 17 August 2013, Wellington.

Andrew Geddis, Professor of Law, Otago University. 8 February 2013, Dunedin.

Robert Peden, Chief Electoral Officer. Telephone 15 March 2013.

Junior parliamentary press gallery journalist. 12 January 2013, Wellington.

Senior parliamentary press gallery journalist. 12 July 2013, Wellington.

**Julian Inch, pillar 12**

Fiona Alan, Chief Executive, Paralympics New Zealand. Informal input and comment.

Graham Cameron, Merivale Community Centre, Tauranga. Informal input and comment.

Raewyn Fox, Chief Executive, New Zealand Federation of Family Community Budgeting Services. Interview 21 August 2013 (with Liz Brown).

Trevor Garrett, former Chief Executive of the Charities Commission. March 2013.

Dave Henderson and David Robinson, Association of Non-Governmental Organisations of Aotearoa. Interview March 2013.

Lachlan Keating, Chief Executive, Deaf Aotearoa. Interview April 2013.

Makerita Makapelu, Wesley Community Action, Cannons Creek, Porirua. Interview April 2013.

Rachel Noble, Chief Executive, Disabled Persons Assembly. Interview April 2013.

Taku Parai (Ngāti Toa) and informants from several representative organisations in relation to Māori society.

Claire Teal, Programme Manager, Volunteering New Zealand; previously with Wellington Citizens Advice Bureau, and former social worker, Child, Youth and Family. Interview March 2013.

Fuimaono Tuiasau and informants from several representative organisations in relation to Pasifika society.

Dr Judy Whitcombe, member, New Zealand Federation of Graduate Women (Wellington), Zonta (Mana), and National Council of Women (Wellington). Interview March 2013.

Disabled persons organisations involved in the Convention Coalition also provided informal input and comment.

**Suzanne Snively, socio-economic foundation, pillars 5 and 9, 12, and 13**

Michael Cullen, Wellington. Three interviews with the final on 24 October 2013.

Gary Hawke, Emeritus Professor, Economics, Wellington. August 2013.

Girol Karacaoglu, Deputy Secretary, The Treasury. Wellington, August 2013.

Stefan Linssen, Chief Editor, *Ethisphere*. Wellington, December 2012.

Max Rashbrooke, Senior Journalist and Author. Wellington, August 2013

**Gavin White, Pillar 13 (all interviews conducted on a confidential basis)**

Exporter – adviser/infrastructure. Telephone interview 12 April 2012.

Exporter – adviser/infrastructure. Telephone interview 23 April 2012.

Exporter – education services. Telephone interview 16 April 2012.

Exporter – fashion and textiles. Telephone interview 26 April 2012.

Exporter – food and beverage. Telephone interview 16 April 2012.

Exporter – food and beverage. Telephone interview 14 May 2012.

Exporter – food and beverage. Telephone interview 24 May 2012.

Exporter – primary products. Telephone interview 24 May 2012.

Exporter – recent start-up. Telephone interview 19 April 2012.

Exporter – tourism. Telephone interview 18 April 2012.

**Fuimaono Tuiasau, Pasifika perspective**

Vilimane Davu, Teacher.

Frank Godinet, President, Auckland District Law Society.

John Kotuisuva, Chair, Fiji Association Auckland.

Dr Jean Mitaera, Lecturer, Whitireia Community Polytechnic.

Richard Pamatatau, Senior Lecturer, AUT.

Kiwi Tamasese, Senior Therapist, Researcher, Anglican Family Centre.

Ronji Tanielu, Policy Adviser, Salvation Army.

Lani Tupu Snr, Treasurer, Methodist Church (national).

Betty Sio, General Manager, The Project.

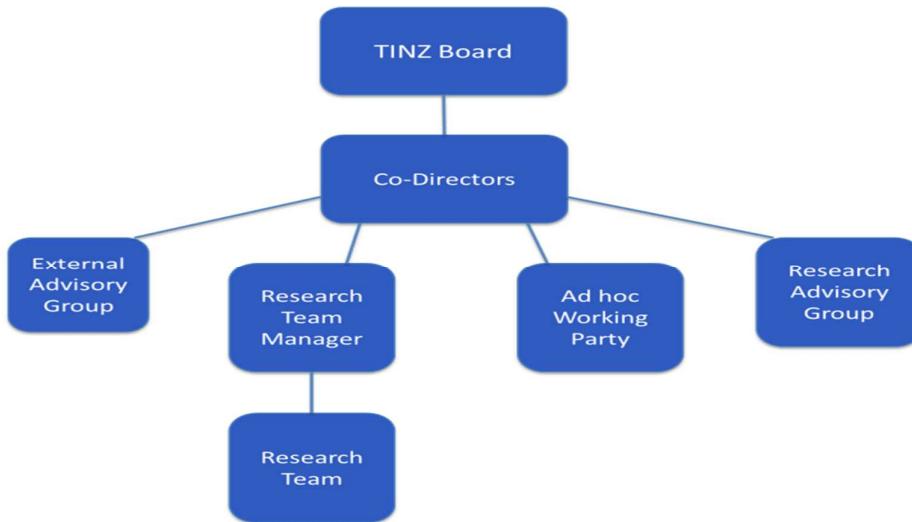
Nove Vailaau, Ekalesia Faapotopotoga Kerisiano Samoa (Samoan Congregational Church)

Su'a Viliamu Sio, Member of Parliament.

## Appendix 5a: National Integrity Assessment 2013: Project governance, management, and finances

### Governance and management

Figure 17: New Zealand National Integrity Survey project management structure



The TINZ board retained overall oversight and responsibility for the NIS assessment, in accordance with the memorandum of understanding between TINZ and TI-S. 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 parameters the board set.<sup>1434</sup>

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.<sup>1435</sup>

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

<sup>1434</sup> One of the co-directors also wrote the section on the economic foundation, while the other co-director completed the research for, and the supplementary paper on, fiscal transparency.

<sup>1435</sup> The research team manager also conducted the research for, and wrote the pillar report on, the Ombudsman (pillar 7).

specialist expertise for each pillar and additional desk research and consultation time for each pillar and foundation topic.<sup>1436</sup>

The large number of researchers also provided a diverse background. The researchers included current academics from three separate 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 a former chief executive of a government department. 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.

This approach to the research allowed a large number of interviews and consultations to be conducted – over 100 for the whole assessment. Each individual researcher was encouraged to submit their draft pillar or supplementary reports for peer review by recognised independent experts (as well as checking factual matters with representatives of the pillar entity being assessed). About 25 expert reviews of this type were obtained.

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, and was chaired by Helen Sutch, a former senior official in the New Zealand government who subsequently had a long career in the World Bank, specialising in governance and anti-corruption.

IPRAG's key functions were to support the co-directors by:

- i. advising on the main aspects of project design and implementation, especially on research methodology
- ii. reviewing and commenting on all draft material, including all the pillar reports (from first to final drafts), scores, and individual chapters in the final report.
- iii. advising on consistency of approach across pillars, assisting in identifying cross-cutting issues, and checking the NIS indicator scores for consistency with the text.

The group's full Terms of Reference are reproduced at the end of this Appendix.

IPRAG's role, however, was advisory. It is not responsible for the text of the report or 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 (including in-kind contributions) for the project,

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<sup>1436</sup> Although there were costs of additional project management time, additional efforts to ensure consistency of approach across all the researchers and time spent by researchers in review, the benefits were that a wider group is now familiar with the assessment process.

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, was supported by a secretariat provided by the Office of the Auditor-General, and had its own terms of reference (reproduced at the end of this Appendix). 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, the NIS project team, the co-directors and, ultimately, the TINZ Board.

The following are the key milestones for this assessment.

In May 2012, the Office of the Auditor-General suggested updating the 2003 New Zealand NIS assessment to mark the centenary of the Public Service Act 1912.

The TI-S provided an initial estimated budget for the project, noting that the usual cost was in the order of 150,000 euros, usually funded by aid agencies. In June 2012, TINZ prepared a project proposal that attracted initial seed funding from the Office of the Auditor-General and support for raising funds from other sources, thus enabling the study to commence.

On 3 September 2012, the TINZ Board endorsed the project purpose statement agreed with the TI-S and incorporated in a memorandum of understanding with the TI-S.

A large number of official entities and a private foundation committed funding to meet the direct costs of the NIS (see sub-section below on project finances).

On 13 November 2012, the project was officially launched at a day-long event at the Victoria University of Wellington School of Government. At the launch, 20 break-out groups commenced detailed discussions about the different pillars.

In the first part of 2013, TINZ and the Victoria University of Wellington Institute of Governance and Policy Studies co-hosted two seminars on topics covered in the NIS.

On 8 May 2013, the first wave of emergent findings was released at a seminar at Victoria University of Wellington. Five draft pillar reports and three supplementary papers for the public sector pillar were posted on the TINZ website for comment.

On 14 August 2013, a public forum was held at the University of Auckland Business School, at which the second wave of emergent findings was presented.

On 30 August 2013, IPRAG held a scoring meeting to review and moderate pillar scores and make recommendations on their consistency.

