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Overview of the New Zealand National Integrity System Assessment 2013

In 2012 Transparency International New Zealand (TINZ) decided that during 2013 it would conduct a National Integrity System (NIS) assessment for New Zealand. New Zealand has always rated highly on the Corruption Perceptions Index (CPI) published by Transparency International, and in recent years has consistently ranked first or first equal. However, the CPI is precisely what its name suggests, an index based on perceptions of a country's corruption status, the perceptions being those of a number of international agencies. TINZ considered the time was ripe to test the reality behind the perceptions and assess the strengths and weaknesses of New Zealand's system.

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The year 2013 seemed particularly appropriate for the assessment as it was ten years since TINZ's first NIS assessment, and was also the centenary of the Public Service Act 1912 (which came into effect in 1913). Sadly, it also marked the death of Jeremy Pope in 2012, a New Zealander who was one of the founders of Transparency International and the pioneer of the concept of a national integrity system. The 2013 report is dedicated to his memory.

While the assessment found that current perceptions of New Zealand's integrity are generally warranted, its core message is that it is beyond time for serious and urgent action to protect and extend integrity in New Zealand.

The National Integrity System

A good working definition of a National Integrity System is 'the institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power' (Brown, 2005, p.1). An assessment of it is an evaluation of the principal governance systems in the relevant country that, if they function well

and in balance with each other, constitute an effective protection against the abuse of power. Those governance systems form the pillars of the 'temple' that is used as a graphic representation of an NIS. The pillars rest on foundations, which are the key norms, ideals and ethics of the various aspects of society. If the foundations are sound, then they are capable of supporting a sound NIS. In an NIS assessment, the foundations are assessed along with the pillars.

Adapting the assessment methodology

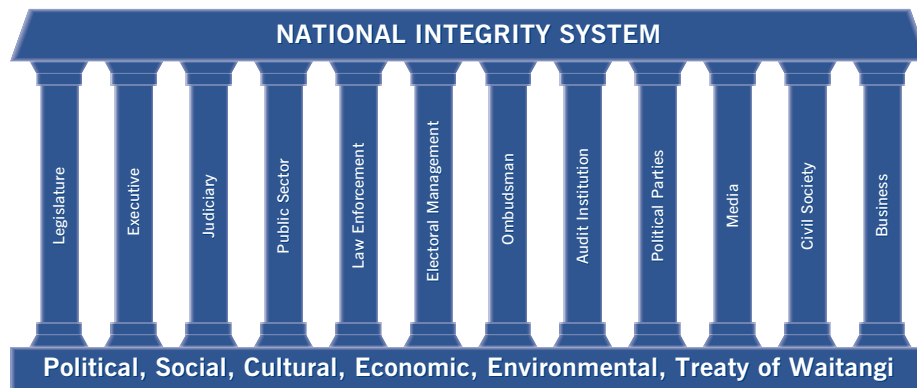
The methodology developed by Transparency International for the assessment of an NIS is intended for use by any country at any level of development and is focused on corruption and on anti-corruption activity. It needed some adaptation to reflect the particular characteristics of New Zealand's NIS, and also to make it more relevant to an environment in which corruption, though undoubtedly present, is not endemic. Accordingly some changes and additions were made:

- The Treaty of Waitangi, as one of New Zealand society's key foundations and a major safeguard against the abuse of majority power, was included among the foundations and also integrated across the individual pillar assessments.
- A further additional foundation was the environment. A high-integrity society needs to be underpinned by sound environmental values and governance practices to avoid the exploitation of power over the environment to the detriment of society as a whole.
- Selected issues were examined and analysed in depth, and some were the subject of supplementary or additional papers.

Assessing the NIS

Each pillar of the NIS was assessed using a set of indicator questions developed by Transparency International to measure the following aspects of its functioning, both in law and in practice:

- its capacity: the extent of its resources and its independence from unwarranted external interference;



- its governance: its accountability and transparency, along with the means by which its integrity and that of its members or employees is assured;
- its role: the extent to which it can and does contribute to the integrity of the system as a whole.

Each pillar was also assessed for compliance with any specific obligations under the Treaty of Waitangi, and in more general terms for activities relevant to the Treaty. This part of the assessment used indicators developed by TINZ after much discussion and consultation with interested parties.

Similarly, each of the pillar foundations was assessed using either the indicators developed by Transparency International (political, social, cultural and economic foundations) or indicators developed by TINZ (Treaty of Waitangi and environment).

