



National Integrity Systems
Transparency International
Questionnaire

New Zealand 2003

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New Zealand

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue Government for infringement of their civil rights?

Formal/legal position

Citizens can sue the government for infringement of their civil rights. The New Zealand Bill of Rights Act 1990 provides for the protection of free speech, rights in criminal procedure and the rights of ethnic, religious, or linguistic minorities. The Human Rights Commission and the Human Rights Act 1993 provide the means to deal with complaints from the public regarding their human rights. Government departments can be prosecuted in the same way as private companies under the Crown Organisations (Criminal Liability) Act 2002.

What actually happens?

The Human Rights Commission actively pursues complaints, and acts independently of government. The emphasis is increasingly on mediating disputes.

Members of the public have taken legal action against the police, and may – but have yet to – take action against government departments under the Crown Organisations (Criminal Liability) Act.

Are there procedures for the monitoring of assets, including disclosure provisions, of Cabinet and other Government Ministers?

Formal/legal position

The Cabinet Manual requires Cabinet Ministers to declare in writing financial interests and assets they hold, including shares and property. This declaration must be made within two months of their appointment and on 31 December each year. Major changes in assets or interests must be notified at the time they occur.

What actually happens?

Declarations have been made according to the requirements of the Cabinet Manual. The process is managed by the Cabinet Office, which acts as Registrar of Ministers' interests. The disclosures of assets and financial interests are made public by the news media. However, the Auditor-General does not audit them.

Are there procedures for the monitoring of assets, including disclosure provisions, of high-level officials?

See section on the Civil Service.

Are there any differences in procedures and disclosure provisions between elected Ministers, appointed Ministers, and high-level officials?

A register is maintained for Ministers, but not for high-level officials. Ministers are required to state the general nature of the interest but not detailed dollar amounts. Officials may be subject to a check by the Security Intelligence Service (SIS).

Note: the answers to questions on high-level officials appear in the section on the Civil Service.

Are there conflict-of-interest rules for Ministers?

Formal/legal position

Cabinet Ministers must declare any personal interest they or members of their family, or whanau, may have in a matter under consideration by the government or Parliament. Ministers should not become involved in the day-to-day operation of any business enterprise. A conflict of interest may require the Minister to transfer responsibility for the matter.

What actually happens?

Relevant guidelines are usually adhered to. Cabinet Ministers have not sought to use their official positions to enrich themselves.

Are there conflict-of-interest rules for high-level officials?

See section on the Civil Service.

Are there rules and registers concerning gifts and hospitality for Ministers?

Formal/legal position

Cabinet rules place limits on Ministers receiving fees or gifts, or engaging in activities that endorse a commercial product. Appearance fees paid to Ministers must be declared in the Minister's schedule of interests. It is an offence to offer a bribe to a Minister or an MP and an offence to accept a bribe.

What actually happens?

The Cabinet Manual provisions have been adhered to. There have been no proven cases of political bribery in New Zealand, although the acceptance of hospitality by MPs in some instances has been controversial.

Are there rules and registers concerning gifts and hospitality for high-level officials?

See section on Civil Service.

If so, are these registers (for Ministers) kept up-to-date? By whom?

Formal/legal position

The Cabinet Office is required to maintain the Register of Ministers' interests.

What actually happens?

The register is maintained by the Cabinet Office and made available to the public and the media by being tabled in Parliament once a year.

If so, are these registers (for high-level officials) kept up-to-date? By whom?

See section on Civil Service.

Have they legal powers to enforce disclosure?

Formal/legal position

There are no statutory or other mechanisms for enforcing disclosure.

What actually happens?

There have been no known occasions when Ministers have refused to disclose their interests. This acceptance of the register has been encouraged through the recording of interests rather than wealth and by the general acceptance of the importance of avoiding conflicts of interest.

Have they staff to investigate allegations?

Formal/legal position

Staffing levels have not been an issue in monitoring potential ministerial conflicts of interest.

What actually happens?

The Cabinet Office, and more specifically the Secretary of the Cabinet, with the use of the register, monitors the Cabinet agenda to ensure that Ministers do not risk conflicts of interest.

What powers of sanction are in place against parliamentarians? Have they ever been invoked?

Apart from Ministers, there is no register for gifts and hospitality received by MPs. This may change as in May 2002 the Prime Minister and Minister of Finance indicated their support for a register of interests for MPs similar to that which exists for Ministers. All MPs must abide by the Electoral Act 1993 that outlaws corrupt practices (see below in this section). MPs may be held in contempt of Parliament for accepting bribes, and would also commit a criminal offence (see section on Legislature below).

What powers of sanction are in place against Ministers who are also parliamentarians?

Formal/legal position

Under the Westminster system adopted by New Zealand, all Ministers must be MPs.

Powers of sanction regarding Ministers rest with the Prime Minister. The Governor-General acts on the advice of the Prime Minister regarding the appointment, resignation and dismissal of Ministers. Under the Electoral Act 1993, an MP's seat becomes vacant if the MP is convicted of a crime punishable by imprisonment for a term of two years or upwards, or is convicted of a corrupt practice, or is reported by the High Court in its report on the trial of an election petition to have been proved guilty of a corrupt practice (III, 55 (d)).

What actually happens?

While both National Party and Labour Party Prime Ministers have removed Ministers from their positions, there have been few cases in recent years that related to conflict-of-interest issues.

Have they ever been invoked?

As noted, there are no statutory or other mechanisms for enforcing disclosure. With regard to the more general power to sanction Ministers, see above in this section.

