ARE AUSTRALIA AND NEW ZEALAND CORRUPT?

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About Dr Lisa Marriott

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In Australia and New Zealand we have long traded on our reputations for high ethical standards. They are reputations that have supported strong positions in the global economy.

This latest paper from future[inc] questions whether or not we deserve our squeaky clean reputations, and what we should be doing to protect them. Not only do reports indicate that rates of corruption in our two countries may be rising, we are also doing more business with countries that have different ethical frameworks from our own.

With reference to data and case studies from both New Zealand and Australia, and from the public and private sectors, the paper looks at what our areas of weakness are, what anti-bribery and corruption tools we have in place, and whether they are being used effectively.

Regulation alone doesn’t appear to be the solution. I encourage you to consider the “suggestions for the way forward” discussed in the paper. Don’t think of them as answers, but as catalysts for stimulating debate. We need to be more proactive in the fight against corruption and send the message that we take the issue seriously.

Rethink what you thought you knew about corruption.

Read on and join the debate.

Fred Hutchings
President,
Chartered Accountants ANZ
charteredaccountantsanz.com/futureinc
Australia and New Zealand perform well in global measures of corruption, and both of our countries trade on reputations for honesty and integrity. However, rates of corruption are reported to be rising and we are trading increasingly often with countries that are considered to be highly corrupt. Additionally, despite our positive survey rankings, Australia and New Zealand have been subject to harsh criticism in recent years for what is perceived to be a lackadaisical approach to corruption. How justified are our good reputations?

Countries such as the United Kingdom (UK) have been lauded by international organisations for initiatives such as the Bribery Act 2010, a tough anti-bribery and corruption law. We need to consider how Australia and New Zealand are currently perceived in the domain of global corruption and how we wish to be perceived in the future.

Relying on our historic reputation as “fair dinkum” countries is no longer enough. We need to not only be better in reality at addressing corruption than other countries – we also need to be perceived to be better.

Our two countries need to be more proactive in the fight against corruption. In this report, we examine what we are currently doing to mitigate corruption in Australia and New Zealand and what we should be doing. We then present ten options for consideration; our aim is to start a broad debate on corruption and the role of Australia and New Zealand in the international context.
INTRODUCTION

Global reports suggest that rates of corruption are low in Australia and New Zealand. Is this view warranted? A brief look at newspaper headlines would suggest not. Cases already reported in the media in 2015 include the payment or receiving of bribes, misconduct in public office, and undisclosed gift-giving and receiving. The Australian media has reported over the past few months that "Australia’s slide into corruption must be stopped", while New Zealand’s media recently labelled the Minister of Justice as the "Minister of Corruption." We have even become accustomed to media reports about corruption on the sports field, including recent accusations of bribery and match fixing in football and cricket.

We set out to ask not only are we corrupt? But also how corrupt are we? And perhaps more importantly, what are we doing about it?
What should we be paying more attention to: statistical rankings or national reports? We set out to ask not only “are we corrupt?” but also “how corrupt are we?” And perhaps more importantly, “what are we doing about it?”

Before we start, we need to clarify what we mean by “corruption.” The definition of corruption used by the Asian Development Bank is “Behaviour on the part of officials in the public or private sector in which they improperly and unlawfully enrich themselves or those close to them, or induce others to do so, by misusing the position in which they are placed.” This definition of corruption is also used by the New Zealand Serious Fraud Office. The victims of corruption may be individuals, private sector organisations or public sector institutions. Corruption may be considered a subset of fraud, and incorporates a broad range of activities (see Figure 2).

For the purposes of this paper we consider financial crime to be a subset of corruption.
But what impact does corruption have on the Australian and New Zealand general public and our businesses? Perhaps the most important financial incentive to minimise corruption is the reduction of reputational risk. In the private sector, a strong reputation means lower costs of doing business, a lower cost of capital, and easier access to international markets. Corruption can impact on employee morale, business relations and an organisation’s share price. The public sector also benefits when corruption is minimised: government resources are increased and greater investment can be made in health, education and other services.

The issue of corruption – and what can be done about it – needs to be debated. Can we be comforted by our positions in international rankings, or do we need to determine for ourselves whether the level of corruption in our society is acceptable? Are we doing enough to combat corruption in Australia and New Zealand?
“FINANCIAL CRIME is the foundation for most serious crime.”

JULIE READ
DIRECTOR AND CHIEF EXECUTIVE OF THE SERIOUS FRAUD OFFICE IN NEW ZEALAND.
We know an issue has become significant when it has a day named after it, and even its own acronym. The United Nations has an annual designated “International Anti-Corruption Day” – 9 December – aimed at raising awareness of corruption. Meanwhile, anti-bribery and corruption activity has become commonly known by the acronym AB&C.

It is difficult to measure corruption accurately. As will be seen, many reports are based on perceptions of corruption, rather than absolute measures. These perception surveys are seen as the most reliable method for comparative analysis of international corruption. Many corrupt activities will not be captured in crime statistics, as they are by their nature hidden. Nonetheless, we can attempt to assess the harm caused by corruption.
AUSTRALIA AND NEW ZEALAND IN THE GLOBAL CONTEXT

PUBLIC SECTOR

Both nations rank favourably in global surveys of fraud and corruption, New Zealand even more so.

Perhaps the best-known international organisation addressing corruption is Transparency International; its annual Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be.12 Figure 3 lists the top sixteen countries in the 2014 rankings, from least corrupt to most corrupt. At the present time, New Zealand and Australia are well placed on this index, ranking second and eleventh respectively.