On 9 September 2013, the TINZ Board met to discuss and ratify the key findings of the draft final report and the recommendations to be discussed at an NIS workshop. The board met again on 7 October 2013 to review the scores and the process for ratifying the final report.

In the final NIS workshop, in Wellington on 16 September, the draft final report was used as a platform from which to engage with a wide variety of stakeholders on the findings and recommendations and on the priorities for anti-corruption policy, and to build momentum for reforms to strengthen integrity and the quality of governance in New Zealand.

## Project Finances

2013 National Integrity Assessment			
Summary of income and expenditure to 31 October 2013			
Income	Actual year ended. 30 June 2013 (\$)	Actual July–October 2013 (\$)	Total (\$)
Ministry of Justice	30,000	-	30,000
Ministry of Social Development	10,000	-	10,000
Thorndon New World	200	-	200
Civil Aviation Authority	5,000	5,000	10,000
Department of Corrections	5,000	-	5,000
Department of Internal Affairs	5,000	-	5,000
Department of Conservation	5,000	5,000	10,000
Inland Revenue Department	5,000	-	5,000
Maritime New Zealand	5,000	5,000	10,000
Ministry for Primary Industries	5,000	5,000	10,000
Ministry of Transport	5,000	5,000	10,000
New Zealand Defence Force	5,000	5,000	10,000
New Zealand Transport Agency	5,000	5,000	10,000
Statistics New Zealand	5,000	-	5,000
Te Puni Kōkiri	5,000	5,000	10,000
The Gama Foundation	15,000	10,000	25,000
Office of the Auditor General	30,000	15,000	45,000
State Services Commission	10,000	-	10,000
Statistics New Zealand (additional contribution)	10,000	-	10,000
The Treasury	30,000	-	30,000
<b>Total income</b>	<b>195,200</b>	<b>65,000</b>	<b>260,200</b>
Expenditure	Actual year ended. 30 June 2013 (\$)	Actual July–October 2013 (\$)	Total (\$)
<i>Personnel</i>			
Co-direction*	45,500	20,000	65,500
Lead researchers	80,250	50,710	130,960
Researchers	31,200	250	31,450
Administrative support	4,234	2,639	6,873
<i>Workshops</i>	-	1,249	1,249
<i>Administration</i>	2,500	2,055	4,555
<i>Travel &amp; meeting expenses</i>	2,201	1,703	3,904
<i>Publication/dissemination</i>			
NIS launch	7,519	-	7,519
<i>Contingency</i>	916	-	916
<b>Total project costs</b>	<b>174,320</b>	<b>78,606</b>	<b>252,926</b>
*Includes Admin. Murray Petrie received no payment			
<b>Surplus / (deficit)</b>	<b>20,880</b>	<b>-13,606</b>	<b>7,274</b>

Organisations and individuals made significant pro bono contributions in the form of advisory time, access to meeting rooms, conference call facilities, hospitality, administrative assistance, travel, printing, and so on. These contributors included:

Auckland Chamber of Commerce  
BDO Spicers  
Bell Gully  
Business New Zealand  
Chapman Tripp  
Chen Palmer  
Claudia Orange  
Deloitte  
Financial Services Complaints Limited  
Gibson Sheat  
Human Rights Commission  
Institute of Directors  
Institute of Governance and Policy Studies, Victoria University of Wellington  
Juliet McKee  
KPMG  
Local Government New Zealand  
Matthew Palmer and Thorndon Chambers  
MediaWeb (New Zealand Management magazine)  
Ministry of Business, Innovation and Employment  
Ministry of Pacific Island Affairs  
New Zealand Trade and Enterprise  
PwC  
Russell McVeagh  
School of Governance, University of Auckland  
School of Government, Victoria University of Wellington  
Te Papa  
UMR Research Ltd

## **Terms of reference for the Integrity Plus Research Advisory Group (IPRAG)**

### **Integrity Plus Research Advisory Group: quality assurance**

#### **Overall aim:**

The NIS Report will be accepted as methodologically sound, well grounded in facts and analysis, and as having done justice to the good governance principles embodied in the questionnaire and the Integrity Plus objectives. The report, therefore, will be taken seriously and its recommendations acted on.

#### **List of review questions and criteria:**

Do the pillar reports and other relevant sections of the NIS Report adequately respond to the questions in the TI questionnaire, to the additional questions on the Treaty of Waitangi, and to the need to draw out implications for good governance values and principles? (This is needed so as to make this NIS go beyond the usual template and add a credible Integrity Plus dimension.)

Has each pillar been treated in a consistent way and with the same degree of rigour? (the NIS will seek to identify the strongest and weakest pillars so there needs to be a consistent basis for comparison).

Are the findings justified by the evidence and analysis brought to bear?

Are the recommendations well founded, and are they clear and credible in the wider context in which recommendations would have to be implemented?

## Members of the Integrity Plus Research Advisory Group

Members joined the group at different times and are listed by length of membership.

Member	Role	Description
Helen Sutch (Chair)	Public Economist	Chair of the Governance Committee, Victoria University Council. After posts in the New Zealand public service, the UK Government Economic Service, and the OECD, Helen specialised in development, governance, and anti-corruption at the World Bank.
Geoff Fougere	Sociologist	Senior lecturer, Department of Public Health, University of Otago, Wellington. Geoff is a former member and chair of several ministerial and other advisory committees on health policy.
Te Huia Bill Hamilton, Ngāti Kahungunu, Ngā Rauru, Ngāti Raukawa, Kotimana	Manager, Human Rights Commission	Manager for Te Mana i Waitangi and works with Māori communities at the New Zealand Human Rights Commission. Bill has a background in education, union work, and iwi governance.
Michael Macaulay	Acting Director, Institute of Governance and Policy Studies	Associate Professor (Public Management), School of Government, Victoria University, Wellington. Michael was lead researcher for the 2011 UK National Integrity System Assessment.
Hemi Toia, Te Mahurehure	Māori business management specialist	General Manager, Ngati Rarua Iwi Trust, and a specialist in Māori business development. Hemi is a former academic from Victoria University of Wellington and the University of Auckland.
Michael Powles	Former Ambassador and Human Rights Commissioner	Former New Zealand Ambassador in Asia-Pacific countries and at the United Nations, and later, a Human Rights Commissioner with Treaty of Waitangi responsibilities and founding Chair of the Pacific Cooperation Foundation.
Robert Gregory	Emeritus Professor of Political Science, Victoria University of Wellington	Emeritus Professor of Political Science in the School of Government, Victoria University of Wellington. Robert has specialised in public administration and policy, with particular reference in recent years to issues of accountability, responsibility, and corruption.
Deborah Battell	Banking Ombudsman	Deborah previously held senior management positions at the Commerce Commission. These positions aimed to hold New Zealand businesses to the highest standards of integrity, ensuring that consumers have information to enable good purchasing or investment decisions.

## Terms of reference for the External Advisory Group (EAG)

### Purpose

The purpose of the external advisory group is to provide a forum for sharing of information about and communicating the results of Transparency International New Zealand's (TINZ) National Integrity Study to promote understanding and improvement in New Zealand's system of national integrity.

### Membership

The external Advisory Group is chaired by former Governor General, Ombudsman and patron of TINZ, the Rt Hon Sir Anand Satyanand. Its initial membership is from representatives across the pillars including SSC, Statistics, Treasury, MSD, Office of the Ombudsmen, Human Rights Commission, Transport, DoC, and Defence from entities providing funding support to the National Integrity System (NIS). Other stakeholders will be solicited. The Office of the Auditor-General (OAG) is the Secretariat for the Advisory Group. Meetings are attended by officers of Transparency International New Zealand and of the NIS project team and steering committee as required.

The External Advisory Group and its member entities are not involved in the governance, management or operation of TINZ or the NIS project to preserve the need for independence of TINZ in its decision -making and activity for itself (including for the NIS): each member entity in respect of its responsibility to carry out the mandate of its organisation.

### Preserving independence

To achieve this independence, the External Advisory Group's focus is on matters to achieve its purpose through activities set out below. The Group does not have decision -making for the NIS research programme or the NIS Assessment Report.

### Activities

The External Advisory Group will support TINZ in carrying out the project through:

being aware of and supporting TINZ in carrying out of the study;

providing expert advice and offering recommendations on matters related to the areas of the study;

providing feedback on matters of factual accuracy, emphasis and fairness on the draft study report; and

supporting the project by participating in and promoting workshops and forums.

Following completion of the study the External Advisory Group will identify from the Study report's recommendations mutually beneficial work, including through:

disseminating and communicating report findings and recommendations within our organisation and with our stakeholders;

carrying out joint seminars and presentations to encourage shared knowledge about integrity and transparency trends, challenges and risks;

devising projects and initiatives to make progress on the NIS recommendations.

Endeavouring to share the information

## **Appendix 5b: National Integrity Assessment 2013 – 2018 update: Project governance, management, and finances**

The 2018 update to the NIS assessment was necessarily narrower in scope than the 2013 exercise, but followed the same principles. The TINZ board retained overall oversight and responsibility for the update, as it did for the 2013 assessment.