What powers of sanction are in place against Ministers who are not parliamentarians?

Not applicable – Ministers must be MPs.

Are there restrictions on post-ministerial office employment?

Formal/legal position

There are no restrictions on post-ministerial employment.

What actually happens?

Several former Ministers and MPs have become professional advisers, political lobbyists, or have opened businesses in the fields in which they were Ministers.

Are members of the executive obliged by law to give reasons for their decisions?

Formal/legal position

There is no legal obligation. However, under the Standing Orders of the House of Representatives, a Minister may be questioned on public affairs with which he or she is officially concerned, on proceedings in the House, or on any matter of administration - for which the Minister is responsible.

What actually happens?

Much importance is attached to Parliamentary question time, which occupies over an hour each sitting day.

Do ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Formal/legal position

Ministers are individually responsible to Parliament for their own activities and the activities of public servants in administering their ministerial portfolios. Awards of major contracts would usually be discussed by Cabinet.

What actually happens?

Ministers have generally exercised their powers in line with their obligations, although the actions of a Minister involved in tendering processes has been questioned. There is generally a high degree of transparency around decision-making processes. The Attorney-General is often asked to investigate tendering processes.

Are there administrative checks and balances on decisions of individual members of the executive?

Formal/legal position

While there are no formal administrative checks, political checks are provided through the Cabinet and Cabinet Committee process. Cabinet discussions are confidential, and are collectively binding.

The requirement of all members of the Executive to be popularly elected to Parliament provides an ultimate check.

What actually happens?

Ministers are aware of the political costs of not consulting with their colleagues, and particularly the Prime Minister, should the decision go wrong.

Legislature

Is the legislature required to approve the budget?

Formal/legal position

No spending of public money can occur without the prior approval of Parliament.

What actually happens?

Relevant rules are followed. Most appropriations are for one year. Although multi-year appropriations of up to five years are provided for, they have been used only once to date. In practice, government majorities have limited MPs' role in the budgetary process, even under MMP.

Are there significant categories of public expenditure that do not require legislative approval?

Formal/legal position

No spending of public monies can occur without the prior approval of Parliament.

What actually happens?

The government seeks the prior approval of Parliament to spend public money. Supplementary estimates are required to cover government expenditure.

Are there conflict of interest rules for parliamentarians?

MPs are not formally precluded from participating in parliamentary business in which they have a pecuniary interest, and do not have to make written or verbal disclosure. However, MPs will be aware of possible political repercussions.

Are there rules and registers concerning gifts and hospitality?

Formal/legal position

There are no formal rules for MPs (as opposed to Ministers) on receiving gifts. The House may treat as contempt the acceptance by an MP of a bribe, fee or other compensation or reward in respect of Parliamentary business.

What actually happens?

MPs have recognised that it is in their own interests to declare any pecuniary or personal interest, and not to accept gifts or take part in any proceedings that could give rise to questions about conflicts of interest. To fail to do so could result in serious political consequences, including being held in contempt of the House. See also section on Executive above.

If so, are these registers kept up to date? By whom?

There is currently no such register.

Are there restrictions on post-legislature employment?

There are no restrictions on the employment of MPs once they leave Parliament.

Electoral Commission

Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)? Who appoints the Head of the Commission?

Formal/legal position

There is an independent Electoral Commission. It consists of four members: a Judge of the District Court or of the High Court or of the Court of Appeal who is appointed by the President of the Commission; the Secretary of Justice *ex officio*; the Chief Judge of the Maori Court *ex officio*; and one person appointed by the Governor-General on the recommendation of the Minister of Justice, who is also Chief Executive of the Commission.

The independence of the Commission is established by the Electoral Act 1993, which establishes (Section 7) that the Commission is not responsible to a Minister. Furthermore, the Chief Executive of the Electoral Commission cannot be removed by the Crown alone, but requires the approval of Parliament making a recommendation to the Governor-General and on the sole grounds of the Chief Executive's misbehaviour or incapacity to discharge the functions of the office.

What actually happens?

The Electoral Commission upholds the relevant electoral regulations in an effective, fair and independent manner.

Political Parties

Are there rules on political party funding? Are substantial donations and their sources made public?

Formal/legal position

The Electoral Act 1993, including amendments made in 1995, contains rules on political party funding. There are rules relating to substantial donations. Each year, parties must

report to the Electoral Commission electorate donations exceeding NZ\$10,000 received the previous calendar year. Anonymous donations over NZ\$10,000 must be included in the return, but may remain anonymous.

What actually happens?

Political parties have exploited the ability to list donations as anonymous or have them paid through front groups. State funding of parties' election expenditure has been proposed but this has not been acted upon. Incumbent MPs have the advantages of taxpayer-funded support staff and travel entitlements which continue through the election period.

Are there rules on political party expenditures (at election time)?

Formal/legal position

Expenditure is regulated. There are limits of NZ\$1 million for a political party that nominates a party list and a further NZ\$20,000 for each candidate's campaign expenditure in the three months prior to election day.

There is also a pool of radio and television campaign funding administered by the Electoral Commission. Parties bid for an allocation, based on such factors as the number of sitting MPs, support at the previous election, and poll ratings. Parties are not allowed to purchase additional time.

What actually happens?

While these formal expenditure restrictions are enforced, the "spirit" has been transgressed by heavy expenditure prior to the three-month election period and the support provided by 'front' groups (see above in this section).

Are political parties accounts published? Are accounts checked by an independent institution, are they published and are they submitted to parliament?