Transparency International describes global public sector corruption as “alarming.” In the most recent Perceptions Index more than two-thirds of the 175 measured countries rank below 50 on a scoring system ranging from 0 (highly corrupt) to 100 (not corrupt).13 What is also important to note from this survey, however, is a visible trend (see Figure 4); both countries have dropped from their 2013 ranking. New Zealand, having occupied the first position for many years, is now in second place. Australia’s position has dropped for two consecutive years, from seventh equal in 2012, to ninth equal in 2013 and eleventh in 2014.

<table>
<thead>
<tr>
<th>RANK</th>
<th>COUNTRY</th>
<th>SCORE</th>
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<tbody>
<tr>
<td>1</td>
<td>Denmark</td>
<td>92</td>
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<tr>
<td>2</td>
<td>New Zealand</td>
<td>91</td>
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<td>3</td>
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<td>15</td>
<td>Belgium</td>
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<td>15</td>
<td>Japan</td>
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Ranking is from least corrupt to most corrupt; scale for score is 0-100, where 0 means extremely corrupt and 100 means not corrupt.

These findings are also reflected in the results of the 2014 World Justice Project (WJP) Rule of Law Index. WJP publish an annual index of 99 countries using 47 indicators based around eight themes. One of the themes is corruption. Like Transparency International, this Index is concerned with corruption in the public sector, including behaviours such as bribery, extortion, and misappropriation of public funds or resources. The Absence of Corruption measure produced by the Index, ranks countries on a scale of 0 – 1, with higher values indicating lower levels of corruption. In 2014, New Zealand scored an impressive 0.91, with Australia lagging slightly at 0.86.15

**PUBLIC AND PRIVATE SECTORS**

In Figure 5 we look at perceptions of corruption in a range of institutions – this time including both the public and private sectors. Results are taken from Transparency International’s Global Corruption Barometer. Respondents were asked to what extent they saw each of the institutions as being affected by corruption. The scale is 1 to 5, where 1 means not at all corrupt and 5 means extremely corrupt.
What is apparent is that New Zealand scores lower than Australia for each of the institutions. In most cases, both Australia and New Zealand scored lower than the global rating. The media was perceived to have higher levels of corruption than the global scale in both countries. Non-government organisations and the business/private sector scored higher than the global average in Australia but lower than the global average in New Zealand.

In both Australia and New Zealand, the media and political parties were perceived to be the most corrupt institutions. Globally, the most corrupt institutions were perceived to be political parties and the police.

Trade unions – though not included in Figure 5 – are also perceived to have high levels of corruption in Australia. Indeed, a Royal Commission into Trade Union Governance and Corruption is ongoing in Australia in 2015. The Interim Report, published in December 2014, raises multiple issues with governance among trade unions in Australia, including:

- conflicts of interest with funds held for a variety of purposes
- fraudulent and other misconduct by former union officials, and
- improper use of funds.

FIGURE 5: PERCEPTIONS OF CORRUPTION IN MAJOR INSTITUTIONS

<table>
<thead>
<tr>
<th>Institution</th>
<th>New Zealand</th>
<th>Australia</th>
<th>Global</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRADE UNIONS</td>
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</table>
CORRUPTION ON THE INCREASE?

CRIMINAL CONVICTIONS FOR DECEPTIVE PRACTICES

Australia and New Zealand use the same standard classifications for criminal offending. Corruption is not measured as a category in itself. However, within the broader category of “fraud, deception and related offences”, a measure is captured for “deceptive business/government practices.” This includes illegal non-fraudulent trade practices, fraudulent trade practices and misrepresentation of professional status. Figure 6 reports on the number of adults convicted in court for this offence over a 14-year period in New Zealand being from 2000-2013, and over a 5-year period in Australia, from 2008/9 – to 2012/13. During this period in New Zealand, the average number of offences was 55 per year. No clear trend is apparent amongst the undulating results. Neither is a clear pattern visible in Australia, although the most recent year reported (2012–13) shows a significantly lower level of convictions for this crime category than for previous years. When adjusted for the different population sizes, Australia and New Zealand report similar proportions of convictions in this category.

CONFLICTING REPORTS

Figure 6 suggests that convictions for corruption offences are not increasing in Australia and New Zealand. However, in its Global Economic Crime Survey 2014, PwC reported that every region surveyed (99 countries in total) observed an increase in cases of bribery and corruption between 2011 and 2014. Moreover, threats of bribery and corruption were reported as having risen more quickly than most other categories of economic crime. PwC’s survey showed an increase in reported bribery and corruption in New Zealand from 7% to 15% between 2011 and 2014, and a global increase from 24% to 27%. Other studies support this finding, with an Australian study finding that 43% of respondents believed that corruption had increased in the three year period to 2012, and Transparency International reporting that 53% of respondents perceive corruption has increased or significantly increased over the previous two year period. Why aren’t convictions for corruption increasing in line with threats and observed cases of corruption?

\[\text{“Every year, WESTERN BUSINESSES pay huge amounts of MONEY IN BRIBES to win friends, influence and contracts.”}^{19}\]

Dr Susan Hawley
“We believe that one driver of the **HIGH REPORTED FIGURES OF BRIBERY AND CORRUPTION** may be the megatrend of the shift in wealth from the developed economies of the West to the emerging high-growth economies of the South and East.”