There was no review of the work while it was under way, but the completed draft was submitted to the Board of TINZ for review. It was then reviewed by an external reviewer, Keitha Booth, BA, Dip NZLS, DipIS (VUW), Senior Associate, Institute of Government and Policy Studies, Victoria University of Wellington and Fellow of Internet NZ. Keitha is a New Zealand researcher and commentator, with longstanding interests in open and digital government and information policy development and delivery. She works at the intersection between technology, information and policy in the public and private sectors and has had roles in public policy, egovernment, information technology and librarianship.

The external reviewer was asked to have regards to the terms of reference for IPRAG (above) in conducting her review.

Similarly, while there was no external advisory group, a number of organisations were consulted in the course of the update and some commented on the relevant parts of the draft.

Thanks are due to

Electoral Commission

NZ Police

Office of the Auditor-General

Office of the Ombudsman

Serious Fraud Office

State Services Commission

## **APPENDIX 6: EXCERPTS FROM THE UNITED NATIONS CONVENTION AGAINST CORRUPTION**

### **Article 5. Preventive anti-corruption policies and practices**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

### **Article 7 Public Sector**

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

### **Article 13. Participation of society**

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
  - (i) For respect of the rights or reputations of others;
  - (ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

## APPENDIX 7: UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

### **Protect, Respect, Remedy: United Nations Guiding Principles on Human Rights and Business – brief summary**

The first international, definitive framework establishing principles for implementation, to address human rights issues in the context of business. Guiding Principles were endorsed by the UN Human Rights Council on 16 June 2011

Major step as UN institutions not traditionally focused on private sector actors. This left a so-called international governance gap (often outside of domestic frameworks and international laws). This gap was recognised by the UN in the 2000s with the appointment of the UN Special Representative.

The Guiding Principles provide an implementation framework for the Protect, Respect and Remedy Framework which was endorsed by the Human Rights Council in 2008

The core ideas of the framework are, as the name indicates:

- Protect, Respect, Remedy; and
- Do no harm

The framework is an internationally agreed roadmap for addressing human rights impacts and aspects of business. Taken together, the framework and the Guiding Principles can be seen as emerging international human rights norms in this area, however, they do not create new international law obligations

The Guiding Principles are grounded in recognition of:

- States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights;
- The need for rights and obligations to be matched to appropriate and effective remedies when breached.

The Guiding Principles apply to all States and all business enterprises – transnational and others, regardless of size, sector, location, ownership and structure.

They should be implanted in a non-discriminatory manner and with particular attention to rights and needs of individuals from groups or populations which may experience heightened risk of vulnerability, and with regard to the differing risks faced by women and men.

The Guiding Principles are focused on implementation of the framework – giving clear recommendations for how to uphold and protect human rights in business operations, and defining the duties incumbent on business. This involves:

- risk assessment
- development of policies and procedures

The Guiding Principles are divided in the following three sections:

### **Role of the State – duty to protect**

The core principle here is that “States must protect against human rights abuse within their territory and jurisdiction by third parties, including business enterprises, and this includes taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”.

### **Corporate social responsibility to protect**

The foundational principle here is that “Business enterprises should respect human rights. This means they should avoid infringing on the human rights of others and should address adverse human rights impact with which they are involved”.

Operationally, this requires that businesses have policies and processes in place to support this:

- A policy commitment to meet their responsibility to respect human rights
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impact on human rights
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”

The concept of human rights due diligence is clearly outlined in guiding principle 17. It should identify human rights risks, put in place procedures to prevent violations, and put in place procedures to mitigate negative impacts if violations occur, and should be ongoing to identify risks over time

Additionally, to gauge human rights impacts, businesses should undertake human rights impact assessments and integrate the findings into their operations appropriately, and track effectiveness over time, and in instances where human rights violations occur, businesses must undertake appropriate remedial action.

### **Access to remedies**

The core principle here is that States must take appropriate steps to ensure, through judicial, legislative, administrative and other appropriate means that when business related human rights abuse occurs within their territory or jurisdiction, that those affected have access to an effective remedy

Note that corporate legal accountability is a growing field of human rights litigation. This is really coming to bear in legal regimes with extraterritorial reach, such as the Alien Tort Claims Act in the United States. A helpful place for more information on case law in this area is the *Corporate Legal Accountability Portal*.

## **UN Global Compact**

The UN Global Compact is another UN led initiative that is important to mention in the business and human rights context

Established in 2000, the UNGC is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with 10 universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

Overall, the Global Compact pursues two core goals:

- Mainstream the 10 principles in business activities around the world
- Catalyse actions in support of broader UN goals, including the Millennium Development Goals

Six UN agencies support the UNGC: UNEP, ILO, OHCHR, UNDP, UNIDO, UNODAC.

The Ten Principles that the UNGC asks companies to embrace, support and enact within their sphere of influence are grouped into 4 categories:

### **Human Rights**

- 1) Businesses should support and respect the protection of internationally proclaimed human rights; and
- 2) make sure that they are not complicit in human rights abuses.

### **Labour**

- 3) Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- 4) the elimination of all forms of forced and compulsory labour;
- 5) the effective abolition of child labour; and
- 6) the elimination of discrimination in respect of employment and occupation.

### **Environment**

- 7) Businesses should support a precautionary approach to environmental challenges;
- 8) undertake initiatives to promote greater environmental responsibility; and
- 9) encourage the development and diffusion of environmentally friendly technologies.

### **Anti-corruption**

- 10) Businesses should work against corruption in all its forms, including extortion and bribery.

Relevant links:

- UN Office of the High Commissioner for Human Rights – Business and Human Rights page: [www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx)
- Business and Human Rights Resource Centre – Portal of the UN Secretary-General's Special Representative on business and human rights: [www.business-humanrights.org/SpecialRepPortal/Home](http://www.business-humanrights.org/SpecialRepPortal/Home)
- United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises: [www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx)
- UN Global Compact: [www.unglobalcompact.org/Issues/human\\_rights/index.html](http://www.unglobalcompact.org/Issues/human_rights/index.html)
- OECD Guidelines for Multinational Enterprises: [www.oecd.org/daf/inv/mne/48004323.pdf](http://www.oecd.org/daf/inv/mne/48004323.pdf)
- The Arc of Human Rights Priorities: A new model for managing business risk: [www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Human\\_Rights\\_Working\\_Group/9June09\\_Arc\\_of\\_Human\\_Rights\\_Priorities\\_-\\_Road\\_Testing\\_Version.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/9June09_Arc_of_Human_Rights_Priorities_-_Road_Testing_Version.pdf)

## APPENDIX 8: OPEN GOVERNMENT PARTNERSHIP

### Open Government Declaration

*September 2011*

As members of the Open Government Partnership, committed to the principles enshrined in the Universal Declaration of Human Rights, the UN Convention against Corruption, and other applicable international instruments related to human rights and good governance:

We acknowledge that people all around the world are demanding more openness in government. They are calling for greater civic participation in public affairs, and seeking ways to make their governments more transparent, responsive, accountable, and effective.

We recognize that countries are at different stages in their efforts to promote openness in government, and that each of us pursues an approach consistent with our national priorities and circumstances and the aspirations of our citizens.

We accept responsibility for seizing this moment to strengthen our commitments to promote transparency, fight corruption, empower citizens, and harness the power of new technologies to make government more effective and accountable.

We uphold the value of openness in our engagement with citizens to improve services, manage public resources, promote innovation, and create safer communities. We embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in our own countries and in an increasingly interconnected world.

Together, we declare our commitment to:

Increase the availability of information about governmental activities. Governments collect and hold information on behalf of people, and citizens have a right to seek information about governmental activities. We commit to promoting increased access to information and disclosure about governmental activities at every level of government. We commit to increasing our efforts to systematically collect and publish data on government spending and performance for essential public services and activities. We commit to proactively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate reuse.

We commit to providing access to effective remedies when information or the corresponding records are improperly withheld, including through effective oversight of the recourse process. We recognize the importance of open standards to promote civil society access to public data, as well as to facilitate the interoperability of government information systems. We commit to seeking feedback from the public to identify the information of greatest value to them, and pledge to take such feedback into account to the maximum extent possible.

Support civic participation. We value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from

people's knowledge, ideas and ability to provide oversight. We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion. We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.

Implement the highest standards of professional integrity throughout our administrations. Accountable government requires high ethical standards and codes of conduct for public officials. We commit to having robust anti-corruption policies, mechanisms and practices, ensuring transparency in the management of public finances and government purchasing, and strengthening the rule of law. We commit to maintaining or establishing a legal framework to make public information on the income and assets of national, high ranking public officials. We commit to enacting and implementing rules that protect whistle-blowers. We commit to making information regarding the activities and effectiveness of our anti-corruption prevention and enforcement bodies, as well as the procedures for recourse to such bodies, available to the public, respecting the confidentiality of specific law enforcement information. We commit to increasing deterrents against bribery and other forms of corruption in the public and private sectors, as well as to sharing information and expertise.