The assessment process involved desk research and more than 100 interviews and consultations. A public workshop at the launch of the project in November 2012 helped to identify issues that were likely to arise and also to identify potential interviewees. Further workshops to present and discuss emerging findings were held in Wellington in May 2013 and in Auckland in August 2013. A final workshop in Wellington in September 2013 considered the draft report.

The foundations of the NIS

The foundations of New Zealand society were generally found to be sound and to support a high-trust society, economy and polity, with a general culture that does not tolerate overt corruption. Political and civil rights are assured, elections are free and fair, and there is wide support for democratic institutions. However,

economic inequality is a threat to social cohesion, and there are perceptions of the level of fraud and corruption that suggest public recognition of the need for a more proactive approach to the protection of New Zealand's integrity.

Political-institutional

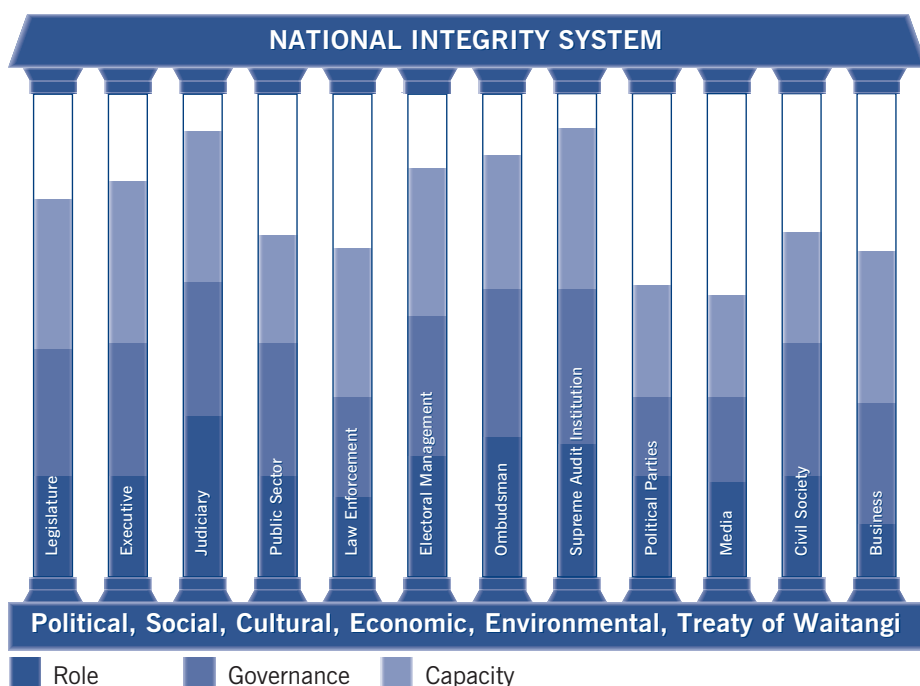
In general, democracy in New Zealand is consolidated and stable. Most political institutions function effectively and the political and civil rights of citizens receive adequate protection. International surveys generally give New Zealand a high ranking. However, there is a decline in confidence in political parties and in politicians generally.

Sociopolitical

While social divisions exist in New Zealand, especially along economic and ethnic lines, diversity is generally accepted. Divisions and differences seldom result in significant conflict. There is a weakness in the link between society and the political system, due in part to the weakness of political party organisations and unions, and in part to a civil society that is healthy and active but generally focused on non-political functions. A strong history of Māori political activism and a well-organised environmental movement stand out as exceptions.

Socio-economic

New Zealand generally has a high standard of living, low inflation, and good access to housing and public services. It is still seen as a good place to bring up children and to form new businesses. There is evidence that these qualities are currently fragile, especially taking into account the growth in economic inequality since 1985. The need for business innovation is recognised, but



there has been limited commercial success in this area and private investment is low.

Socio-cultural

New Zealand’s cultural identity is predominantly bicultural, with some multi-cultural characteristics. Egalitarianism is important, though decreasingly so. There is general confidence in the public service, in the way democracy has developed and in the trustworthiness of individuals.