Formal/legal position

Party accounts must be audited. They are held by the Electoral Commission. While they are not published or submitted to Parliament, members of the public, media, or other political parties may view them.

What actually happens?

The media and political parties examine the returns. The Electoral Commission strictly enforces the rules.

Does that institution start investigations on its own initiative?

Formal/legal position

The Electoral Commission has the power to start investigations on its own initiative and refers matters to the police if irregularities are discovered.

What actually happens?

The Electoral Commission has performed its functions effectively and fairly. It has undertaken investigations into the accounts of parties and the media has reported its findings. The police and Serious Fraud Office have occasionally investigated the accounts of parties.

Who appoints the head of the institution?

See section above regarding the appointment of the Chief Executive of the Electoral Commission.

Supreme Audit Institution

Is the national Auditor-General independent? i.e. is the appointment of the Auditor-General required to be based on professional criteria/merit?

Formal/legal position

The appointment of Officers of Parliament, including the Auditor General (A-G), is guided by long-standing conventions, involving unanimous resolution of Parliament following consultation with party caucuses. There is no requirement for the appointment of the A-G to be based on professional criteria. Section 5.9 of the Public Audit Act 2001 requires the A-G to be independent.

What actually happens?

The A-G enjoys a very high level of independence.

Is the appointee protected from removal without relevant justification?

Formal/legal position

The A-G is appointed by the Governor-General on the recommendation of Parliament for a single term of seven years, with the same protection from removal that Judges have.

What actually happens?

The A-G enjoys a high degree of independence in law and in practice.

Are all public expenditures audited annually?

Formal/legal position

All public expenditures are subject to annual financial audit by the A-G who also has the power to carry out "performance" audits. The mandate of the A-G is very broad, covering all public entities, including local government and state-owned enterprises.

What actually happens?

All public expenditures are subjected to annual audit.

Is reporting up to date?

Formal/legal position

The A-G has a duty to report to Parliament at least once a year (besides the A-G's own annual report). The A-G also has wide-ranging power to report at any time to a Minister, Select Committee, public entity or any person in respect of any matter arising from his functions.

What actually happens?

Reporting is up-to-date. In practice, a considerable number of reports are typically presented to the House each year (18 in 2002).

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

Formal/legal position

The Finance and Expenditure Committee (the New Zealand equivalent of the Public Accounts Committee in other Westminster systems) and subject Select Committees of Parliament together have the power to scrutinise the annual estimates, and carry out financial reviews of departments and other entities. They have full access to the A-G's reports and expertise.

What actually happens?

The Finance and Expenditure Committee and subject Select Committees of Parliament together scrutinise the annual estimates, and carry out financial reviews of departments and other entities including Crown Entities and State-owned Enterprises. The A-G plays a very active role in providing written and oral briefings to Select Committees, with senior staff assigned as advisers on a permanent basis.

Are all public expenditures declared in the official budget?

Formal/legal position

All public expenditures are declared in the official budget, including those subject to permanent appropriation (such as debt-servicing expenses).

What actually happens?

The procedures outlined above are followed in practice. However, information on tax expenditures – defined as tax incentives, holidays, deferrals and any other departures from the normal tax code – is not published.

Judiciary

Have the courts the jurisdiction to review the actions of the Executive?

Formal/legal position

Most actions by Ministers and civil servants are capable of being reviewed by the Courts. Judicial review enables a Judge of the High Court to review the exercise (or any refusal to exercise) of a statutory power of decision, and to determine whether that decision or action is unauthorised or invalid. Legal aid is available to litigants seeking judicial review on the same basis as for any other legal action.

What actually happens?

In practice, judicial review is quite widely used. These reviews relate to the procedures, not substance, of a decision.

Are judges/investigative magistrates independent? i.e. are appointments required to be based on merit? Are recruitment and career development based on merit?

Formal/legal position

The only qualification for appointment as a Judge contained in statute is a requirement that he or she has held a practising certificate as a barrister for at least seven years. Prospective candidates for appointment to the bench are also assessed against a range of publicly announced criteria, including legal ability and reflection of society.

What actually happens?

Most appointments are made by the Governor-General on the recommendation of the Attorney-General – and are based on merit. Expressions of interest are called for by public advertisement, and nominations may be sought from a wide range of interests. Most of those appointed will have practised for considerably longer than seven years. New Judges attend a five-day orientation course, and in the early stages of their career a 'mentor' Judge assists them. The Judicial Studies Institute provides further training throughout a Judge's career.

Are the appointees protected from removal without relevant justification?

Formal/legal position

Judges are appointed on permanent tenure until the age of 68 (except for Masters of the High Court who are appointed for a five-year term). A Judge of the High Court cannot be removed from office except by a majority vote of Parliament on the grounds of that Judge's misbehaviour or incapacity to fulfil the functions of office. A Judge of the District Court may be removed from office by the Governor-General on grounds of inability or misbehaviour.

What actually happens?

Removal powers have never been invoked.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

Formal/legal position

With regard to the removal of Judges, see above in this section.

What actually happens?

There have been no prosecutions of officials of the judicial branch in the past three years. However, two judges were prosecuted over expense claims in 1997: one pleaded guilty, and the other was acquitted.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Formal/legal position

There are provisions in the normal criminal codes, and specific codes dealing with corruption and bribery that apply to the Civil Service. Some Departmental officers are subject to particular statutes.

What actually happens?

The law is adhered to.

Are there conflict-of-interest rules?