Increase access to new technologies for openness and accountability. New technologies offer opportunities for information sharing, public participation, and collaboration. We intend to harness these technologies to make more information public in ways that enable people to both understand what their governments do and to influence decisions. We commit to developing accessible and secure online spaces as platforms for delivering services, engaging the public, and sharing information and ideas. We recognize that equitable and affordable access to technology is a challenge, and commit to seeking increased online and mobile connectivity, while also identifying and promoting the use of alternative mechanisms for civic engagement. We commit to engaging civil society and the business community to identify effective practices and innovative approaches for leveraging new technologies to empower people and promote transparency in government. We also recognize that increasing access to technology entails supporting the ability of governments and citizens to use it. We commit to supporting and developing the use of technological innovations by government employees and citizens alike. We also understand that technology is a complement, not a substitute, for clear, useable, and useful information.

We acknowledge that open government is a process that requires ongoing and sustained commitment. We commit to reporting publicly on actions undertaken to realize these principles, to consulting with the public on their implementation, and to updating our commitments in light of new challenges and opportunities.

We pledge to lead by example and contribute to advancing open government in other countries by sharing best practices and expertise and by undertaking the commitments expressed in this declaration on a non-binding, voluntary basis. Our goal is to foster innovation and spur progress, and not to define standards to be used as a precondition for cooperation or assistance or to rank

countries. We stress the importance to the promotion of openness of a comprehensive approach and the availability of technical assistance to support capacity- and institution-building.

We commit to espouse these principles in our international engagement, and work to foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government.

## APPENDIX 9: AUTHOR BIOGRAPHIES AND REPORT RESPONSIBILITIES

Some authors also contributed to the 2018 update. These are indicated by an asterisk\*.

Author	Responsibility
Sophie Bond – Senior Lecturer, Geography Department, University of Otago.	Supplementary paper on environmental governance
Howard Broad, CNZM, LLB (VUW), Dip NZ Pol (RNZPC) – former New Zealand Commissioner of Police, Transport Accident Investigation Commissioner, Public Sector Consultant, Acting Chief Executive, Turn Your Life Around Youth Development Trust.	Assistance with law enforcement agencies (pillar 5)
*Liz Brown, ONZM, MA (Oxon), MPP (VUW) – Independent consultant and former Banking Ombudsman.	Ombudsman (pillar 7), Chapter 1, and general oversight
Ralph Chapman – Associate Professor and Director, Graduate Programme in Environmental Studies, Victoria University of Wellington.	Supplementary paper on environmental governance
Claire Charters, BA (Otago), LLB(Hons) (Otago), LLM (NYU), PhD (Cantab) – Ngāti Whakaue, Ngā Puhi, Ngāti Tūwharetoa, and Tainui – Senior Lecturer, Faculty of Law, University of Auckland.	Chapter 2 (Treaty of Waitangi)
Keric Chin, BS (United States Air Force Academy), MA (East–West Center Graduate Degree Fellow, University of Hawaii), JD (Honours) (University of Texas), LLM (The Judge Advocate General's Legal Center and School).	Supplementary paper on public procurement and assistance with public sector (pillar 4)
Stephen Drain – Director in PwC's Forensic Services team, specialising in the prevention of, detection of, and response to financial crime, particularly fraud, corruption, and money laundering.	Chapters 3 and 4
*Dr Bryce Edwards – Lecturer in politics, University of Otago, teacher and researcher in aspects of New Zealand politics, in particular, elections, political parties, public policy, and political communications.	Electoral management body (pillar 6), political parties (pillar 10), media (pillar 11), parts of Chapter 2 (political-institutional and socio-political foundations)
Eddie Goldberg – independent environmental consultant	Supplementary paper on environmental governance
Nicky Hager, BSc (physics), BA Hons (philosophy) – author and investigative journalist, Wellington.	Law enforcement agencies (pillar 5), assistance with Chapters 3 and 4 and business (pillar 13)
Ash Johnstone, Dip Bus Studies (ACC) – Senior Investigator, Interpol, New Zealand Police.	Assistance with Chapters 3 and 4, law enforcement agencies (pillar 5), business (pillar 13)

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Author	Responsibility
Julian Inch BSc (Canterbury), PGDip Mgmt Sci (Canterbury) Strategy consultant (NGOs, health, local government), business owner, Leadership NZ Alumnus. Previously Chief Executive District Health Boards New Zealand .	Civil Society (pillar 12)
*Rae Julian, QSO – National President, UN Women National Committee New Zealand, previously Executive Director, New Zealand Council for International Development, and Commissioner, New Zealand Human Rights Commission.	Assistance with civil society (pillar 12)
Justin Kerr, BCA (VUW), DipBank (Massey) – former Executive Director, Financial Services Federation.	Assistance with business (pillar 13, finance sector)
Rob Laking, BA (VUW), MPA (Harvard) – Senior Associate, Institute of Government and Policy Studies, Victoria University of Wellington.	Supreme audit institution (pillar 8)
Chris Livesey, BA (Hons), BSc – independent public policy (environmental and economic) consultant, owner and manager of a small commercial forest, co-owner of a block of native bush held for conservation purposes.	Chapter 2 (environment foundation) and supplementary paper on environmental governance
*Alex Matheson, MA (UC), Master of International Law (ANU), DipMgt (Templeton College, Oxford), former New Zealand senior executive service member in three departments, senior public management adviser Commonwealth Secretariat, and Head, Budgeting and Management Division, Governance Directorate OECD Since 2005 he has been a consultant on governance and public management in many developing countries	Legislature (pillar 1), executive (pillar 2), public sector (pillar 4)
Kristin Mednis – studying bioethics and health law at the University of Otago, formerly with the Office of the Auditor-General.	Supplementary paper on Crown entities and assistance with public sector (pillar 4)
Taku Parai – Pou Arahi (Education Review Office), Chair of Te Rūnanga o Ngāti Toa, Kaumātua of Whitireia New Zealand and member of its Executive Team.	Assistance with Māori perspective in Civil Society and Business
*William (Bill) Paterson, BE (Hons), PhD (Canterbury), MIPENZ – independent consultant (infrastructure governance) in Wellington, former Lead Infrastructure Specialist, World Bank.	Supplementary paper on public procurement and assistance with public sector (pillar 4)
*Murray Petrie, MPA (Harvard) PhD (Public Policy) (VUW) – Lead Technical Advisor to the Global Initiative for Financial Transparency, worked for the New Zealand Treasury, since 1997 has consulted on public financial management for New Zealand government agencies, the International Monetary Fund, World Bank, and International Budget Partnership.	Supplementary paper on fiscal transparency, executive summary, Chapters 1 and 6

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Author	Responsibility
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Patrick Smellie – Wellington-based journalist and co-founder of the BusinessDesk business news wire service, which services all major New Zealand news sources and is distributed in Australia.	Business (pillar 13)
David Smyth – formerly a public servant in New Zealand, including appointments as Deputy Commissioner, State Services Commission, and Chief Executive, Ministry of Housing; recently a consultant on aspects of public sector governance, performance, and risk management.	Executive summary, Chapters 1 and 6
*Suzanne Snively, MA Distinction (Victoria), BA Hons (Victoria), BA Econ (Reed College, Portland, Oregon) – economist, former partner PwC with experience in governance through civil society organisations and business.	Chapter 2 (socio-economic foundation) and assistance with business (pillar 13)
Alison Stephens, BA – has worked on policy projects in the justice sector for 18 years.	Chapter 2 (socio-cultural foundation)
Amanda Thomas – PhD candidate, Geography Programme, Victoria University of Wellington.	Supplementary paper on environmental governance
Fuimaono Tuiasau, LLB, BA (University of Auckland).	Assistance with Pasifika perspectives
Ian Tuke – leads the Counter Fraud Service for the New Zealand Deloitte Forensics team.	Chapters 3 and 4
Michael Wearne, BA, MPP, COP Public Sec Acctg (VUW), DipTP, MTP (UA), MNZPI (retired), MRTPI (until 2012) – international consultant, public sector modernisation, 1997–2010; Director, Research, Development and Training, then Manager Policy and Research, New Zealand Local Government Association Inc, 1989–1997; Planning Advisor, New Zealand Planning Council; Urban and Regional Planner, New Zealand, London (UK), Australia and Hong Kong, 1970–1989.	Additional paper on local government, assistance with public sector (pillar 4, local government)
Gavin White, MA (Hons) (University of Auckland) – Research Director with UMR Research.	Assistance with business (pillar 13, overseas trade)
Margaret Wilson, LLB(Hons), MJur (1st), Honorary Doctorate (University of Waikato) – Professor of Law and Public Policy, University of Waikato, former Attorney-General and Associate Minister of Justice, former Law Commissioner.	Judiciary (pillar 3)

### Additional biographies and responsibilities 2018

Additional biographies and responsibilities 2018	
Julie Haggie BA(Hon), DipTchg Chief Executive of Transparency International New Zealand. 20 years experience as CEO or in a senior role in industry associations and industry regulatory bodies.	Project support and research over several pillars
W. John Hopkins Phd (Sheff), BA(Hons) (Strath), PGCertTertTchg (Cant). Professor of Law, University of Canterbury.	Assistance with Law Enforcement (Pillar 5)
James Jong, Chief Internal Auditor, Ministry of Education	Assistance with Public Sector (Pillar 4)
Professor Karin Lasthuizen, Brian Picot Chair in Ethical Leadership,(VUW)	Business sector (Pillar 12)
Miraz Jordan, freelance technical writer	General data updating
Michael Macaulay Professor of Public Administration at the School of Government. He was previously Professor of Public Management at Teesside University (UK), and has held visiting professor posts in the UK and South Africa.	Public Sector (Pillar 4)
Ann Webster BA, Dip SocSciRes and MPP (Victoria). Public servant at MBIE, former Assistant Auditor-General R&D at the OAG with experience in public sector governance, performance management and public accountability.	Supreme audit institution (pillar 8)
Marece Weinhold researcher within the Brian Picot Chair in Ethical Leadership (VUW)	Business sector (Pillar 12)

## **Appendix 10: Response to 2013 National Integrity System Assessment**

# **Response to National Integrity Systems Report on New Zealand by Transparency International**

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## Background

In 2013 Transparency International New Zealand published the “Integrity Plus 2013 New Zealand National Integrity System Assessment”.