Socio-environmental

Allocation of access to natural resources and the control of pollution do not appear to have been subject to corrupt practices, although compliance with the relevant regulations is variable. More needs to be done to ensure the integrity of New Zealand’s claim to be ‘clean and green’. Some important environmental issues are not being addressed effectively and the quality of environmental governance is variable. The system is generally appropriate for local issues, but inadequate for addressing national, systemic and cumulative issues. There are active civil society organisations, including iwi organisations, and some recognition of the legitimacy of Māori values in resource management.

Treaty of Waitangi

The Treaty forms a general framework for the approach to relations between

the government and Māori, although it is not enforceable in law unless specifically incorporated into legislation. Māori rights are still vulnerable to majoritarian will. The Waitangi Tribunal and the Treaty settlement process go some way to addressing Māori grievances and historic injustices.

The pillars of the NIS

None of the pillars of the NIS was found to be weak, and some, especially among the watchdog agencies such as the Office of the Auditor-General, were found to be very strong. Nor were there gross disparities between pillars, although the media and the political parties were distinctly weaker than the average.

The diagram above shows the comparative performance of the pillars in the three aspects of capacity, governance and role. In order to enable international comparisons of relative pillar rankings, the Treaty of Waitangi aspect was not included.

The legislature

The introduction of proportional representation has increased Parliament’s effectiveness as a check on the executive (although the executive continues to dominate), and it is more representative of the community. A backlog in the legislation process is being addressed. However, inter-party contestation dominates

the parliamentary culture to the detriment of other important functions. There is a need to strengthen Parliament by giving more attention to the quality and constitutionality of law-making and to the effectiveness of public spending.

Legislative processes are generally transparent and there are excellent opportunities for the public to participate in the work of select committees. Parliamentary administration is less transparent and the Official Information Act should be extended as recommended by the Law Commission (New Zealand Law Commission, 2012).

Parliament’s integrity systems lack formal regulation, but the rules about integrity are clear, fairly applied and effective. There is a reluctance to address new risks or respond to rising expectations of integrity: there is no formal code of conduct, and Parliament has declined proposals for the regulation of lobbying and for independent oversight of members’ travel expenses.

Assorted mechanisms give Parliament adequate powers for holding the executive to account. Its oversight of fiscal management is only moderate by the standards of international good practice and there is a low level of direct public engagement on the budget process.

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

The political executive – Cabinet

The Cabinet has great power to make policy decisions and the prime minister is powerful within it because of the right to allocate and change ministerial portfolios. It has some powers that in other countries have constitutional or statutory protection, such as the power to appoint board members to most statutory bodies. There has been public concern over some appointments that were seen as political patronage.

There is a tradition of effective self-regulation through the Cabinet Manual, reporting of public sector activity to Parliament, the independent scrutiny of officers of Parliament, the Official Information Act and the use of parliamentary questions. This generally

provides a high level of transparency and accountability for decision-making and implementation, and also promotes ministers' integrity.

In other respects the power of Cabinet is not effectively balanced, and there are concerns about the relative dominance of the executive. In making appointments, Cabinet may introduce candidates outside the normal assessment process; ministers may resist the appropriate independence of the public sector by failing to encourage or listen to free and frank advice; local government roles may be shifted to central government; and Cabinet (and individual ministers) may resist the spirit and intent of the Official Information Act in dealing with requests for information. Ministerial accountability for the collective coherence and effectiveness of policies is relatively weak. The Cabinet Manual acknowledges the status of the Treaty of Waitangi as a founding document of government in New Zealand. In general Cabinet appears to be meeting its Treaty-related responsibilities.

The judiciary

The judiciary is one of the strongest pillars of the NIS and has high standards of accountability, transparency and integrity. It is an important check on executive decision-making. There are some specific transparency issues in relation to the judicial appointment process (the government has announced changes to this process), the absence of a requirement for financial disclosure, a lack of regular public reporting on the activities of the judiciary, and some weaknesses in public access to court information.

There have been recent reviews of the administration of justice from the perspective of value for money and 'customer satisfaction'. The effects on the judiciary of resultant changes are not yet apparent, but there is the potential for the perception of some conflict between measures intended to improve efficiency, on the one hand, and the need to preserve the rule of law and rights of access to justice on the other.

The judiciary recognises the constitutional status of the Treaty of Waitangi. There is a separate legal regime concerned with Māori land, and the Waitangi Tribunal makes

recommendations on claims relating to the practical application of the Treaty, though there is a weakness in that its powers are recommendatory only. Judicial education includes awareness of the promotion of the Treaty in the context of New Zealand's conditions, history and traditions. There are Māori judges, especially in the district courts, but only three with acknowledged Māori heritage in the High Court.