PwC Global Economic Crime Survey 2014\(^{28}\)

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**Figure 6:** Convictions for “Deceptive Business/Government Practices” in Australia and New Zealand

**Source:** Adapted from “Statistics New Zealand, Customised Dataset – Charges prosecuted against adults by offence type. Data extracted 30 October 2014”\(^{26}\) and “Australian Bureau of Statistics, Recorded Crime – Offenders, Principal offence (divisions and selected subdivisions) 2008-09 to 2012-13, Table 4, Commonwealth of Australia, 2014.”\(^{27}\)
Corruption is a global issue, and organisations doing business with countries that have high levels of corruption are more likely to be exposed to corrupt practices. Australia and New Zealand both trade in a large number of jurisdictions: KPMG report that Australian organisations operate in 171 countries outside Australia, and New Zealand organisations operate in 169 countries outside New Zealand. Survey results reported by PwC indicate that 50% of organisations around the world operate in areas identified to have a high corruption risk.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>TRADING POSITION (AUSTRALIA)</th>
<th>TRADING POSITION (NEW ZEALAND)</th>
<th>TRANSPARENCY INTERNATIONAL RANKING (2014)</th>
<th>TRANSPARENCY INTERNATIONAL SCORE (2014)</th>
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<tbody>
<tr>
<td>CHINA</td>
<td>1</td>
<td>1</td>
<td>100/176</td>
<td>36</td>
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<tr>
<td>USA</td>
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<td>JAPAN</td>
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<td>UNITED KINGDOM</td>
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<td>THAILAND</td>
<td>8</td>
<td>10</td>
<td>85/176</td>
<td>38</td>
</tr>
</tbody>
</table>

Ranking is from least corrupt to most corrupt; scale for score is 0-100, where 0 means extremely corrupt and 100 means not corrupt.

Australia and New Zealand have the same top ten trading partners, some of which, such as Thailand and China, rank poorly in Transparency International’s Global Corruption Index (see Figure 7). China, the number one trading partner of both Australia and New Zealand, is ranked 100 out of 176 countries on the index, scoring 36/100 (where 0 is highly corrupt and 100 is not at all corrupt). Thailand’s measure is only slightly better at 38/100.
“While it is not the most common form of crime reported, of all the types of fraud covered in our survey, BRIbery and corruption may pose the greatest threat to global businesses because of the number of business processes it threatens.”

PwC Global Economic Crime Survey 2014.32

KEY RISK AREAS

THIRD PARTIES

International trade presents significant challenges to multinational organisations. One practice identified with an increased risk of corruption is the use of vendors or third parties. In 2013, around 90% of cases reported under the United States (US) Foreign Corrupt Practices Act involved third parties. Third parties are also seen as generating the highest compliance risks for businesses.33

The three most significant bribery and corruption challenges reported in a survey of 214 UK and US executives were: auditing third parties for compliance; issues in performing due diligence on foreign agents or third parties; and variations in different jurisdictions on issues such as facilitation payments (see page 20).34

Figure 8 extracted from EY’s 2013 Asia-Pacific Fraud Survey examines compliance options for third-party contracts. The survey data has been collected from 681 professionals and executives across eight Asia Pacific countries, including Australia and New Zealand. What it shows is that most of these tools are not widely used. Just over a quarter of respondents had no processes at all to monitor third parties. Only 37% had an approved supplier database and 38% had a background checking system – these are two of the fundamentals of good control systems. Also surprising is the low percentage of respondents that were regularly auditing third parties with which they were doing business. Even more surprising is that most of these companies were not small: 32% of respondents had over 500 employees, 55% had between 50 and 500, and only 10% had fewer than 50.

HIGH-RISK INDUSTRIES

The highest levels of bribery and corruption worldwide are reported in engineering, construction and energy, utilities and mining. Professional services and hospitality are two examples of industries that fall below the global average of 27% across all industries.35
FIGURE 8: SYSTEMS AND CONTROLS FOR MONITORING THIRD PARTIES

- BACKGROUND CHECKING SYSTEM: 38%
- APPROVED SUPPLIER DATABASE: 37%
- CHECK ON OWNERSHIP OF THIRD PARTY: 29%
- EXTERNAL PROVIDERS TO RUN CHECKS: 28%
- NO PROCESSES: 26%
- AUDIT RIGHTS OF THE THIRD PARTY: 23%
- TECHNOLOGY BASED CHECK OF THIRD PARTY: 22%
- OTHER: 18%

FIGURE 9: REPORTED BRIERY AND CORRUPTION WORLDWIDE, BY INDUSTRY

- ENGINEERING AND CONSTRUCTION: 50%
- ENERGY, UTILITIES AND MINING: 42%
- GOVERNMENT/STATE OWNED ENTERPRISES: 35%
- TECHNOLOGY: 32%
- PHARMACEUTICALS AND LIFE SCIENCES: 31%
- COMMUNICATION: 30%
- TRANSPORTATION AND LOGISTICS: 30%
- INDUSTRIAL PRODUCTS: 28%
- GLOBAL: 27%
- RETAIL AND CONSUMER: 25%
- HOSPITALITY AND LEISURE: 24%
- INSURANCE: 24%
- OTHER INDUSTRIES: 22%
- FINANCIAL SERVICES: 19%
- PROFESSIONAL SERVICES: 18%
- ENTERTAINMENT AND MEDIA: 14%

CORRUPTION – THE PRICE

OECD publications suggest the cost of corruption is in excess of 5% of global GDP, or US$2.6 trillion. A significant portion of this figure (US$1 trillion) is made up of bribes. In recent international survey results from PwC, 53% of respondents believed that the greatest economic crime risk was from bribery and corruption. The level of concern was slightly higher in the Asia Pacific region, with 56% of respondents believing the highest relative economic crime risk was from bribery and corruption.