The Report concluded that:

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

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

In 2014 New Zealand submitted its first National Action Plan (NAP14) and joined the Open Government Partnership (OGP). One of the commitments it made in NAP14 was:

*The third element of our Action Plan is the work we are embarking on with Transparency International New Zealand (TINZ), the civil society organisation that works to identify and address corruption. In 2013, TINZ produced a New Zealand National Integrity System Assessment which culminated in a detailed report that made a series of recommendations across 12 “pillars” of New Zealand's integrity system. These pillars are the legislature, the executive, the judiciary, public sector, law enforcement, electoral management, ombudsman, audit institutions, political parties, media, civil society and business.*

*The work with TINZ over the next two years will involve engaging in ongoing dialogue on TINZ's National Integrity System Assessment, and working with TINZ and other stakeholders to examine and respond to the recommendations (for details about the recommendations see Appendix B).*

This report summarises actions taken by central government to date in pursuit of that commitment. In preparing it, the State Services Commission consulted the Ministry of Justice, the Treasury, the Department of Internal Affairs, the Ministry of Social Development, Te Puni Kokiri, the Ministry of Culture and Heritage, the Department of Corrections, the Ministry of Business, Innovation and Employment, the Serious Fraud Office, the Ombudsman and the Office of the Auditor General. The Department of Prime Minister and Cabinet was informed.

## Recommendation 1:

*Develop a comprehensive National Anti-Corruption Strategy (NACS), developed in partnership with civil society and the business community, combined with rapid ratification of the UN Convention against Corruption (UNCAC).*

### National Anti-Corruption Strategy

1. Cabinet approved work to develop a NACS in 2013 in the Report Back to Cabinet on the Organised Crime Strategy.
2. New Zealand's legislative framework on bribery and corruption has since been strengthened, and there is increasing awareness of corruption risks. Work on a NACS was deferred, pending development of an "*anti-corruption system standard*" by the International Standards Organisation (ISO). This ISO standard is expected to be completed by the end of 2016.
3. The strong backing of government (central and local) and the support of civil society and business is needed to adequately address the risks that corruption poses to core government business and priorities and the private sector. New Zealand's relatively corruption-free reputation is critical to business success, the kiwi way of life and standard of living. Implementing a timely and comprehensive NACS will address many of the risks and protect New Zealand's reputation.

### UN Convention against Corruption

4. UNCAC was ratified in December 2015 following the passage of the Organised Crime and Anti-corruption Legislation Bill (OCAC). OCAC amended 13 different Acts to strengthen New Zealand's legislative framework to better combat organised crime and corruption.
5. Collectively, the legislative amendments improve New Zealand's ability to collaborate with international law enforcement agencies to disrupt organised crime and to respond quickly and effectively to new criminal activities as they emerge.
6. In addition to the passage of OCAC, the Government has advanced or contributed to a range of initiatives that will support and strengthen anti-corruption measures since the release of the 2013 NIS Report. These include:
  - measures to prevent overseas criminals from using New Zealand's registration system for companies and limited partnerships to, among other things, create shell companies;
  - allowing Inland Revenue to share information with the New Zealand Police to prevent, detect and investigate serious crime;
  - reviewing New Zealand's extradition and mutual legal assistance laws;
  - passing legislation to address match fixing risks presented by New Zealand's hosting of the Cricket World Cup and the FIFA Under 20 (football) World Cup; and
  - the establishment of a new interagency cyber crime plan.
7. Ratification of UNCAC means that New Zealand is now part of the "Implementation Review Mechanism" which enables States to assess their implementation of UNCAC. New Zealand is due to begin the self-assessment for Chapters III and IV of UNCAC from June 2016.

8. At the London Anti-Corruption Summit in May 2016 New Zealand agreed to consider establishing a central register of company beneficial ownership and a central database of companies with convictions for bribery and corruption. New Zealand also supported the establishment of an International Anti-Corruption Law Enforcement Coordination Centre.

## Recommendation 2:

*Initiate a cross-government programme of wide public consultation to develop an ambitious New Zealand Action Plan for the OGP.*

### Open Government Partnership

9. New Zealand has joined the OGP and developed its first National Action Plan (NAP). The commitments identified in that plan were:
  - the Government's Better Public Service (BPS) Results programme
  - the Government ICT Strategy and Action Plan to 2017
  - the Government's response to the 2013 Transparency International New Zealand's National Integrity System Assessment Report, and
  - the Kia Tūtahi Relationship Accord.
10. The Plan has been criticised by some commentators as not particularly ambitious. New Zealand, like many other countries, elected to undertake a first Action Plan that was largely focussed on improving openness and transparency within existing projects.
11. Three parts of the Action Plan (Better Public Services, the Kia Tūtahi relationship accord, and the government ICT strategy) are related to existing work and are widely considered to be transformational.
12. The first Action Plan was drafted within time constraints due to the timing of New Zealand joining the OGP. An on-line forum to collect public feedback on the first Action Plan was established and several public meetings were held. In addition, in July 2015, a Stakeholder Advisory Group, with representatives from civil society, academia and local government, was established as a mechanism for multi-stakeholder feedback. It was appointed to June 2016 and has now been replaced by an Expert Advisory Panel.
13. New Zealand is engaging with stakeholders and communities to develop its next National Action Plan which is due by October 2016.

## Recommendation 3:

*Transparency and integrity need to be strengthened in a range of priority areas.*

### Parliament

- i. Extend the coverage of the Official Information Act 1982 to the Parliamentary Counsel Office, officers of Parliament, the Speaker in the role of Responsible Minister for parliamentary agencies under the Public Finance Act 1989, the Office of the Clerk, and the Parliamentary Service.
  - ii. Strengthen parliamentary oversight of the executive, including through a review by Parliament of its select committee structure and consideration of establishing new cross-cutting specialist committees, for public accounts, for treaties, and for human rights; providing select committees with more independent analytical support.
  - iii. Enhance the quality of legislation by more pre-legislative public disclosure of draft bills and the adoption by select committees of tests for legislative quality.
  - iv. Introduce a code of conduct for members of Parliament.
  - v. Introduce measures that provide an adequate degree of transparency to ensure that public officials, citizens, and businesses can obtain sufficient information on, and scrutinise lobbying of members of Parliament and ministers.
14. The Government decided not to extend coverage of the OIA as it considered Parliament makes considerable information available and supports the *status quo*. Recommendations (ii), (iii) and (iv) are issues for Parliament to consider.
  15. While there is usually an opportunity for external parties to comment on a Bill as part of the select committee process, there is a growing expectation that external consultation will occur in advance of introducing a Bill. The conventions recorded in the Cabinet Manual invite Ministers to consult external organisations or undertake a wider process of public consultation with citizens or affected parties before policy decisions are finalised and a Bill is introduced. Several rounds of consultation may be needed on significant or complex legislation.
  16. To aid consultation, practice around public disclosure has improved. Since July 2013, Departments must prepare legislative disclosure statements for Government Bills and substantive Supplementary Order Papers (SOPs), which are published when the Bills and SOPs are published. If the Legislation Amendment Bill, introduced to the House on 20 May 2014, is passed, the new practice requirements will become law and extended to disallowable instruments.
  17. The new Legislative Design and Advisory Committee (the Committee) announced in June 2015, aims to improve the quality and effectiveness of legislation.
  18. The final Report of the New Zealand Productivity Commission review of regulatory institutions and practices has been a catalyst to achieve change to secure improvements to regulation across key themes of stronger ownership and leadership; greater focus on improving the quality of legislation; raising the professionalism of the regulatory workforce; and review and evaluation.
  19. In 2013 the Government Administration Committee recommended that the House develop guidelines for members of Parliament about handling communications relating to parliamentary business, and review the relevant Standing Orders to ensure consistency. The Committee also recommended that the Government:

- require regulatory impact statements and explanatory notes of parliamentary bills to include details of non-departmental organisations consulted during the development of policy and legislation
- encourage the proactive release of policy papers.