The public sector

Of all the pillars, the public sector was the one most intensively studied. Specialist researchers contributed in the fields of

While procurement processes have improved considerably, specific enhancements are still needed, especially in record-keeping. The public sector has been helpful in promoting integrity among exporters, but could do more to encourage integrity-focused education and training in wider civil society.

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 area. Māori are reasonably well represented among public service employees, but much less so on Crown entities.

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Crown entities, environmental governance, fiscal transparency, local government and public procurement. Their work was used in writing this section of the report and was also published as supplementary or additional papers.

At a general level, the institutional and governance arrangements strongly support ethical behaviour, suppress corruption, and promote transparency and high levels of operational accountability. There are, however, pressures (including from chief executive appointment policies and heavy use of organisational restructuring) that have promoted fragmentation and affected the capacity of the public service to provide free and frank advice and to assure high-quality regulatory processes. Evidence of the impact of public sector policies is insufficient to ensure that they are fit for purpose. Local government's important role in implementing national regulations is impaired by an incoherent interface with central government.

At a practical level, there has been resistance to the obligations established by the Official Information Act.

Law enforcement agencies

While New Zealand has a number of agencies with law enforcement functions, the relevant agencies for the purposes of the NIS assessment were the Police and the Serious Fraud Office. Both were found to be adequately resourced and generally independent and accountable, with, by international standards, low levels of internal corruption.

In a standard NIS assessment there is one pillar for law enforcement agencies and another for anti-corruption agencies. As New Zealand has no dedicated anti-corruption agency, the two pillars were combined for this assessment. This is one reason why the law enforcement agencies did not rate particularly highly: they are multi-purpose bodies and there is no agency with a close focus on the prevention, detection, investigation and prosecution of bribery and corruption. The Serious Fraud Office prioritises bribery and corruption cases, but it has no statutory obligation to do this, and no formal role in prevention or education.

Another reason for the rating is that, in considering the role of the agencies,

the assessment considers the law that they enforce as well as the scope of their activities. The most relevant law in New Zealand is found in the Secret Commissions Act 1910 and the Crimes Act 1961, both of which are recognised to be outdated and in serious need of review and revision. In addition, New Zealand has yet to ratify the United Nations Convention against Corruption, and a recent review by an OECD working group found slow progress in complying with some of the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials.

In the past two decades mainstream media has become more bicultural, but it still lacks some proficiency in its relationship with Māori and its coverage of Māori issues.

Both the Police and the Serious Fraud Office have taken action to improve their relationship with Māori and the Police actively recruit Māori, but Māori remain over-represented in the criminal justice system.

Electoral management body

The Electoral Commission has a reputation as an impartial and trust-worthy institution, with particular credibility in administering general elections. It is adequately resourced, accountable, and transparent in most aspects of its activities, and there are no concerns about its integrity.

There is some concern about the performance of the Electoral Commission's function in distributing election broadcast advertising, and in some areas, particularly the regulation of political party financing, it has limited powers. Most of the perceived problems with the electoral system, such as a decline in voting, fall outside its area of responsibility.

The Electoral Commission has a special role in administering the Māori vote and intends to reduce barriers to the participation of Māori in elections. Māori voters have a high level of satisfaction with the election process.

The ombudsman

The Office of the Ombudsman meets high standards of independence, accountability and integrity. It is an important check on the exercise of administrative power and on the proper use of the official information legislation.

Funding has not kept up with an increase in complaints and with the allocation of new functions, and a substantial backlog was found to have developed. It is not clear whether a recent increase in funding will be sufficient to eliminate the backlog, and there is no funding for educational and oversight activities.

Ombudsman staff receive training in the Treaty of Waitangi and information is available in te reo. There are some outreach programmes in areas with a high Māori population.

Supreme audit institution

The Office of the Auditor-General is highly rated for transparency, accountability and integrity. It is independent and well resourced. It is effective in its role of financial auditing, but could do more to evaluate the effectiveness of public spending. It has made significant efforts to improve its responsiveness to Māori.

Political parties

While political parties are not public institutions, they play a significant part in the operation of several other pillars and they receive significant public funding. It is therefore of concern that they form the weakest pillar, with only moderate levels of accountability and transparency. There are problems with the financing of political parties, and especially with the opacity of their finances, both as regards donations and as regards indirect public funding.