Formal/legal position

The State Services Commission requires all Chief Executives to sign a declaration of interests upon taking up their appointment, and provides guidelines for avoiding conflicts of interest by high-level officials. Responsibility for implementing guidelines rests with the Chief Executive of each Department. There is no formal requirement to disclose assets.

What actually happens?

Guidelines are generally followed. Where conflicts of interest are revealed, action is taken.

Are there rules requiring political independence of the civil service?

Formal/legal position

Laws, regulations and codes of conduct promote political independence. There is a long-standing convention that public servants are obliged to provide Ministers with free and frank advice, and perform their duties in a non-partisan manner. A public servant who becomes a parliamentary candidate must take leave and, if successful, resign from the Public Service.

What actually happens?

In practice, the requirements for political neutrality are widely observed. Nevertheless, it has been observed that increasing pressure is emerging that could affect the political neutrality and independence of the Civil Service. Furthermore, party political considerations have been alleged in appointments to Boards of Crown Entities and State-Owned Enterprises.

Are recruitment/career development rules based on merit? Are there specific rules to prevent nepotism? Cronyism? (note: rules discriminating positively in favour of marginalised or minority groups are not included in this description)

Formal/legal position

There are rules to ensure that recruitment and career development is based on merit. The State Services Commissioner, who heads the Civil Service, is appointed by the Governor-General on the recommendation of the Prime Minister. The State Sector Act 1988, section 5, requires the State Services Commissioner to act independently of the Minister of State Services. The only grounds on which the State Services Commissioner can be dismissed are misbehaviour and incompetence. This requires the Governor-General to inform Parliament, which then makes the decision.

Chief Executives who are appointed by the State Services Commissioner must operate as "good employers", which includes making appointments based on impartial selection of suitably qualified candidates. The State Sector Act 1988 requires all appointments to be made on merit and every department must have a procedure to review appointments that are the subject of any complaint by any employee. Each Chief Executive must also ensure that the department has an equal employment opportunities programme and report performance in this area.

What actually happens?

The rules on merit appointment are widely observed. This is ensured by the ready availability of complaint mechanisms and ultimately of judicial review, the ability to draw on the services of employee unions and, more broadly, prevailing norms on the unacceptability of nepotism or partisan appointments.

Are there rules (including registries) concerning acceptance of gifts and hospitality?

Formal/legal position

The Public Service Code of Conduct contains guidance on the acceptance of gifts, and imposes an obligation to disclose them. Public Servants must not solicit gifts or benefits that might compromise, or be seen to compromise, the integrity of the Public Service. Chief Executives are obliged by contract to disclose private interests. There is no requirement, however, for departments to maintain a register of gifts (see section on Executive above).

What actually happens?

Some departments maintain a register of gifts, but there is no centralised information on this. It is therefore not possible to fully answer the following questions.

If so, are these registers kept up to date? By whom?

Some departments maintain a centralised register; others have gift registers in each office. There is no aggregate information available on whether registers are up-to-date.

Have they legal powers to enforce disclosure?

The State Services Commissioner has extensive information-gathering powers which could in principle be used to obtain information about gifts.

Have they staff to investigate allegations?

Larger departments have internal auditors, while smaller departments could call on Human Resources and in-house legal staff to conduct any necessary investigations.

What powers of sanction are in place against parliamentarians?

See section on Executive above.

Have they ever been invoked?

See section on Executive above.

Are there restrictions on post-public service employment?

Formal/legal position

All Chief Executives (CEs) have some restrictions. CE employment contracts currently specify requirements concerning the use and retention of official information, and a 'cooling-off' period of 12 months following disengagement. In some departments, specific conditions apply to some specialist positions. However, there is no formal restriction covering all Public Service employment or political activism. Judges appointed to the High Court are required to sign an undertaking that they will not resume practice before the courts on retirement or early termination of their appointment.

What actually happens?

Although the restrictions are generally observed, concern has been expressed over this issue. For instance, questions were raised about the 2002 resignation of the Reserve Bank Governor, and his immediate declaration of candidacy for Parliament.

One judge resumed practice – but although he had served two years as a judge he had not accepted final appointment to the bench.

Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc.)?

Formal/legal position

A wide range of information is published in the weekly New Zealand Gazette. Further information may be obtained through the Official Information Act 1982. (See section on Civil Society below.)

What actually happens?

The Official Information Act (OIA) is generally adhered to, although delays in the processing of requests has been a matter of concern to the Ombudsmen. (See section on Ombudsman below.)

Are there complaint mechanisms for public servants and whistleblower protection measures?

Formal/legal position

'Whistle-blowing' is covered by the Protected Disclosures Act 2000 and section 65 of the State Sector Act. The concern is primarily with the responsibility of officials (and private contractors working for government) to report serious wrongdoing, and the protection of those officials who do so in the proper manner.

What actually happens?

The 'whistle-blowing' legislation provides a formal procedure for disclosure but so far it has been used only rarely. The deliberate leaking of information by officials to the media as a means of opposing government policy occurs periodically, and risks compromising the political independence of the Public Service.

Are there means for complaints by members of the public?

Formal/legal position

Members of the public can request the Ombudsmen to investigate an administrative decision. There are also more specialised avenues for complaints – such as the Privacy Commissioner (see section below on Investigative/Watchdog Agencies).

What actually happens?

Wide and effective use is made of the Ombudsmen and other 'watchdog' agencies such as the Auditor-General.

Are there administrative checks and balances on decisions of individual public officials?