CASE STUDY 1: Public sector corruption in New Zealand
The Chief Information Officer (CIO) of the Otago District Health Board (DHB), together with a Queenstown surveyor, defrauded nearly NZ$17 million from the DHB over a period of six years. The offenders raised 198 invoices from associated companies to charge the DHB for IT-related services that were not provided. The corruption was discovered in 2008. Both offenders received prison sentences: nine years and six months for the former CIO and four years and three months for the surveyor.

CASE STUDY 2: Insider trading in Australia
In 2014, the Australian Federal Police and the Australian Securities and Investments Commission engaged in a joint investigation into an insider trading scheme involving a National Australia Bank employee and an employee of the Australian Bureau of Statistics. They found that the National Australia Bank employee had made use of market-sensitive statistical information to engage in foreign exchange derivative contracts. Both employees were charged with insider trading, money laundering, corruption and abuse-of-office offences. As a result of the investigation, the Australian Federal Police restrained cash and property worth AUD$7 million.

CASE STUDY 3: Finance company corruption in New Zealand
Finance companies have been particularly prominent as settings of corruption in New Zealand in recent years. Company directors have been prosecuted for a wide range of offences, including making false statements in offer documents, false accounting, and theft by a person in a special relationship. Corruption in finance companies causes significant losses to many individuals. The Bridgecorp group collapse in 2007 left NZ$460 million outstanding, representing 14,500 investors. The Hanover Finance collapse in 2008 left 13,000 investors with losses totalling NZ$465 million. These are just two of the 66 finance company collapses reported in New Zealand since 2006.
CORRUPTION AND WEALTH
Real GDP per capita has been described as "the most important determinant of corruption." Research has found that as a country's wealth increases, corruption decreases. New Zealand's corruption ranking challenges this finding, as New Zealand typically falls outside the top 20 countries in terms of GDP per capita (based on purchasing power parity). For example, the IMF place New Zealand's GDP per capita at 31 out of 183 countries and the Social Progress Index positions New Zealand's GDP per capita at 21 out of 133 countries. Australia ranks 16/183 and 11/133 under the same measures.

It is problematic to attempt to explain New Zealand's low levels of corruption by pointing to its wealth: by the same rationale we would expect Australia to be less corrupt than New Zealand when it is reported consistently to be more corrupt.

Other determinants of corruption include inflation (periods of high inflation are linked to increased corruption), and development (more developed economies have lower levels). This second point may be somewhat circular, as it is widely understood that corruption hinders growth. The OECD has stated that "Corruption is one of the main obstacles to sustainable economic, political and social development, for developing, emerging and developed economies alike."

WHEN IS A BRIBE A "FACILITATION PAYMENT"?
Transparency International defines a bribe as "a favour or gift offered or given with the intention of influencing behaviour or opinions of the recipient." The OECD, however, classifies "facilitation payments" separately. Facilitation payments are made to expedite an outcome rather than to change it. While bribery is illegal in most countries, the legality of facilitation payments is jurisdiction-specific.

OECD publications suggest the cost of corruption is in excess of 5% of global GDP, or US$2.6 trillion. A significant portion of this figure (US$1 trillion) is made up of bribes.
NEW ZEALAND
In New Zealand, section 105C(3) of the Crimes Act 1961 covers bribery of foreign public officials. Under this legislation, payments to influence foreign public officials are not illegal if their purpose is “ensuring or expediting the performance by a foreign public official of a routine government action; and the value of the benefit is small.” The Income Tax Act 2007, section DB 45, provides for such payments to be tax deductible outside New Zealand if they are not illegal in the country where the funds are received and (using the same phrasing as the Crimes Act 1961), the payment is small, and is intended to ensure rather than change an outcome.

AUSTRALIA
In Australia, division 70.4 of the Criminal Code Act 1995 covers bribery of foreign public officials. This section provides a defence for facilitation payments where: the value of the benefit was minor; “the person’s conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature”; the conduct was documented; and the documents have been retained.

The Australian Federal Police have said the facilitation payment defence is currently being considered for repeal. Nonetheless, facilitation payments remain tax deductible in some situations. Section 26.52 of the Income Tax Assessment Act 1997 specifies that an amount is not a bribe (to a public foreign official) where the value of the benefit is minor and, using the same language as the Criminal Code Act 1995, the payment is made to ensure an outcome rather than to change it.

OECD publications suggest the COST OF CORRUPTION IS IN EXCESS OF 5% OF GLOBAL GDP, or US$2.6 trillion. A significant portion of this figure (US$1 trillion) is made up of bribes.
WHAT DO WE KNOW ABOUT CORRUPTION IN AUSTRALIA AND NEW ZEALAND?

It is widely believed that Australia and New Zealand have relatively low levels of corruption. New Zealand is perceived consistently to be less corrupt than Australia, but Australia is still seen as less corrupt than most other countries.

Rankings aside, levels of corruption are reported to be rising in both countries, and we are trading increasingly often with countries that are more corrupt than ours. The issue of corruption can no longer be dismissed. Even New Zealand, long regarded as one of the least corrupt countries in the world, is “not immune from the threats associated with bribery and corruption.”