## Political Executive

- i. *Commission an independent review of the respective responsibilities of Cabinet, ministers, and public servants with a view to clarifying the conventions concerning the duty of, and capacity for, free and frank advice between the political executive and the public sector, to mark the centenary of the introduction of the merit-based public service in New Zealand.*
  - ii. *Introduce a centralised approach to the systematic proactive release of official information, including Cabinet papers, by all public entities.*
  - iii. *Initiate discussions with civil society and the business community on a general government-wide framework for timely consultation on the development of new policy initiatives and encouragement of direct public participation in policy development and implementation.*
20. The 2013 amendments to the State Sector Act 1988 have codified the duties of officials to give Ministers free and frank advice and the responsibility of chief executives to provide stewardship for that capability. The Cabinet Office is currently reviewing the Cabinet Manual.
21. Public sector information is increasingly being made available proactively. A wide range of reports, policies, strategies and other documents are available on the websites of central and local government agencies.
22. Proactive disclosure of official information in the form of policy papers and Cabinet papers is encouraged and the trend is towards greater proactive release. On 19 November 2015 Cabinet issued its updated requirements on the proactive release of Cabinet material for example Treasury with Budget documents.
23. In 2011 the government approved principles for managing the data and information it holds. The principles provide that government data and information should be open, readily available, well managed, reasonably priced and re-usable unless there are necessary reasons for its protection. Personal and classified information will remain protected. Government data and information should be trusted and authoritative.
24. The appointment of the Chief Executive of the Department of Prime Minister and Cabinet as the Head of the Policy Profession along with the response to the Productivity Commission Report on Regulatory Institutions and Practices will provide the opportunity to address concerns relating to consultation and engagement in the development of policy initiatives.
25. The importance of public participation is largely accepted and is evident in efforts by the Government to actively seek public input on policy matters in a number of ways and at more than one stage of the development process. Overcoming barriers and increasing business and citizen participation in government policy are recognised as important factors that will enable government to deliver on inclusive growth initiatives, such as the BPS Results, the Social Investment Approach and Population targeted Reviews.
26. The Social Investment Approach, in particular, has led to new ways of working to better leverage the involvement of the public and communities, including the not-for-profit and private sectors.

**Local Government**

- i. *Initiate a national conversation on the constitutional place of local government.*
  - ii. *Develop a central government/local government protocol on the design and implementation of regulations where regulation-making powers have been delegated to local authorities.*
27. As part of its Better Local Government Programme, the government has committed to developing a non-statutory allocation framework to guide decisions on which regulatory functions are best undertaken by local and central government.
28. The Government has agreed that there would be value in central and local government improving their collaboration in the development of regulations that have implications for the local government sector.
29. The Government is not convinced that a formal joint mechanism would be effective. Rather, that improvements to govern the development of regulations that will have implications for the local government sector can be achieved without a formal mechanism.
30. The Department of Internal Affairs provides guidance to local authorities on making regulations and improvements are currently being made to its *Policy Development Guidelines for Regulatory Functions Involving Local Government*.
31. In addition, improvements are also being made to the Cabinet Guide, and the Regulatory Impact Analysis Handbook. The Cabinet Office Manual is also being amended, to include the need to consult effectively with local government during policy development.

## Recommendation 4:

*The integrity of the permanent public sector, and its role in promoting integrity should be strengthened in a range of priority areas.*

### Strengthen transparency and accountability for public procurement

- i. Extend proactive disclosure of project information, both upstream and downstream of tendering, including projects exempted from open tendering and without compromising commerciality.
- ii. Incorporate explicit anti-corruption provisions in procurement procedures and documents.
- iii. Build capacity, especially in smaller entities.
- iv. Improve requirements for record-keeping so that data on different types of procurement can be readily extracted, and also for complaint mechanisms.
- v. Publish principles, objective criteria, and a robust management framework for 'hybrid procurements'.
- vi. Conduct periodic reviews of transparency and integrity of spending and procurement in the Canterbury earthquake re-build in view of the scale of the procurements.

*Procurement Principles, Management, Reviews of spending and Proactive Disclosure*

32. The Government Rules of Sourcing (Rules) came into effect on 1 October 2013 and reflect international best practice, including in relation to disclosure. The Rules are read together with the five Principles of Government Procurement and align to the World Trade Organisation Agreement on Government Procurement. The Rules have been refreshed several times and, in addition to the core public service, now also apply to 103 crown entities, the New Zealand Defence Force and the New Zealand Police.
33. The Treasury has accountability for developing and maintaining the rules and processes around investment management, including those relating to major projects and programmes and Public Private Partnerships. Most of the rules are contained in Cabinet Circular CO (15)5, which took effect from 1 July 2015. The Treasury's Investment Management and Asset Performance (IMAP) team runs the IMAP programme, including the review processes at both agency and programme/project level (these include an Investor Confidence Rating (ICR) for investment-intensive agencies, and Gateway reviews for programmes and projects assessed as high risk).
34. Consistent with Cabinet's decision in 2011 to commit to actively releasing high value public data, the IMAP team regularly publishes information on the government's pipeline of potential and existing investments, the Investor Confidence Rating results of investment-intensive agencies, and status and performance information on major projects/programmes monitored by the Treasury.

*Capacity building, record keeping, and complaints*

35. The Government established the Procurement Functional Leadership programme to improve procurement capability and practice in government agencies. New Zealand Government Procurement and Property, a branch of the Ministry of Business, Innovation and Employment (MBIE), implements procurement reform, with oversight by Cabinet's State Sector Reform and Expenditure Control Committee.
36. Key achievements include:
  - the launch of a New Zealand Procurement Academy

- implementing the Procurement Capability Index to enable agencies to assess their procurement processes and capability
- providing a guide on giving feedback or making a complaint and providing an easily accessible complaints process
- establishing a commercial pool of procurement practitioners to give agencies strategic support for major procurement projects
- compiling and making available online agencies' annual procurement plans
- developing a range of best practice procurement tools, templates and guidance
- establishing All-of-Government contracts to deliver cost savings to entities of all sizes over the terms of the contracts.

*Anti-corruption provisions*

37. In addition to the reform of State services procurement discussed above, New Zealand has agreed to actions under the Communiqué at the London Anti-Corruption Summit in May 2016 to intensify efforts to build capability and to safeguard process integrity. While New Zealand has implemented the Financial Action Taskforce (FATF) Recommendations on beneficial ownership, it will also explore: (1) how to incorporate the FATF standards on preventing money-laundering in the non-financial professional services sector into domestic legislation; (2) establishing a public central register of company beneficial ownership information and (3) a central database of companies with final convictions for bribery and corruption offences; and (4) ways to share information on corrupt bidders across borders.

## Strengthen integrity and accountability systems in public sector entity operations

- i. *Introduce greater transparency in the process for public appointments to boards of Crown entities and other public bodies, and strengthen the capacity of the public sector to nominate suitable candidates.*
- ii. *Strengthen the Protected Disclosures Act for both the public and private sectors.*
- iii. *Introduce central reporting and monitoring of all misconduct and breaches of integrity within public entities, when they involve issues going to honesty and integrity (for example, suspected fraud, corruption, conflicts of interest, favouritism, and abuse of position)*
- iv. *Institutionalise on-going regular integrity and conduct surveys across the public sector*
- v. *Introduce central reporting, monitoring and knowledge-sharing between agencies on 'best practice' options and initiatives in fulfilling Treaty of Waitangi obligations*
- vi. *Increase fiscal transparency and accountability by deepening the reporting of tax expenditures, publishing a Citizens' Budget, and investigating options for an independent body to advise Parliament on key fiscal strategy reports to deepen the public debate about fiscal policy*
- vii. *Require public entities to publish management letters from the Office of the Auditor-General, and report to Parliament their responses to issues of significance identified in these letters, for consideration in the annual select committee reviews*
- viii. *Actively promote the importance of ethics, transparency, accountability, and financial literacy among the public in New Zealand through civics education, including in the secondary and tertiary curricula.*
- ix. *Review the evidentiary status of Government Communications Security Bureau evidence provided to domestic law enforcement agencies*

*Board Appointments*

38. The Crown entity system relies on Ministers, entities and monitoring departments working well together. The incentives and the accountability mechanisms in the system provide good reason for all players to perform their role to the best of their ability.
39. Good guidance is available for Boards and Ministers, in the form of *It Takes Three: Operating Expectations Framework*, published in 2014. The guidance explains the respective roles and responsibilities of Ministers, Crown entities and monitoring departments to build a shared understanding of how legislative obligations are appropriately put into practice.
40. SSC's Board Appointment and Induction Guidelines were updated in 2015 and provide greater clarity about the roles and responsibilities of Ministers, Monitoring departments and Boards. The Commercial Operations Group (formerly COMU) of The Treasury also continues to do work in relation to appointments.

