

NZ still not enforcing anti-bribery convention

In May 2011 Transparency International (TI) issued its latest Progress Report on enforcement of the OECD Anti-Bribery Convention. For the first time in seven years the report indicates there has been no improvement in the enforcement of the Convention over the past year. This has raised concerns about a loss of momentum in the global efforts against corruption because of a lack of political commitment by government leaders.

The TI report involved a survey of 37 of 38 parties to the OECD Convention, including New Zealand, to identify whether the countries had "active", "moderate" or "little or no" enforcement. Active enforcement means that there is an adequate deterrent to foreign bribery. The classifications are based on the number and significance of cases and investigations, taking into account the scale of the country's exports. The key findings were:

- Active Enforcement – seven countries (including the UK and USA);
- Moderate Enforcement – nine countries;
- Little or No Enforcement – twenty-one countries (including New Zealand).

The New Zealand section of the report indicated that one case and one investigation had been initiated during 2010, and noted that New Zealand lacks anti-bribery legislation comparable to that now present in UK law. Encouragingly, one of the recommendations for New Zealand was to make additional financial resources available to agencies such as the Serious Fraud Office, and this has since been implemented, with the SFO's budget doubled to \$15 million.

Another positive development since publication of the TI report is that the OECD has invited Russia to join the OECD's Working Group on bribery and to accede to the OECD Convention, following Russia's recent enactment of laws criminalising foreign bribery.

TI(NZ) wishes to thank Aaron Lloyd, a TI member and partner at Minter Ellison Rudd Watts, for his work once again this year in compiling the data for the New Zealand section of the report.

[TI report and press release](#)

Additional sources: [NZ Herald News](#) & [OECD.org](#)

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Former MP Taito Phillip Fields

Bribery in our backyard?

In the last TI(NZ) newsletter we gave an update on the 2010 Global Corruption Barometer, and summarised the New Zealand results. One of the findings was that 73% of those surveyed believed the level of corruption in New Zealand had increased over the past three years. Certainly there seem to have been more cases involving bribery hitting the media headlines in recent times.

The most high-profile case making its way through the judicial system recently has been that of former MP Taito Philip Field, who was found guilty of accepting a bribe while in Parliament. Mr Field was convicted under the Crimes Act for accepting free or low-cost labour from various Thai people in return for immigration assistance.

The Court of Appeal has recently dismissed Field's appeal against the conviction and sentence of six years imprisonment, during which the Court discussed at some length the nature of the NZ statutory scheme in relation to bribery and corruption of politicians. The Court commented on the significance of political corruption, noting the immense damage that can be inflicted by politicians or parties acting out of greed. In mid-June the Supreme Court heard Field's appeal seeking to have his convictions overturned, and their decision is awaited.

Several other cases involving the public sector have also come to light recently:

Two prison guards, Johan Clarke and Manu Jensen, were charged with corruption offences this year.

Clarke pleaded guilty to six charges of corruptly accepting a bribe to smuggle drugs and other items into Rimutaka prison, and was sentenced to two years and three months in prison.

The SFO laid more than 300 charges in late 2010 against Hemant Kumar Majaraj, who worked for North Shore City Council, and co-offender Suresh Dinn of Auckland for their alleged use of invoices to defraud the Council of some \$840,000.

Majaraj is alleged to have helped defraud the old North Shore City Council by paying a friend (Dinn) for roading work that was never done.

ACC Fraud

Most significantly is Malcolm Mason's case. The former ACC national property manager, was convicted and sentenced in March after an SFO investigation resulted in three charges of bribery and corruption. Mr Mason had received \$160,000 for giving information to a property developer who built and then leased a building to ACC. The person alleged to have given Mason the bribe, Gregory Hutt, is facing two charges - one of corruptly giving and corruptly offering a bribe and one charge of corruptly giving a gift as a reward. Hutt lost a bid to retain name suppression.

The outcome of this case should be watched with interest as any conviction of Gregory Hutt will send a clear message to the private sector that corruption or attempted corruption of public officials will be taken seriously.



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Spotlight on: Murray Sheard

We are pleased to welcome Dr Murray Sheard as a new member. Murray is an ethics trainer, community animator, author, academic, anti-corruption specialist, and social entrepreneur.

His current roles are as lecturer in ethics at the University of Auckland and as Senior Institutional Integrity Advisor with Tiri – Making Integrity Work . Tiri is an independent, international non-governmental organisation.

Murray is currently establishing “The Hub Auckland”, a shared workspace in Central Auckland for social entrepreneurs, NGOs, and all those working for more than profit. The vision is to enable social impact by providing access to space, resources, connections, knowledge, experience and investment.