Assuming we wish to maintain and potentially improve our reputations for honesty and integrity, we need to ask what we are doing about corruption. Is it enough?
What are we doing about corruption? Despite our strong international rankings, Australia and New Zealand have recently been called on to pay greater attention to corruption. For example, PwC argue:

New Zealand CEOs should be more cognisant when it comes to considering the risks associated with this type of economic crime. Not only are the numbers of reported occurrences increasing but, of the three economic crimes falling under government enforcement, almost half of our survey respondents (49%) perceived bribery and corruption as having the most severe impact on their corporate reputation.\(^5^4\)

This section considers how we are fighting corruption in Australia and New Zealand, and the methods being used in other countries.

**INSTITUTIONS**

The public sector institutions in New Zealand that are most involved in combatting corruption are the New Zealand Police and the Serious Fraud Office (SFO). New Zealand Police is the institution with primary responsibility for investigating fraud and corruption. Within the police, the Financial Intelligence Unit assists with the detection and investigation of serious financial offending (including money laundering and the financing of terrorism) by collecting and analysing information that is used by a range of other entities, such as Interpol, the Inland Revenue and the New Zealand Customs Service.

The SFO is responsible for the investigation and prosecution of complex or serious fraud. While it does not have a mandate to look for fraud, it does have mechanisms for active monitoring within the corporate environment. The SFO gives priority to cases of multi-victim fraud; fraud involving those in positions of trust, such as lawyers or accountants; matters of bribery and corruption; and cases that could significantly damage New Zealand’s reputation for fair and free financial markets.\(^5^5\)
Other New Zealand institutions purposed with combating fraud include the Financial Markets Authority (FMA), the Commerce Commission, the Office of the Auditor General, and Audit New Zealand.

There is no equivalent to the New Zealand SFO in Australia. Instead, corruption is investigated by state or territory police or the Australian Federal Police (AFP). The AFP investigate fraud and corruption against Commonwealth law, which applies nationwide. These are likely to be serious or complex cases. The state police prosecute fraud under local legislation. Some cases may involve breaches of both state and Commonwealth legislation.

The Australian Securities and Investment Commission (ASIC) administers and enforces laws relating to financial markets, financial services organisations and financial professionals.

Among the many other organisations that work to combat fraud in Australia (both public and private sector), are the Insurance Fraud Bureau of Australia, the Australian Cybercrime Online Reporting Network, and the Australian Prudential Regulatory Authority (APRA). The Commonwealth Fraud Control Framework outlines the Australian Government’s approach toward fraud control.

**TRANSPARENCY INTERNATIONAL “PILLARS”**
Under its National Integrity System, Transparency International describes the important “pillars” for a nation’s governance (see Figure 10). If the pillars are well formed and function as intended, corruption levels are likely to be lower. According to Transparency International’s assessments, all of these pillars function well in Australia and New Zealand.

**FIGURE 10: PILLARS OF NATIONAL INTEGRITY**

**LEGISLATIVE BRANCH OF GOVERNMENT**
- Public sector
- Ombudsman
- Political parties
- Anti-corruption agencies

**EXECUTIVE BRANCH OF GOVERNMENT**
- Law enforcement
- Media
- Audit institution
- Judiciary
- Business
- Civil society
- Electoral management body
TOOLS TO DETECT CORRUPTION
In general, academic research tends to agree that greater likelihood of detection is a stronger deterrent to non-compliant behaviour than increased severity of punishment. Where corruption is concerned, detection methods are directly related to prevention.59 Figure 11 shows survey results from 214 executives in the US and the UK, who reported on the measures their organisations had in place to detect and monitor bribery and corruption risk. The methods most frequently adopted were monitoring and internal audit, communication and training, whistle-blower mechanisms, and anti-bribery and corruption (AB&C) policies.

WHISTLE-BLOWING
Reports indicate that the most common method of detection for economic crime in Australia and New Zealand is whistle-blowing. A 2014 PwC survey of private sector organisations found that in Australia, 29% of organisations were detecting economic crime through tip-offs and formal whistle-blowing initiatives.60 The figure was even higher in New Zealand, where tip-offs and formal whistle-blowing initiatives detected 37% of discovered economic crime.61 Anonymous tip-off lines for reporting fraud and corruption are used in both the public and private sectors. For example, KPMG has an Ethics and Compliance Hotline, which is a mechanism for reporting illegal or unethical activity or improper conduct as outlined in the KPMG Code of Conduct. Insurance companies, banks and consumer organisations also provide tip-off lines. Perhaps unsurprisingly, organisations with whistle-blower hotlines reported more instances of fraud than those without.62

CODES OF ETHICS

It is inevitable that there will always be some individuals who will engage in corrupt behaviour. To minimise the risk, organisations can use mechanisms such as codes of conduct and codes of ethics to guide their members in knowing the behaviours that are expected and acceptable. However, as reported in our recent publication Why business ethics matter to your bottom line, just having a code of ethics is not enough. Organisations need to go further and create an environment that supports employees to make ethical decisions. In these environments, corruption is unlikely to thrive.

The argument is made that business needs to completely rethink the way we approach the management of business ethics. This situation is generated from increasing globalisation; the changing use of technologies in business; and the fallout from what is now known to be poor ethical decision-making playing a role in the Global Financial Crisis. Our publication argues that business ethics in Australia (and therefore presumably also in New Zealand) is less mature than other parts of the globe. Thus, what appears to be a reliance on the presence of a code of ethics, rather than a strong enforcement of the code of ethics, appears to dominate in Australia and New Zealand.