Formal/legal position

Nearly every decision affecting any individual or groups of citizens may be reviewed or challenged. Executive action is subject to external and independent review. Parliamentary Select Committees also play an increasingly important part in this process.

What actually happens?

The checks and balances generally operate effectively with assistance from an active media and civil society.

Police and Prosecutors

Is the Commissioner of Police independent? Are appointments required to be based on merit? Is the appointee protected from removal without relevant justification?

Formal/legal position

The Commissioner of Police is independent by convention but, unlike other Chief Executives, has no statutory independence and serves at the pleasure of the Governor-General.

What actually happens?

The convention regarding the independence of the Commissioner of Police is adhered to, and the Minister of Police does not generally interfere in police operational decisions. There is no statutory obligation to base the appointment of the Police Commissioner on merit, but the process chosen by the State Services Commissioner (who now administers the appointment) is merit-based.

Are public prosecutors independent?

Formal/legal position

Crown Prosecutors are independent of political control. They are generally lawyers in private practice who hold Crown solicitor warrants.

What actually happens?

Prosecutors are free from political interference. Police prosecutors form a separate national division, and are no longer answerable to local Police commanders. More complex or high-profile cases are prosecuted by the Crown Prosecutors who are appointed by the Solicitor-General (who is a highly respected non-political lawyer).

Are there special units for investigating and prosecuting corruption crimes?

Formal/legal position

The Serious Fraud Office (SFO) handles complex and high-profile fraud cases. It is totally independent in relation to the investigation and prosecution of offences. It is headed by a Director who is responsible to the Attorney-General and State Services Commissioner for administration of the Office. The Serious Fraud Act prevents political interference in the operations of the SFO.

What actually happens?

The formal requirements and duties are adhered to. The Director has full discretion in the selection of cases. Questions were raised by an MP over the performance of a former SFO Director during a major inquiry into tax evasion involving the Cook Islands during the late 1990s (the so-called 'wine-box affair'). The criticism of the SFO was found to be without substance.

Is there an independent mechanism to handle complaints of corruption against the police?

Formal/legal position

The Police Complaints Authority (PCA) investigates all complaints made against Police officers for actions carried out in the course of their duties. It is a statutory body independent of the Police, and is headed by a retired Judge.

What actually happens?

In practice the PCA employs seconded police officers to investigate accusations against other officers.

Does civil society have a role in such a mechanism?

There is no formal civil society involvement in the PCA process.

In the past five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

A number of police officers have been convicted of criminal offences (six in 2002, five in 2003, 12 in 2000 and five in 1999). The offences over this four-year period included drunk driving (10), assault (5), theft (5), perjury (1), sexual violations (1), drugs (2), false particulars (1) and careless driving (1).

The most notable case was the Commissioner of Police, who was forced to resign in 2000 after appearing to try and divert a junior officer from breath-testing the Commissioner's partner who was driving a private car in which the Commissioner was a passenger. He was not prosecuted, but eventually resigned because of the perception that he may have abused his position.

Are there any cases of corruption within the prosecuting agencies?

There have been no such cases.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

The Serious Fraud Office Act 1990 gives the Director of the SFO wide discretion over investigating crimes of fraud (see SFO above). The Crimes Act 1961, sections 99-106, also declares a wide variety of acts to be corrupt and punishable by law.

Is the law applied?

The law is applied, and serious allegations of alleged corrupt acts are investigated and/or prosecuted.

Is private-to-private corruption punishable by law?

Private corruption is covered by the Serious Fraud Office Act and the Crimes Act, sections 229-232. The Securities Act 1978 also allows the Securities Commission to suspend or cancel the offering of securities which it considers illegal or misleading. The Commission also investigates accusations of insider trading of publicly listed company shares. The Fair

Trading Act 1986 also outlaws false or misleading advertising and gives the Commerce Commission the right to take legal action against breaches of the Act.

Is the law applied?

The SFO, the Police, and the Commerce Commission regularly initiate legal action over corrupt acts. Misleading advertising can in some cases amount to fraud.

How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

The SFO conducted 20 prosecutions during the year from 1 July 2001 to 30 June 2002, all of them resulting in convictions. Only one of these cases involved a public servant abusing his official position. The remainder involved private individuals attempting to defraud other citizens and organisations. In the eleven months to 31 May 2003 the SFO conducted eleven prosecutions, all of them successfully. None involved public servants' abuse of their position.

The Commerce Commission reports an increasing number of criminal prosecutions over recent years. There were 37 for the year to 30 June 2001, which indicated a significant increase from previous years, and 23 for the year to June 2002. However, Commerce Commission figures cannot be easily compared over time because they give differing priorities to their work plans each year with the intention of changing particular activities.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Formal/legal position

Although detailed guidelines for procurement exist there are no centralised rules that set out fixed requirements for procurement, such as competitive bidding. Legally, with very few exceptions, Government Departments may purchase whatever inputs they choose, using whatever means they choose - provided that appropriation levels are not exceeded, and subject to the general accountabilities of Chief Executives. But there is a general legal background against which tendering occurs, which acts as a constraint on departments.

What actually happens?

The government expects its Departments, and encourages other public sector agencies, to be guided in their procurement by principles that include open and effective competition. The Auditor-General has issued "best practice" procurement guidelines and audits the procurement practices of public entities in the course of its routine financial audits. The A-G is also asked from time to time to investigate particular tenders. These audits indicate a generally high integrity environment of government procurement. There is a general legal background against which tendering occurs, which deters departments from bypassing best practice. However, concern has been expressed by the A-G in some instances over the quality of processes, and it is difficult to make well-informed judgments about the degree of compliance of public entities with the procurement guidelines.