His immediate past role was as Director of Professional Integrity Education at Tiri. He was responsible for the development of two of Tiri's major programmes. The first was *Integrity@Work*, a programme of ethics and professionalism training in the public service and business, currently in development in Indonesia and Nigeria. The second was the *Public Integrity Education Network*, a network of over 200 academics in 170 universities in 60 countries.

Before joining Tiri in 2007, Murray was director of Ethical Edge Ltd, an ethics consultancy in New Zealand that aims to increase the ethical decision-making competence of professionals and business leaders.

Prior to this, Murray was the New Zealand team leader of *Servants to Asia's Urban Poor*, a development charity with teams living and working in the slums of Asia's mega-cities.

They were engaged in community development, including medical care, education and job placement for orphans, and small business development. *Servants* train local people to deliver these projects, eventually indigenising their work. The role involved leadership, management, training, promotion, and public speaking.

Murray's PhD investigated the nature of businesses' property rights on environmentally-sensitive resources. He developed a new concept of property that justifies greater environmentally motivated limitations on property than do traditional accounts. It has implications for the design of property law, environmental law, climate change policy, and the ethical responsibilities of business. Murray also holds a BE in electrical engineering.

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licensed professional investigators

DONATION

TINZ member Tim McKinnel is co-director of Zavest Licenced Professional Investigators with Glynn Rigby. As a way of thanking their clients without breaching supplier agreements, the Zavest directors decided in 2010 that instead of purchasing Christmas gifts for clients they would send them Christmas cards advising that they would donate to TINZ, an organisation that shared their company values. TINZ received a donation from Zavest of \$1000. Many thanks to Glynn and the team of Zavest.

New Members

The Board has also approved the following people as new members.

Paul Roughan: Paul is a researcher with a background in policy, civil society and the environment in the Pacific, with a specialisation in the Solomon Islands. Paul is founding chair of Islands Knowledge Institute (headquartered in Honiara, Solomon Islands) and a member of the Compliance Committee of the Cartagena Protocol on Biosafety (UNCBD). He is based at the Macmillan Brown Centre for Pacific Studies. Paul has conducted research and policy analysis in the fields of corruption and post-conflict peace building as well as environment related issues such as bioprospecting and biosafety. He is currently conducting research in:

- the operation of business in the context of customary authority and customary land tenure (Solomon Islands)
- expectations of public service delivery and conceptions of social contract (Solomon Islands and Vanuatu)
- conceptions and attitudes towards public accountability (Solomon Islands).

Dr Peter Perry: “My connection with TI grew out of my teaching political geography at Canterbury University and by the mid 1990s I had become TI's New Zealand contact which remained the situation until 2001. Corruption has long been, and to a degree remains, a matter ignored by the world of scholarship. My aim and interest has been to redress this situation. I am the author of two books *Political Corruption and Political Geography* (1997) and *Political Corruption in Australia: a wicked place?* (2001) and a number of shorter pieces.”

Watch out for profiles of the following new members in future issues of Transparency Times: **Helen Sutch, Fabio Morato, Ferdinand Balfoort, and Michael Vukcivic.**



Pacific Update

The Pacific Support programme, which for a number of years has been managed by Transparency International New Zealand, is to be redesigned and taken over by the TI-Secretariat in Berlin. The programme is now called Pacific Institutional and Network Strengthening Programme and operates in the Solomons, Fiji, Vanuatu and Papua New Guinea. The programme will continue to offer support to the Chapters, but with Berlin managing other programmes it will allow increased alignment, efficiency, and provide more in-depth support to Pacific chapters. It is expected that the new programme will start in July.

New Financial Markets Authority looking to make an impact

The new Financial Markets Authority (FMA) is likely to be a completely different beast from its predecessor the Securities Commission.

Newly appointed Chief Executive Sean Hughes says he is determined to run the new body more like a corporate entity than a bureaucracy. The FMA has seven main areas of interest—enforcement, compliance, regulatory operations, market intelligence, communications, back office functions and legal governance. His staff will need to hit the ground running as they will have to deal with a backlog of cases that they have inherited from the Securities Commission.

The budget for 2011/12 for the FMA will be \$24 million, increasing to \$28 million in 2013/14 to reflect the emphasis on market intelligence, investigation and enforcement, and some additional transition costs.

Commerce Minister Simon Power said the FMA needs to be adequately resourced and funded to carry out its functions effectively. Transparency International New Zealand agrees!