While professions such as accountancy and law have utilised written codes of ethics for decades, such codes have recently been applied across many other sectors. Codes of ethics exist for a number of reasons: they establish acceptable practices, outline approaches to managing both ethical dilemmas and unethical behaviour, and signal to stakeholders outside the organisation the standards of behaviour they may expect. Research suggests that employees of organisations with codes of ethics rate their companies more highly for ethical support and feel more satisfied with the outcomes of ethical dilemmas.

Research also suggests a link between financial performance and an increased emphasis on ethics. A study from the US reports that the 27% of the 500 largest public companies that committed to ethical behaviour toward their stakeholders, or who emphasised compliance with their code of conduct, had significantly improved financial performance compared to those that had not.

New Zealand has been criticised for paying comparatively less attention to codes of ethics than other countries. Transparency International claimed in 2010 that in New Zealand “few companies augment their [AB&C] policy with an adequate system to encourage a culture of compliance with anti-corruption policies.” They cited research carried out by CAER (Corporate Analysis, Enhanced Responsibility) in 2009 (see Figure 12), which showed that only 16% of NZX companies had a corporate ethics system that rated as advanced. “The bottom line of this research” Transparency International observes, “appears to be that many of New Zealand’s largest listed businesses don’t pass some fundamental best practice ethics tests.”

“THERE IS ALWAYS FRAUD. That is not a function of society being corrupt: that is a function of individuals being corrupt.”
Julie Read, Director and Chief Executive of the Serious Fraud Office, New Zealand
A CULTURE OF CORRUPTION
The culture of an organisation may be said to be corrupt if it either supports corrupt activity or fails to address corruption. One of the best-known examples in Australia is the case of the Australian Wheat Board (see Case Study 4). In this case, a culture of corruption created by the individuals in power at the time allowed the illegal activity to continue over a long period.

CASE STUDY 4
The Australian Wheat Board held a monopoly over Australian wheat exports and was the largest supplier of humanitarian goods to Iraq during the Oil-For-Food Programme. In the mid-2000s, the Australian Wheat Board was found to have been paying “kickbacks” to Saddam Hussein’s regime, in exchange for valuable wheat contracts. This contravened the United Nations sanctions that were in place at the time (including a financial and trade embargo), as well as Australian law and the OECD anti-bribery convention. A number of successful civil prosecutions were taken against individuals in response to the scandal. One civil case, taken by shareholders of the Australian Wheat Board, was settled for AUD$39.5 million in 2010.

The Australian Wheat Board case has become synonymous with corrupt corporate culture. Research has shown how the culture within the Australian Wheat Board created an environment where senior managers placed performance measures above the sanctions that were clearly established by the United Nations. Subsequent reviews of performance at the Australian Wheat Board clearly established the link between the culture at the organisation and the illegal activity: “The conduct of AWB and its officers was due to a failure in corporate culture.” The subsequent Cole report was damning of the organisation, stating: “The answer is a closed culture of superiority and impregnability, of dominance and self-importance. Legislation cannot destroy such a culture or create a satisfactory one. That is the task of boards and the management of companies. The starting point is an ethical base. At AWB the Board and management failed to create, instil or maintain a culture of ethical dealing.” (page xii).
ANTI-BRIBERY POLICIES

Transparency International has also found New Zealand companies to be wanting in their AB&C policies. Figure 13, taken from a report issued by Transparency International in 2010, compares the proportion of New Zealand companies that prohibit giving and receiving bribes to that in other countries. Less than half of NZX-listed companies had policies prohibiting bribery, ranking New Zealand below the UK, the US, Europe and Australia on this measure. The same report found that only 18% of New Zealand companies had policies on facilitation payments. New Zealand’s poor showing may perhaps be expected when the NZX listing rules do not require specific policies on bribery and corruption.

REGULATION

NEW ZEALAND

Perhaps the best-known legislation aimed at minimising fraud and corruption in New Zealand is the Protected Disclosures Act 2000, more commonly known as the whistle-blowing act. The protection offered under the legislation is that no civil, criminal or disciplinary proceedings may be taken against a person who makes a protected disclosure. Since the introduction of the Protected Disclosures Act there has been wider acknowledgement that employees should have the opportunity to report corrupt activity without potential repercussions.

The Organised Crime and Anti-corruption Legislation Bill was introduced to the New Zealand Parliament in June 2014. The objectives of the bill are:

- to ensure that law enforcement agencies have the power to deal with organised crime and corruption
- to improve New Zealand’s ability to collaborate with overseas agencies in combating organised crime and corruption.

Key measures introduced by the Bill include:

- the requirement for entities such as banks to report all international transfers above NZ$1,000 and all physical cash transactions above NZ$10,000 to the Financial Intelligence Unit within the New Zealand Police Department
- increased information sharing with other jurisdictions
- increasing penalties for bribery and corruption in the private sector, and
- updating the definition of crime involving dishonesty in the Crimes Act 1961 to ensure that those convicted of corruption offences cannot hold positions of trust in the community.

Other legislation with relevance to economic crime in New Zealand includes the Crimes Act 1961 (which is relevant to public sector corruption); the Secret Commissions Act 1910 (which relates to the giving and receiving of gifts or other forms of payment in exchange for the rewarding of contracts); the Commerce Act 1986 and the Financial Markets Conduct Act 2013.