*Protected Disclosures*

41. SSC's 2013 Integrity and Conduct survey, found that there were a number of barriers to the effectiveness of the Protected Disclosures Act (PDA) operating in the State services, indicating limited use of the PDA.
42. PWC's 2016 Global Economic Crime Survey observed that, overall, corporate controls were not identifying financial crime risks. New Zealand organisations were heavily reliant on people reporting concerns, with 42% of fraud detected through a tip-off.
43. "Whistling While They Work 2", a three-year research project into whistleblowing, has just commenced, and will run from 2016-2018 in Australia and New Zealand. The project is funded in part by the Australian Research Council and is supported in New Zealand by SSC, VUW and the Ombudsman. The project's research team includes leading academics and researchers.
44. The research will compare the law and practice across jurisdictions in Australia and New Zealand and across the public and the private sectors to identify the policies and rules that encourage and empower managers in the public and private sectors to maximise the benefits and minimise the costs of employee-reporting of suspected wrong-doing. The research is expected to identify good practice and shed light on the nature of possible legislative changes to the PDA.

*Integrity and Conduct Surveys & Centralised Reporting and Monitoring*

45. The Integrity and Conduct survey collects information about perceptions of behaviours in the State services. The Integrity and Conduct Survey has been run by SSC on a triennial basis since 2007. The survey is to be replaced with common data collated across the state services, including integrity issues, to provide a whole-of-system assessment.
46. Chief executives are responsible for the integrity and accountability systems in their agency. Centralising the reporting and monitoring of misconduct and integrity breaches does not fit comfortably with New Zealand's decentralised agency model, and may not reflect best practice. In its leadership role, SSC has done work on strengthening integrity through a focus on building capability and skills by identifying needs and sharing best practice.

*'Best Practice' Options and Initiatives in Fulfilling Treaty of Waitangi Obligations*

47. The Ministry of Justice has developed a list of commitments from legislated settlements of historical Treaty of Waitangi claims and has commenced working with Crown agencies to carry out some checks on the list. The list aims to provide each agency with greater visibility of their commitments and responsibilities to better manage commitments. The

list information will provide the data for any future IT solution in the form of a central register; work on developing a centralized register is continuing.

*Fiscal Transparency and Accountability*

48. New Zealand provides extensive financial information to the public, and has retained its number one ranking in the Open Budget Survey (OBS) in 2015.
49. The Government has been active in increasing data transparency across all public services. Steps taken include the 2011 Declaration on Open and Transparent Government, the expansion of the scope of the world-leading Integrated Data Infrastructure, and the establishment of the Data Futures Partnership. On 3 December 2015 the Treasury and Figure.NZ released over 90 categories of fiscal data. The format used in the release makes it easy to examine the details of public spending and revenue, from measures such as the OBEGAL surplus and net debt to more detailed information around different categories of spending.
50. The three recommendations made in the NIS are the same as those made in the latest OBS. Treasury is currently looking at the results of the OBS and considering the aspects that New Zealand can improve on for future Budgets.
51. The concerns giving rise to the recommendation relating to a citizen's budget concern usability, rather than availability, of fiscal information. The concerns include that: the information is fragmented, spread across eight documents; the terminology can be overly technical; and information is not available across all stages of the budget cycle.
52. The Treasury has made changes as part of Budget 2015 that address some of these concerns. It is considering what could be done to further improve access to, and usability of, budget and other fiscal information that it holds to enhance public understanding of the budget process.
53. Criticism of the reporting of tax expenditures includes: the narrow scope and the lack of transparent objective criteria, and insufficient quantification and explanatory information for individual items. The Treasury considers the cost of doing this would exceed the value.
54. The recommendation relating to fiscal advice to Parliament is for Parliament to consider.

*Publication of Management Letters*

55. Once a draft management letter has been issued to an entity it is official information and may therefore be subject to a request for disclosure under the OIA. It is for the entity that holds the information to determine whether it is appropriate to release it. There is nothing to prevent public entities from publishing management letters, if they wish to, nor to prevent a Select Committee from requesting this information.

*Civics Education to promote the importance of ethics, transparency, accountability, and financial literacy*

56. Some promotional and educational work is being done by agencies and watchdog organisations. This is generally ancillary to their core functions.

*Government Communications Security Bureau*

57. The Government Communications Security Bureau Act 2003 was amended in 2013. The amendments included changes to the oversight regime of the New Zealand Intelligence Community, changes to the objective, functions, and limitation provisions to improve clarity about the legal basis for the GCSB's activities.
58. The Report of the First Independent Review of Intelligence and Security in New Zealand, Intelligence and Security in a Free Society has been tabled in the House. That review (inter

alia) provided for consideration of whether the legislative frameworks of the intelligence and security agencies (GCSB and NZSIS) are well placed to protect New Zealand's current and future national security, while protecting individual rights.

## Strengthen accountability in public policy processes

- i. *Develop and implement a new government strategy to promote 'evidence based policy making' including enhanced monitoring and evaluation of the impacts of government policies.*
- ii. *Introduce greater transparency about the anticipated effects of proposed departmental restructuring and institutional reform exercises in the public sector, and, ex post, their actual effects*
- iii. *Enhance reporting on the social, economic, and environmental impacts of government regulation and spending.*
- iv. *Commence regular, technically independent reporting on State of the Nation environmental indicators, and reintroduce regular publication of the Social Report.*

### *Evidence Based Policy Making*

59. In the last three years, much has been done to strengthen policy capability in the State services. This strengthening is being achieved through the use of more robust evidence to inform policy advice; "free and frank" communication of policy advice to Ministers; and improvements to the legislative process and the quality of the legislation. The elements of strengthened policy-making include:
- a shift towards the use of robust, high quality evidence in creating, and in reviewing the impact of, government policy advice
  - the appointment of a Chief Science Advisor (CSA) to the Prime Minister in 2009 and a number of Departmental Science Advisors (DSAs) to key social, economic, environmental and security agencies. The CSA and DSAs meet regularly with the Chief Economist, Deputy State Services Commissioner and Deputy Secretary of Treasury. DSAs work across the sector as well as in departments
  - a new Head of Profession for policy advice has been established. This role carries responsibility for driving improvement in the policy system (i.e. capabilities, systems, processes, and standards).
  - a "Policy Project", led by DPMC in collaboration with public service policy leaders, supports the new Head of Profession. Government agencies are monitoring and evaluating policy projects through new methods of scientific analysis. There is now a much greater focus on testing before implementation
  - the Social Policy Evaluation and Research Unit (Superu) is championing the use of evidence in policy-making, particularly for complex social issues
  - In 2013 amendments to the State Sector Act 1988 codified the obligation of officials to provide free and frank advice to Ministers and obliged chief executives to steward the capacity of their agencies to be able to continue to provide free and frank advice.

### *Restructuring and Institutional Reform*

60. Workforce planning to ensure the right mix of skills in the right places over the long term is an essential part of long term success for the State services. This is being supported by improved workforce planning through 'Four year plans'. These require detailed advance planning by agencies and sectors in relation to the skills and capabilities that will be required of the workforce as services and service delivery changes over time. Proper

planning increases the likelihood that change is anticipated and planned for, reducing the need for restructuring.

*Reporting on Social, Economic, and Environmental Impacts of Government Regulation*

61. The Environmental Reporting Act (the Act) established a framework for environmental reporting, and aims to provide authoritative and independent information on the state of the environment and regular reporting. The Government Statistician and the Secretary for the Environment are responsible for environmental reporting. The Parliamentary Commissioner for the Environment can also comment on any aspect of reporting. The first report, Environment Aotearoa 2015, was published on 20 October 2015.
62. There is now greater transparency and enhanced stewardship of government regulation. In the last few years, stewardship expectations have been incorporated in the Performance Improvement Framework (PIF) agency model and in chief executive performance management. Stewardship expectations are also guiding the Treasury's approach to its responsibility for oversight of the regulatory system as a whole.
63. Following the Productivity Commissions' Report on Regulatory Institutions and Practices in 2015, the Government directed seven major regulatory agencies to be transparent about how they manage their regulatory regimes, the performance of those regimes, and plans for improvement. The regulatory management strategies and plans of all these agencies are shortly to be published, enabling stakeholders and departments to identify opportunities to improve regulation and reduce red tape and compliance costs.
64. The Treasury regularly analyses and reports on the economic impact of recent events and of potential shocks to the New Zealand economy. The Treasury also applies the Higher Living Standards framework in assessing the social and economic impact of policy.

## Recommendation 5:

*Support, reinforce and improve the roles of key independent integrity agencies and bodies.*

### Electoral management

- i. *Review public funding of political parties, the allocation of broadcasting time to political parties and the restrictions on parties purchasing their own broadcast election advertising*
  - ii. *Require greater transparency of the finances (including donations) of political parties.*
  - iii. *Strengthen the Electoral Act 1993 to make the lines clearer between legal and illegal activities and investigate the options for strengthening enforcement in response to complaints*
65. These issues are addressed in the Electoral Commission's comprehensive 'Report on the Conduct of the 2014 General Election', tabled in Parliament on 2 April 2015. After each election, the Electoral Commission's Report is followed by a Justice and Electoral Committee Inquiry into that election which considers electoral law generally. The Electoral Commission's Report has informed the Committee's consideration. The Justice and Electoral Committee Inquiry into the 2014 election reported in April 2016. The Government will now consider and respond to the report, including deciding any new policy direction.