Are the rules laid down in documents publicly accessible?

The guidelines referred to above are all publicly available, including on the web sites of the respective organisations.

Are there strict formal requirements that limit the extent of sole sourcing?

Formal/legal position?

As noted above, there are no formal requirements for any aspect of tendering. The Auditor-General's Guidelines do cover selective tendering (S. 3.2), and indicate that it should be the exception rather than the rule.

What actually happens?

The guidelines are generally followed.

Are all major public procurements widely advertised to the private sector? Are procurement decisions made public?

Formal/legal position

It is government policy to help New Zealand suppliers penetrate the government market.

Departments must notify the New Zealand Industrial Supplies Office (NZISO) of their intention to contract for purchases over NZ\$50,000, and of any intended purchases which are to be the subject of a public call for tender or registration of interest. These are made public on the NZISO website.

What actually happens?

The above procedures are generally adhered to. Competition among suppliers is considered the best way to ensure Government Departments and agencies get value for money. The NZISO website provides a centralised point for publication of award notices.

Is there a procedure to request review of procurement decisions? Can unfavourable decisions be reviewed by a court of law?

Formal/legal position

As with most actions of a public entity, procurement decisions are subject to judicial review (see section on the Judiciary above). Procurement actions and decisions may also be the subject of complaint to the Ombudsmen and/or the Auditor-General.

What actually happens?

Procurement decisions may be reviewed. For instance, in 2001 the Auditor-General criticised the tendering process by which armoured vehicles had been purchased for the army.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

There are no such provisions.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

Formal/legal position

The general rules on conflicts of interest and the disclosure of gifts applying to civil servants – and described in the previous section on the Civil Service – apply to procurement activities as well as to all activities of civil servants. In addition, the Auditor-General's Guidelines contain guidance on ethical considerations in procurement, such as declarations of the interests of employees involved in procurement, confidentiality and disclosure, and contact with potential suppliers during the evaluation process.

What actually happens?

The rules and procedures are generally followed.

Are assets, incomes and lifestyles of public procurement officers monitored?

Formal/legal position

There is no specific monitoring of civil servants involved in procurement.

What actually happens?

There have been rare instances of prosecution of civil servants for corruption in procurement.

Ombudsman

Is there an Ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?

Formal/legal position

The passage of the Parliamentary Commissioner (Ombudsman) Act 1962 established the Ombudsmen's Office.

What actually happens?

The Ombudsmen have operated effectively since 1962 and currently operate under the Ombudsmen Act 1975, the successor to the 1962 legislation.

Is the Ombudsman independent? Are appointments required to be based on merit?

Formal/legal position

Appointments are based on merit. Applicants are interviewed by a panel of Parliamentarians drawn from both the Government and Opposition parties.

What actually happens?

The bipartisan nature of the appointment process has been maintained.

Is the appointee protected from removal without relevant justification? Has an Ombudsman been removed without relevant justification in the past five years?

Formal/legal position

The Ombudsmen may be dismissed only by Parliament for "disability, bankruptcy, neglect of duty, or misconduct". The Governor-General (Head of State) may suspend an Ombudsman on these grounds if Parliament is not sitting, but only for two months, after which Parliament must dismiss the Ombudsman or the suspension lapses.

What actually happens?

In practice the Ombudsmen have operated independently and free of political interference.

No New Zealand Ombudsman has ever been dismissed. However, controversy arose in 1992 when the first female Ombudsman was not re-appointed and the event led to a critical statement by the Chief Ombudsman. There was, however, no suggestion of political interference.

Can petitioners complain anonymously if they fear possible reprisals?

Formal/legal position

The Ombudsmen cannot be forced to reveal the source of information but have the discretion to reveal material if they consider this appropriate.

What actually happens?

Petitioners can complain anonymously if they fear possible reprisals.

Are reports of the Ombudsman published?

Formal/legal position

The Ombudsmen must make an annual report to the House of Representatives on the exercise of their functions under the Ombudsmen Act 1975.

What actually happens?

An annual report is made for Parliament. Quarterly reviews are also published.

Does the government act on the Ombudsman's recommendations?

Formal/legal position

The government is not bound to act on reports of the Ombudsmen.

What actually happens?

Generally the Ombudsmen's recommendations are adhered to. The practice of the Ombudsmen is to negotiate with Chief Executives of Government Departments over specific cases where some redress is required.

The Ombudsmen can alert Parliament to cases where they are frustrated over their negotiations with the Department or organisation. Over recent decades, this has occurred on several occasions, especially in regard to Official Information requests.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

There are a number of investigating agencies in addition to the Police and SFO examined earlier: the Treasury, the State Services Commission, the State Sector Standards Board, the Department of Prime Minister and Cabinet, the Health and Disability Commissioner, and the Privacy Commissioner, the Commerce Commission and the Securities Commission all have duties which include an investigation and watchdog role.

What are their main responsibilities?

Investigation, prevention, education and awareness, and in some cases prosecution.

The Treasury

Formal/legal position

The Treasury is the principal economic and financial adviser to the government. Its investigatory responsibilities include reports on all expenditure proposals submitted to government. As the government's accountant it has an oversight responsibility for government expenditure. It has considerable power to obtain information from Government Departments. The Treasury also includes the Crown Company Monitoring and Advisory Unit (CCMAU), an operationally independent unit established to monitor the performance and governance of Crown-owned companies.