AUSTRALIA

Legal commentators have observed that Australia has a plethora of regulatory tools for fighting corruption. Commonwealth legislation includes the Criminal Code Act 1995, which covers bribery of public officials, and the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010, which increased the penalties for bribery offences. Individuals may now be sentenced to up to 10 years in prison or a fine in excess of AUD$1 million for such offences, and companies a fine of up to AUD$17 million or three times the value of benefits obtained by the bribery, whichever is the greater.

INTERNATIONAL CONVENTIONS

Australia and New Zealand are both signatories to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The 41 countries that have signed up to the OECD Convention account for 80% of world exports. Both countries have also signed the United Nations Convention against Corruption, although New Zealand is one of only a few countries that have not yet ratified the United Nations Convention.

Signatories of the two conventions are required to have strong mechanisms in place to address bribery and corruption. Signatories to the OECD Convention must have legislation making bribery of foreign public officials a criminal offence. Obligations under the convention also extend to investigations and prosecutions.

These conventions, however, have been criticised by some as being “split between keen sleazebusters and countries like Russia and China.”

WHAT ARE OTHER COUNTRIES DOING?

Perhaps the most notable action to address corruption in recent times has been the introduction of the Bribery Act 2010 in the United Kingdom. This piece of legislation is widely cited as a game changer in setting the standard for corruption on a global basis. The Bribery Act, which has been in force since July 2011, departs from prior legislation in three key aspects:

- significant increases in the seriousness of penalties: unlimited fines, confiscation of property, disqualification of directors and up to 10 years in prison
- broad coverage: prosecutions can extend to those who have links to the United Kingdom, regardless of where the corrupt activity took place
- extension of criminal liability to organisations that fail to prevent bribery.
The Bribery Act is being credited for a significant increase in both public and private sector AB&C compliance programmes in the UK (from 57% to 86% of surveyed respondents in the period from 2009 to 2011). This increase is attributed to the potential liability for organisations that do not have robust AB&C policies and procedures in place.76 It is possible that the Bribery Act could result in prosecution for Australian or New Zealand individuals who make facilitation payments in the UK (see discussion page 20).

The equivalent legislation in the US is the Foreign Corrupt Practices Act 1977. While the US legislation doesn’t have the same reach as that in the UK, its objectives are similar in that it makes companies and officials criminally liable for bribery. Like the UK Act, the US legislation applies to those who are connected to the US, regardless of whether the corrupt activity takes place there. Penalties include substantial fines (up to US$100,000 for an individual or US$2 million for a company) and prison sentences of up to five years. Further penalties that may follow under the Foreign Corrupt Practices Act are the withdrawal of export approvals and exclusion from government contracts.77

ARE WE DOING ENOUGH?

Australia and New Zealand have both recently been criticised for what is perceived to be a lackadaisical approach to addressing corruption. Transparency International has been quick to comment on Australia’s slip in rankings in their corruption index. Australia’s Independent Broad-Based Anti-Corruption Commission was criticised for being “far too limited” in its scope, and the Independent Commission against Corruption received similar criticism for not being at a Commonwealth level.78 Nor does New Zealand escape censure, with Transparency International observing, “statistics indicate there are gaps in the way New Zealand companies are tackling bribery and corruption.”79

The OECD is more direct in their criticism of New Zealand, making the following comments on New Zealand’s introduction of the OECD Convention on Combating Bribery:

“While the Working Group welcomes New Zealand’s recent efforts to implement the Convention, it has serious concerns about the lack of enforcement of the foreign bribery offence. Since becoming a Party to the Convention in 2001, New Zealand has not prosecuted any foreign bribery cases. Only four foreign bribery allegations have surfaced. New Zealand opened its first investigations into two of these allegations in July 2013.”

It reiterates its earlier recommendation that New Zealand broaden its criteria for the liability of legal persons to allow for the effective prosecution of such entities for foreign bribery.

The low number of foreign bribery allegations raises concerns on the levels of awareness, reporting and detection. There are further concerns surrounding outdated perceptions that New Zealand individuals and companies do not engage in bribery may undermine detection efforts.80

Australia was chastised by the OECD in 2013 for failing to enforce, among other things, foreign bribery laws: “out of 28 foreign bribery referrals that have been received by the Australian Federal Police, 21 have been concluded without charges.”81 The same report recommended that New Zealand increase its efforts to investigate and prosecute foreign bribery.
Australia and New Zealand perform well on global measures, but are simultaneously criticised for a lack of action. In this final section of the report, we review a range of options that could be adopted in Australia and New Zealand to address corruption and protect our future reputations as honest countries in which to do business.
WILL REGULATION HELP?

Increasing regulation is unlikely to be the solution to corruption. Regulation is good for establishing the practices that are, and are not, acceptable in society. It is also good for communicating the consequences when unacceptable practices are discovered. It is less good in the prevention and detection phases. Nonetheless, regulation has a place in the toolkit to address corruption. Perhaps the best example is the introduction of the Bribery Act 2010 in the United Kingdom.

OPTIONS FOR THE WAY FORWARD

We need to be sending the message that we are taking the issue of corruption seriously in Australia and New Zealand. Below, we raise ten options for consideration: options with the potential to enhance our global reputations as countries with low levels of corruption.

1. INCREASE TRANSPARENCY IN AWARDING PUBLIC SECTOR CONTRACTS

The public sector is particularly vulnerable to accusations of bribery and corruption. Increased transparency can assist – particularly when it comes to the awarding of lucrative contracts. Actions such as disclosing bids once public sector contracts have been awarded will result in greater accountability in the contracting process.