### Judiciary

- i. *The judiciary should publish an annual report on its activities and performance*  
*Increase public access to information about the operation of the court system*
  - ii. *Enhance the transparency of the judicial appointment process*
66. The Ministry of Justice's website provides good information on the operation of the Court system and the judicial appointment process. The heads of bench for the District Court and High Court each publish an annual report.

### The Ombudsman

- i. *Promote enhanced compliance with and understanding of the Official Information Act 1982, better processes for handling Official Information Act requests, and implementation of the Law Commission's recommendation for an Official Information Act oversight function as well as instituting a similar oversight function for the Ombudsmen Act 1975*
  - ii. *Review in 2014/15 the adequacy of funding for the Office of the Ombudsman.*
67. Since the NIS Report was published, there has been greater focus on enhanced compliance with and understanding of the OIA, and better processes for handling OIA requests.
68. The Office of the Ombudsman provides regular training and education to agencies on the OIA and publishes information and guidance. The Office has recently been updating all its OIA guidance and case notes.
69. The Ministry of Justice, in consultation with the Ombudsman, is developing additional OIA guidance resources and promoting better practices. Since 2014 it has run a cross agency forum on OIA guidance developing practical guidance materials to address issues shared

across government. Finalised guidance materials are currently being promoted across government.

70. The Law Commission (2012) recommended creation of a new oversight office. The government considered the oversight provided by the Ombudsman was effective, and that government departments and agencies should continue to look to the Office of the Ombudsman for guidance.
71. The Chief Ombudsman's own-motion, wide-ranging review of OIA practices in the public sector, announced in late 2014, was directed at improving OIA practices. The Ombudsman's Report, released on 8 December 2015, found the OIA had created greater openness and transparency about the activities of the government and also led to greater accountability in the conduct of public affairs.
72. The Ombudsman has announced robust measures to ensure that the New Zealand State services maintains its high standards of openness.
73. The funding for the Office of the Ombudsman has been increased in recent budgets to help manage its caseload, and the annual report for the 2013/14 year shows a reduction in the backlog of casework for the Office. The Officers of Parliament will continue to monitor the performance of the Office and the adequacy of its funding.

## Recommendation 6:

*The business community, the media, and non-government organisations should take a much more pro-active role in strengthening integrity systems and addressing the risks of corruption as ‘must-have’ features of good governance. Specific actions include the following.*

### Business community

- i. *Raise awareness and understanding of the implications of the criminalisation of bribery of foreign public officials in the Crimes Act 1961 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*
  - ii. *Ensure adequate training on and awareness of corruption and integrity risks and their management and encourage the reporting of foreign and domestic bribery suspicions to the authorities.*
  - iii. *Investigate and evaluate the costs and benefits to business from continual vigilance around maintaining and strengthening integrity systems*
  - iv. *Work with the Institute of Directors to encourage the highest standards of governance.*
74. Recognising bribery and corruption, understanding how to deal with them, and complying with anti-bribery laws is increasingly important for New Zealand business and is receiving greater attention by them.
75. Following the passage of OCAC, the Ministry of Justice a comprehensive anti-bribery and corruption information pack to assist businesses to develop internal controls, ethics and compliance programmes to prevent and detect and respond to corruption.
76. In 2014 a free on-line anti-corruption training module was launched by Transparency International New Zealand and the SFO. This training module was supplemented by Chapman Tripp, Deloitte and Business NZ delivering corruption, bribery and fraud workshops throughout New Zealand. In addition:
- in conjunction with this, BusinessNZ, in partnership with Deloitte and Chapman Tripp released a free downloadable guide on bribery and corruption risks & strategies for NZ businesses and held training courses in various centres throughout New Zealand
  - government agencies have become more active in raising awareness and communicating bribery and corruption risks and responsibilities
  - government agencies are playing an active role in maintaining integrity around trade. The ongoing work of NZ Inc (collaborating agencies including MPI, NZTE, NZ Tourism, MFAT) in raising awareness and protecting integrity in business and trade, including NZ's brand and through the promotion of the “NZ Story”.
77. Work to encourage the highest standards of governance is also being progressed. “The Future Directors” initiative, administered by the Institute of Directors, aims to strengthen standards of governance by developing the next generation of directors to support New Zealand's economic growth.

### Media

- i. *Media industry self-regulatory and regulatory bodies should review and strengthen their integrity frameworks and promote adherence to them.*

- ii. *The government should publish regular monitoring reports on the effectiveness and integrity of media industry regulation and self-regulation.*
78. There are sound self-regulatory bodies and a number of agencies in New Zealand with their own specific codes of conduct, including statutory standards, which set out principles and standards in their respective areas of broadcasting and journalism:
- The Press Council
  - The Broadcasting Standards Authority (BSA)
  - The Online Media Standards Authority (OMSA)
  - Advertising Standards Authority (ASA).
79. The government has considered advice from the Law Commission on media regulation and the impact of changing technology. The government favours inter-agency coordination over statutory and institutional change, and has opted to observe the further impact of technological convergence on the news media and the news media response to it.
80. In 2015, the Ministry of Culture and Heritage (MCH), in collaboration with MOJ, DIA and MBIE, worked on a number of options for the regulation and classification of media content in an environment where traditional boundaries between media are disappearing. The joint discussion document, *Content Regulation in a Converged World*, was published in August 2015, is part of the New Zealand Government convergence programme and outlines the Government's approach to supporting and regulating the production of media content.
81. In July 2015, new legislation relating to cyber bullies and internet harassment, the Harmful Digital Communications Bill, was passed. The new laws responds to the rapid advances in technology that have changed the way people communicate.

## Civil society

- i. *Review the appropriateness of contractual and/or statutory restrictions on public advocacy by non-government organisations.*
  - ii. *Educate the public on what information they should expect from nongovernment organisations.*
  - iii. *Assess the need for capacity building of Māori organisations to enable them to contribute to local authority decision making in ways currently expected of them.*
82. The NIS Report recommendation is focussed on the ability of NGOs to speak out on policy matters which they may have expert knowledge about. No statutory restrictions have been identified. Any contractual provisions will be the subject of negotiations between the parties.

## Recommendation 7:

*Public sector agencies should conduct further assessments and research to strengthen integrity systems over time. Priority research is to investigate the actual incidence of corruption in New Zealand, why it is occurring, and how it might best be reduced to supplement existing surveys on how exporters and importers of goods and services are managing bribery and corruption risks.*

83. Developing and implementing a comprehensive National Anti-Corruption Strategy (see recommendation 1) could provide for greater measurement and research to enable better understanding and protection against the risks to integrity in a fast changing, digitally dependent, global environment.

*A review of possible causes of and responses to the role of structural discrimination in the over-representation of Māori in the criminal justice system*

84. The Better Public Services programme- Results 7 and 8 – are focussed on reducing reoffending and reducing rates of crime.
85. Doing better for Maori to reduce over-representation was identified as a key challenge for the Youth Crime Action Plan 2013 (YCAP). YCAP is a 10 year strategy to reduce youth offending; the next stage of work under the plan will be considering what actions can be taken to reduce over-representation of Maori. Several communities are testing the effectiveness of stronger iwi involvement to address and reduce lower level offending by Maori. There have been three to four social sector trials regarding the role of Iwi in reducing crime.
86. Extensive analysis shows that the over-representation of Māori in the corrections system is explained by three factors – gang affiliation, socio-economic deprivation and young age at first conviction.
87. There is now information about Māori social, cultural and economic well-being. In 2013, Statistics New Zealand carried out Te Kupenga, the first survey of Māori well-being. Te Kupenga collected information on a wide range of topics to give an overall picture of the social, cultural, and economic well-being of Māori in New Zealand. The survey also provided important information about the health of the Māori language and culture.
88. The Department of Corrections uses a range of interventions focussed on Māori culture, philosophy and values in an effort to reduce re-offending by Māori. The interventions are designed and carried out in collaboration with Māori service providers and communities. Interventions include the Kaiwhakamana Visitor Policy, where cultural and spiritual support is available to prisoners to help them engage with their iwi, hapū or whānau.

*Important sectors and institutions not assessed in this study, notably the state-owned enterprise sector and the Reserve Bank of New Zealand, should be independently bench-marked in the next 12 months against relevant international standards of transparency, public participation, integrity, and accountability.*

89. There is no plan to undertake such reviews.

*Transparency and awareness relating to the Treaty of Waitangi should be increased by increasing the level of public education on the Treaty.*

90. A number of agencies play a role directly and indirectly, in raising awareness of the Treaty of Waitangi through education. These include Ministry of Culture and Heritage, Ministry

of Education, Human Rights Commission, Te Puni Kokiri and Education Review Office (ERO).

91. Other organisations also provide education on the Treaty. For example, the Waitangi National Trust Board maintains the Treaty House and its grounds and is also playing a role in making sure New Zealanders can learn about their history and understand the historical and contemporary role of the Treaty of Waitangi.
92. 2015 marked 175 years since the signing of the Treaty of Waitangi. The Ministry of Culture and Heritage and other government agencies formed the “Waitangi 175 working group” to plan initiatives across the Government to mark this event to increase awareness of the Treaty.