What actually happens?

In practice, Treasury is the pre-eminent government department. Because of its power in formulating the government's annual budget, departments generally comply with Treasury's requests and instructions. These form part of the Treasury's preventative, educative and awareness-raising responsibilities.

The State Services Commission (SSC)

Formal/legal position

The SSC is headed by the State Services Commissioner who is responsible for appointing most Chief Executives of Government Departments. The SSC has wide-ranging powers of investigation of those departments for which it is responsible. It is also responsible for the promotion of ethical standards within the Public Service and the production of guidelines on appropriate behaviour.

What actually happens?

The State Services Commissioner provides leadership to the Public Service. The formal Code of Conduct is less important than the overall culture of promoting high standards that has emerged in the Public Service.

Are they independent?

The State Services Commissioner is independent.

Removal

See section on Civil Service appointments.

Are their reports published (other than when criminal charges are pending)? Do they report publicly to the legislature on the general scope of their work?

Formal/legal position

There is no statutory requirement for reports to be published.

What actually happens?

Annual Reports are published.

The Reports of the State Services Commissioner and the Secretary to the Treasury are always presented to Parliament, at which time they become public.

Can people complain to the agency without fear or recrimination?

The Protected Disclosure Act 2000 establishes procedures for dealing with allegations of wrong-doing. The Human Rights Act also provides protection. The Ombudsmen are able to investigate any cases of recriminations against those alleging mistreatment or other wrong-doing.

State Sector Standards Board (SSSB)

Formal/legal position

The SSSB was established for a two-year term in November 2000 to provide advice and comment on the state sector to the Minister of State Services. Its membership was drawn from the public and private sector, trade unions and Maori.

What actually happens?

Reports from the SSSB have highlighted the loss of ethos of Public Service, and the need for a greater role for the State Services Commission in the promotion and retention of high standards of integrity in the public sector.

Department of Prime Minister and Cabinet (DPMC)

Formal/legal position

The DPMC does not have a formal role in monitoring the performance of the Public Service.

What actually happens?

The DPMC plays a powerful coordinating role. The Chief Executive of the DPMC chairs meetings of CEs of government departments, and is particularly influential during periods of crisis management. This role has increased with the emergence of coalition governments following the change to the MMP proportional representation electoral system.

Health and Disability Commissioner

Formal/legal position

The Health and Disability Commissioner has formal jurisdiction over all health providers in both the public and private sector, and considers complaints regarding treatment.

What actually happens?

The Office has drawn a draft code of conduct and has initiated legal proceedings against health providers in breach of the code. Commissioner reports have identified problems and suggested measures to resolve them.

Overall Cooperation Between the Watchdog Agencies

The State Services Commission frequently works with the Cabinet Office, which is part of the Department of Prime Minister and Cabinet, particularly regarding issues of political neutrality and the boundaries between Ministers and officials. This comes into sharp relief in election years and during government formation. The SSC has issued guidelines for public servants on both topics. The SSC has also had limited involvement in the drafting of the Cabinet Manual and has contributed Cabinet Office Circulars on ethics-related matters in the past.

The SSC provided the secretariat for the SSSB when it was in existence. The Treasury also provides input into some ethics work in conjunction with the SSC, particularly as it relates to commercial and financial responsibilities of those involved in both the core and the wider state sector

The other organisations have no direct, formal involvement in the promotion of wider state sector ethics but the reports of the Ombudsmen's Office, the Office of the Auditor-General, the Health and Disability Commissioner and the Privacy Commissioner are all considered by government departments, especially the SSC, as they relate to ethics throughout the wider state sector .

Media

Is there a law guaranteeing freedom of speech and of the press?

Formal/legal position

Freedom of speech is guaranteed under Section 14 of the New Zealand Bill of Rights Act. However, this Act is not supreme legislation (and therefore does not override other legislation).

What actually happens?

Freedom of speech and the press is well entrenched in New Zealand. The free speech provision of the Bill of Rights has influenced judicial decision-making.

Is there censorship of the media?

Formal/legal position

The government has no legal right to censor news reporting. The Broadcasting Act 1989 (Section 44) seeks to set professional standards for broadcast journalists, but specifically excludes the Minister of Broadcasting from interfering in any way in programme content or news gathering and presentation. The New Zealand Press Council was established by the newspaper and magazine publishers, not the government, and has no enforcement powers. The Films, Videos, and Publications Classification Act 1993 deals with matters relating to taste, such as pornography.

What actually happens?

There is no active government censorship of the media. Nor does the government make threats against news organisations concerning the way they report news. The government has, though, been willing to criticise the media robustly and has referred complaints to the Broadcasting Standards Authority (see main report, p.25).

Is there a spread of media ownership?

Formal/legal position

There are no laws specifically governing news media ownership. The restriction on foreign ownership of the media was removed with the passage of the Broadcasting Amendment Act 1991.

What actually happens?

The spread of media ownership has been greatly diminished over the past two decades. All the major private sector news media organisations are foreign-owned. The government continues to own Television New Zealand, and Radio New Zealand, which compete with private sector television and radio stations. Ninety per cent of New Zealand's 25 daily newspapers are owned by either the Wilson and Horton Group or Independent Newspapers Ltd.

Cross-media ownership has occurred. For instance, for a period during 2002, one Christchurch media organisation owned a newspaper, magazine, community paper and a local TV station.

Does any publicly owned media regularly cover the views of government critics?