2. NO PUBLIC SECTOR CONTRACTS FOR THOSE WITH PAST CONVICTIONS

Prohibit the awarding of public sector contracts to organisations, individuals, or their affiliates, where they have corruption or fraud convictions. Canada has adopted this approach, which has been discussed more widely for some time (for example, not awarding public sector contracts to organisations or individuals with tax debts) but is yet to receive traction in either Australia or New Zealand.

3. NO PUBLIC SECTOR CONTRACTS FOR COMPANIES WITHOUT CORRUPTION POLICIES

Require organisations bidding for public sector contracts to have effective integrity initiatives in place. The OECD provides good practice guidelines in relation to internal controls, ethics and compliance.

4. INCREASE USE OF ASSET CONFISCATION

While there is legislation that allows for asset confiscation in certain circumstances, there has been little visible appetite to follow through with this action. A working group set up by the G20 in 2010 has drawn up rules on seizing corrupt assets (and denying visas to corrupt officials).
How we move forward in the **FIGHT AGAINST CORRUPTION** needs to be prominently debated.

5. **ENCOURAGE AB&C POLICIES AND PRACTICES IN THE PRIVATE SECTOR**
   The key tools for detecting corruption include control of third parties, frequent compliance audits, forensic data analytics, clear corporate policy and training programmes.87

6. **REWARDS FOR WHISTLE-BLOWERS**
   We have mechanisms in place to support whistle-blowers when they disclose illegal activity. Should we go further and reward them? This practice has a formal term in the legal system: a writ of qui tam is where an individual helps with a prosecution and receives some proportion of either the penalty imposed, or any fraudulently obtained funds eventually collected. Some countries already offer rewards for tax whistle-blowing.

7. **BETTER CROSS-BORDER COOPERATION ON BRIBERY**
   The OECD recommends enhancing cross-border cooperation, particularly on foreign bribery investigations and prosecutions. We have already noted the criticism of both Australia and New Zealand for their failure to prosecute foreign bribery.

8. **HARSHER SANCTIONS, APPLIED MORE BROADLY**
   The OECD notes that “effective enforcement also goes hand in hand with effective, proportionate and dissuasive sanctions; in this regard, the range of sanctions available for foreign bribery in New Zealand may be insufficient.”88 The UK Bribery Act 2010 is a good example of how harsher sanctions, applied to a broader range of offenders, may assist with reducing corruption. It is also important that where sanctions exist, they are seen to be followed through.

9. **LIMIT TAX DEDUCTIBILITY OF “FACILITATION PAYMENTS”**
   There appears to be a fine line between what is a bribe (illegal) and what is a facilitation payment (legal). The fact that facilitation payments are tax deductible, provided that they are minor and not illegal in the country of receipt, sends the signal that they are acceptable.

10. **REQUIRE AB&C POLICIES IN NZX AND ASX LISTING RULINGS**
    Transparency International recommends including bribery and facilitation payment guidance into the NZX Corporate Governance Good Practice Code. This recommendation could also be extended to the ASX Corporate Governance Council. We could go even further and require all listed companies to have AB&C polices. The importance of having a concerted and cohesive effort to address corruption has been widely noted.89
CONCLUSION

Australia and New Zealand are not highly corrupt: at least, not yet. But we are trading increasingly often with countries more corrupt than our own, and we have been criticised by global bodies for our apparent lack of attention to corruption. This lack of attention may be responsible, at least in part, for low numbers of prosecutions and convictions.

We have no shortage of legislation, institutions, and frameworks tasked with addressing the issue of corruption. BUT ARE THESE TOOLS BEING USED? Are they STRONG ENOUGH TO TAKE ACTION when issues arise?

Australia and New Zealand have a – potentially small – window of opportunity to ensure that we keep our good reputations. How we move forward in the fight against corruption needs to be prominently debated, with a focus on improving communication of good AB&C policies (such as those outlined by the OECD); strengthening transparency in the public sector; increasing enforcement action where corruption is discovered; and expanding sanctions for corrupt activity.
CORRUPTION IS THE ENEMY OF DEVELOPMENT, and of good governance. It must be got rid of. Both the government and the people at large must come together to achieve this national objective.⁹⁰

PRATIBHA PATIL
FORMER PRESIDENT OF INDIA
ARE AUSTRALIA AND NEW ZEALAND CORRUPT?

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3. The receipt of an $8195 Montblanc pen by former New South Wales Premier Barry O’Farrell in relation to bids for major construction contracts in Sydney. The gift was not declared on the parliamentary register of interests as required.


11. Personal interview between Dr Lisa Marriott (Author), and Julie Read, Director and Chief Executive of the New Zealand Serious Fraud Office 14 November 2014


19. Dr Susan Hawley, Exporting Corruption; Privatization, Multinationals and Bribery; The Corner House, June 2000

20. Fraudulent trade practices are those “carried out as part of trade or commercial activity that are intended to deceive consumers, stakeholders or other interested parties” (e.g. false advertising). Illegal non-fraudulent trade practices are “acts intended to obtain financial gain or advantage through dishonest or unscrupulous means, not involving fraud” (e.g. selective supply of a product by a manufacturer to business entities operating in competition). Definitions from Australian Bureau of Statistics, Subdivision 093 Deceptive Business/Government Practices.


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