Stop Press

The Financial Markets Authority welcomed the High Court's verdict this month in its case against three directors of Nathans Finance NZ Limited. Directors Donald Young, Kenneth Moses and Mervyn Doolan were today found guilty of offences under section 58 of the Securities Act on the basis of untrue statements made in Nathans' 2006 prospectus and investment statement.

FMA Chief Executive Sean Hughes said Justice Heath's judgment sent a clear message of responsibility to issuers of securities and their directors.

"It makes clear that directors have a personal duty to ensure that disclosure documents and other advertisements do not mislead or deceive. That is a duty that cannot be delegated to staff or external advisers - the directors must form their own opinions."

Public servants and Gifts



The recent publicity about ACC public servants accepting expensive corporate hosting from contractors and suppliers highlights the need for the chief executives of departments, crown entities and the State Services Commission to be ever vigilant and clear about what is and isn't acceptable when it comes to accepting hosting, invites or gifts. On one side we appear to have an almost puritanical attitude in some departments (no gifts, no hosting), in others we have what is known in departments as 'the Dominion' test (ask yourself—would this look bad on the front page of The Dominion Post), and in other cases no clear guidance or monitoring at all. The SSC is, however, very clear in its instructions to its chief executives. "Gifts or hospitality with an estimated value exceeding \$100 are to be declared by every chief executive at two-monthly intervals, from 1 July 2009. A gift valued at less than \$100 does not have to be declared, though chief executives are welcome to do so if they wish." It would be expected therefore that those same rules would apply to staff, and staff would be made aware of such a policy on a regular basis. It seems a pretty simple instruction and a balanced one. ACC staff clearly did not have that policy in mind when they accepted helicopter trips, lodge getaways and lavish hospitality from private contractors. A TVNZ news investigation revealed that the trip for the staff who travelled by helicopter from Wellington to the luxury Wharekauhau lodge in Wairarapa cost \$1000. Many of the other hospitality 'gifts' were apparently not declared. And that is the key—be open and transparent about relationships and ensure anything accepted is not excessive and that it is declared.

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Global News

Transparency International Taskforce consider setting up a charitable company

Suzanne Snively, board member of TI(NZ), was selected to be one of eight members of an international taskforce set up by Transparency International to consider the merits of setting up a new not-for profit TI entity (charitable private limited company, gGmbH in German) which would be able to engage in paid consultancy type services.

The group were asked to review the potential risks and the benefits of such a company for the movement in general, and individual chapters in particular. The mandate of the taskforce was to indicate whether such an entity should be formed or not, and if yes identify:

- how it would work, i.e. under what conditions;
- the kind of work it may or may not do;
- how it would relate to the movement and in particular to the Chapters;
- what accountability mechanisms would apply; and
- outline the risks and opportunities of the setting up of such an entity.

The group made recommendations to the Board that that such a company be formed as a pilot and under strict conditions, with its existence to be thoroughly reviewed in mid 2013. However the TI Board decided not to go ahead with the 'TI-Secretariat subsidiary' for the time being. The Board felt that the issue remained too contentious to bring it to the movement at the next Annual Members Meeting. While the final conclusion of the Board was different from that of the taskforce, the recommendations and the various points in the recommendations of the taskforce were absolutely essential in helping the Board to assess the complexity of the issue and arrive at a well-informed decision. Other members of the taskforce were Michael Ahrens, Roberto Courtney, Moctar Fall, Michael Hershman, Christian Humborg, Jean-Pierre Méan, Martin Okumu, Elisabeth Ungar and Miklos Marschall (as non-voting Chair).



Australian Public Sector Anti-Corruption Conference

The Australian Public Sector Anti-Corruption Conference (APSACC) will be held in Fremantle, Western Australia between the 15th and 17th of November in 2011. This will be the third APSACC, and is Australia's leading corruption prevention conference.

A joint initiative of Australia's three major anti-corruption agencies, the APSACC 2011 is an unrivalled opportunity to focus on the latest contemporary trends, strategies and future directions in preventing corruption, and to network with Australian and international public sector peers and leaders.

The three-day event will again be jointly hosted by the Corruption and Crime Commission (WA), the Crime and Misconduct Commission (QLD), and the Independent Commission Against Corruption (NSW).

Join Transparency International

If you would like to join Transparency International New Zealand please go to our website — www.transparency.org.nz — and complete the membership application form and forward it by email or post to:

admin@transparencynz.org.nz or P.O. Box 5248, Wellington 6615.

New membership applications are referred to the next meeting of the Transparency International (New Zealand) Inc Board. The Board considers applications in terms of the Rules. If the application is approved the Board confirms the applicant as a Temporary Member of Transparency International (New Zealand) Inc.



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