Both Radio New Zealand and Television New Zealand are publicly owned and cover news without interference from the government. There are no government-owned newspapers. Radio New Zealand has a charter guaranteeing its independence, and a similar charter has been drawn up for TVNZ but not yet given statutory backing. The charter must be reviewed every five years.

Have journalists investigating cases of corruption been physically harmed in the past five years?

There have been no such cases.

Does the media carry articles on corruption?

All news media will cover corruption stories when they arise according to their judgment of the news value. However, with some notable exceptions, there has been a general reluctance by news organisations to devote significant resources to investigative journalism.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

There are no licences required to print a newspaper in New Zealand. Frequencies required by broadcasters are auctioned. The government has intervened to fund a Maori television station, and both Maori and Pacific Island radio broadcasting.

Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

There is some evidence that libel laws have had a 'chilling effect' on media reporting. But this is not the case with the business newspapers. Sanctions, such as withdrawing state advertising, have not been used.

Civil Society

Does the public have access to information and documents from public authorities?

Formal/legal position

The Official Information Act 1982 gives any citizen the right to obtain official information. Exceptions are made for matters that would prejudice security and justice, commercial sensitivity or privacy, and would jeopardise free and frank advice from public servants to Ministers.

What actually happens?

Public authorities generally – but not always – cooperate in responding to requests for official information. The Ombudsmen hear complaints about refusals or delays in the release of official information, and have been increasingly critical about refusals or delays by both public servants and Cabinet Ministers.

Do the public authorities generally cooperate with civil society groups?

Formal/legal position

Consultation with civil society groups is increasingly required, particularly with Maori groups. The courts have provided guidelines that reflect Treaty of Waitangi commitments. These include basic principles of "reasonableness" and "good faith", and the need to consult and make informed decisions.

What actually happens?

Consultation with civil society groups, and particularly Maori, has increasingly become accepted as part of the public policy process. Nevertheless complaints inevitably arise alleging inadequate consultation or not sufficient notice being taken of the views expressed.

Are there citizen groups or business groups campaigning against corruption?

Transparency International New Zealand is the most prominent group raising public awareness about corruption-related issues. The New Zealand Centre for Business Ethics and Sustainable Development has been established with private sector support.

Are there citizen groups monitoring the government's performance in areas of service delivery, etc.?

A wide range of interest groups monitor government agencies from a variety of standpoints. These include business, farming, consumer, trade union and church groups.

Do citizens' groups regularly make submissions to the legislature on proposed legislation?

Citizens' groups make submissions on a wide variety of issues to the Select Committees of Parliament on almost all legislation and Parliamentary enquiries. The MMP electoral system has resulted in the government losing control of a number of Select Committees, and

prevented them from stifling public submissions. There has also been an increase in the number of inquiries being embarked upon by Select Committees.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

There is no mandatory 'civic education' required in the educational curriculum.

Regional and Local Government

Are there, at the regional and local level, rules and disclosure provisions similar to those operating at the national level on nepotism, conflict of interest, gifts and hospitality, and post-public office employment.

Formal/legal position

The Local Authorities (Members' Interests) Act 1968 requires councillors to disclose any pecuniary interest they may have involving a matter under deliberation. It also requires all appointments to be made on merit. All contracts are made contestable through public tender. There is no explicit requirement to declare gifts or hospitality, or regarding post-public office employment.

What actually happens?

The conflict-of-interest requirement has been enforced, and has resulted in resignations. Appointments are made by the Chief Executive, not councillors. Monetary levels are imposed regarding the value of contracts to be decided by staff, rather than at open Council meeting. There has been concern about the extent of transparency in practice. Legally, councillors are personally responsible if the council ignores advice of the Chief Executive resulting in a financial loss. This provision has never been exercised.

What public offices at the regional and local level are appointed by the national government?

Formal/legal position

The 21 District Health Boards, which are formally responsible for public-funded health and disability services in their geographic area, include four government-appointed and seven elected members.

What actually happens?

There is concern that appointments have been made on the basis of political patronage rather than competence, although there is no evidence that this has resulted in corrupt decisions.

Is there a legal requirement that meetings of city/town councils be open to the press and public? Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?

Formal/legal position

The Local Government Act 1974 requires all meetings to be held in public with two exceptions. These are where there is commercial sensitivity, and where the personal affairs of an individual are being discussed.

What actually happens

Local Government New Zealand – the central body representing all local authorities – has expressed concern at the frequency with which councils exclude the public from meetings by going into committee. While the minutes of meetings can be observed under the Local Government Official Information and Meetings Act, these may not reveal all that transpired in the making of the decision. There is concern about the frequency of informal workshops held with council officials, which may in effect make decisions which are not subject to the formal transparency requirements.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, Ombudsmen, supreme audit institutions, and so on) work at regional or local levels, and are there specific agencies with regional and local responsibilities?

Formal/legal position

The Serious Fraud Office will investigate any cases within its jurisdiction.

Both the Auditor-General and Ombudsmen have jurisdiction over local authorities. Information can be discovered through the Local Government Official Information and Meetings Act 1987, and appeals can be made to the Ombudsmen. The Local Government Commission deals with local electorate issues, including local electoral boundaries and the number of councillors. The Environment Court resolves disputes over environmental decisions and consents made by local authorities.

What actually happens?

Concern has been expressed about the number of local authority consents given by council staff that do not require public notification. The time taken to resolve issues has meant that in some cases it is cheaper to pay off objectors rather than to go through the legal process.