The representational and engagement abilities of political parties are limited,

their membership low and their relationship with voters weak. However, they do play a strong role in highlighting and combating impropriety and potentially corrupt practices in public life.

Political parties have no legal or special obligations under the Treaty of Waitangi, but most parties take the Treaty seriously and pay special attention to its ramifications for public policy. Māori institutions are generally strong and support political activism.

Media

The media is generally free and independent. It is active and successful in informing the public about the activities of government and in investigating and exposing cases of corruption, although there is little investigative journalism and reporting is often superficial and focused on the sensational. Transparency and accountability are adequate.

The media is not diverse in terms of ownership or content, and it is doubtful whether the mainstream media adequately reflects the entire political spectrum. The main barriers to greater diversity are economic. The commercial environment does not encourage the development of public- and community-oriented media and the state plays only a limited role.

In the past two decades mainstream media has become more bicultural, but it still lacks some proficiency in its relationship with Māori and its coverage of Māori issues. However, a genuine attempt is being made to work in partnership, respect and participation with Māori. The recent development of Māori media has been significant.

Civil society

The groups that make up civil society are highly diverse, representing a wide range of non-government and non-business aspects of society. The NIS study did not cover the entire range, and generally excluded religious and sporting bodies and professional associations.

Civil society organisations vary widely in their degree of transparency and accountability. Registered charities and incorporated societies generally meet reasonable standards, but it is not always clear who benefits from an organisation's

activities, nor do the public generally know what level of information they should expect. Some organisations take on advocacy and policy reform initiatives, but there is little focus on anti-corruption.

Organisations that are funded by the government to provide services sometimes experience a mismatch between their need to provide services on a long-term basis and the short-term nature of government funding. Some are concerned about restrictions on their advocacy activities. There is also a question about the timeliness of government consultation exercises.

Civil society generally gives effect to and recognises the spirit and principles of the Treaty of Waitangi, but there is wide variation across the range of organisations. There is also some uncertainty about the appropriate action to take in order to reflect Treaty principles and Māori tikanga generally.

Business sector

Businesses enjoy a high degree of freedom from unwarranted interference. After the collapse of many finance companies in recent years, regulatory frameworks in the financial services sector have been significantly strengthened to include stronger disclosure measures, enhanced licensing, prudential oversight and governance requirements. There is still some lack of transparency and accountability in other parts of the business sector, especially in permitting non-disclosure of beneficial ownership and other financial matters in respect of companies and trusts. Some 'shell companies' involved in questionable activities have incorporated in New Zealand.

There appears to be a low level of anti-corruption awareness and behaviour both domestically and in dealings in offshore markets, and some exporters appear to view potentially corrupt or unethical practices as acceptable if carried out by agents who do not inform them of their practices and over whom

they may have little or no control. The business community generally is not well informed about the criminalisation of bribery of foreign public officials.

The Māori economic base has increased significantly in recent years. 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. There is some evidence that asset-holding companies are better advanced than tribal incorporations in

there has been continued passivity and complacency. This is exemplified by New Zealand's failure to ratify the United Nations Convention against Corruption more than ten years after signing the convention, and its failure to fully comply with the legal requirements of the OECD Anti-Bribery Convention more than 14 years after signing it. The core message of the report is that it is beyond time for serious and urgent action to protect and extend integrity in New Zealand.

The analysis of the individual parts of the NIS resulted in the findings outlined above, but also identified six broader

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the establishment of new, legally-binding but culturally-appropriate structures to manage and govern Treaty settlement assets.

Conclusion

The overall conclusion is that New Zealand's NIS remains fundamentally strong. By international standards there is very little corruption and 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.

A number of areas of concern, weakness and risk highlighted in 2003, however, remain, in the face of ongoing and new challenges to integrity. In some key areas

themes which cut across the pillars, with effects found in several or all pillars. These were:

- a strong culture of integrity, with most decisions conforming to a high ethical standard, but this culture is coming under increasing pressure;
- the relative structural dominance of the executive branch of government;
- a lack of transparency in a number of areas;
- considerable variations in the degree of formality in the frameworks that regulate the pillars of New Zealand's NIS;
- at times, poor management of conflicts of interest;
- a need for greater emphasis on the prevention of fraud and corruption.

The report makes a large number of detailed recommendations.

References

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