Rethinking the future of Parliament - Openness and Transparency in Government

“What is a government itself but the greatest of all reflections upon human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary” James Madison (1751-1836) 4th President of the USA

Introduction

The aim of this paper is to show how rethinking the future of Parliament in terms of openness and transparency can only happen by building a sense of expectation and commitment in favour of honesty, transparency, respect, and accountability in government.

Sadly, as the very low public engagement with the Open Government Partnership and declining voter turnout has shown, even before doing this, something needs to be done to rouse citizens out of their apathy and/or complacency about doing the things required to ensure the future of a strong, democratically-elected, government here.

New Zealand has historically been ranked as having the least corrupt public sector in the world. This reputation for high standards of accountable and transparent government has relied on many factors. Leading factors include a merit-based public service, an independent auditor general, a strong judiciary and a world class ombudsman.

In recent years, the New Zealand public sector has faced significant domestic and international challenges to its public integrity, a direct threat to its ranking as ‘least corrupt’ public sector in the world. This is illustrated by Transparency International’s 2013 Global Corruption Barometer’s finding that 3% of New Zealanders reported that they or someone in their household had paid a bribe to a public official within NZ in the previous year, and that 65% felt that corruption had increased in NZ in the previous two years.¹

By association, this decline in perceptions about the New Zealand public sector has an impact on its overall reputation, including that of the voluntary and private sector.

In order to meet the needs of future citizens, integrity and good governance are essential as they underpin government legitimacy and the freedoms, civil liberties and ability to participate in a democratic state.

Our reputation has unrealised potential to draw global interest to New Zealand. Building strong integrity systems creates a positive spiral for strengthening all organisations, be they public, private or voluntary sectors as well as financial markets and through this, building an economy.

¹ Transparency International’s 2013 Global Corruption Barometer results can be found at http://www.transparency.org/gcb2013
The mechanisms through which this can be achieved for Parliament are through a greater commitment from politicians to building resilient integrity systems to prevent corruption and increase transparency. The 2013 Transparency International New Zealand National Integrity System assessment provides the basis of the steps required to do just that. By responding to the recommendations of this and future NIS reports, future parliamentarians can be the catalyst for revitalising New Zealand’s reputation.

The ways of doing this nationally includes building resilient integrity systems, reviewing best practice around public funding and greater transparency around the finances of their political parties, respecting the role of the Public Sector to provide free and frank advice and by committing ambitiously to the Open Government Partnership.

Turning to international channels, our future parliamentarians can show their commitment by joining the Global Organisation of Politicians against Corruption (GOPAC), and not just ratifying\(^2\), but actively engaging with the United Nations Convention against Corruption (UNCAC).

By working to build strong integrity systems and accountable governance, a future New Zealand Parliament would be seeking to actively lead on best practice to ensure that our reputation as an open transparent public sector with low levels of corruption is sustainable and deserved. What follows is a blueprint for future parliamentarians that want to show leadership to change the direction of movement from increasingly serious attacks on our parliamentary democracy to building a system led by accountable and trusted governance.

### Building Resilient Integrity Systems

For many of the years since the inception of the Transparency International Corruption Perception Index, New Zealand has held the honoured place of first or first equal on the global anti-corruption perceptions index. For us to hold our place as the world leader on this will take effort, commitment and a true desire to lead the world on integrity systems from our future parliamentarians.

New Zealand has the honour of being the birthplace of Jeremy Pope, the first managing director of Transparency International, the global anti-corruption and Integrity civil society watchdog. The National Integrity Systems (NIS) assessment methodology was developed by Jeremy to provide an evidence-based framework that anti-corruption organisations use to analyse both the extent and causes of corruption in a given country, as well as the effectiveness of national anti-corruption efforts to support integrity and promote public policies that are considered to be fair, effective, and sustainable.

Transparency International New Zealand (TINZ)\(^3\) is the local chapter of this global organisation - TINZ works voluntarily as a civil society watchdog to actively promote the

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\(^2\) It should be noted that at the time of writing this paper (early September 2015) NZ was still one of the few countries not to have ratified UNCAC.

\(^3\) [http://www.transparency.org.nz](http://www.transparency.org.nz)
highest levels of transparency, accountability, integrity and public participation in government and civil society in New Zealand and the Pacific Islands.

TINZ expanded on Pope’s methodology in its 2013 NIS, called as a result, “The Integrity Plus” 2013 New Zealand National Integrity System (NIS) Assessment⁴. As well as being an independent and in-depth assessment of the quality of transparency and accountability in the public sector, it also gathered evidence across many references about civil society, local government and the private sector about the integrity of New Zealand's overall governance systems.

The NIS takes stock of the integrity with which entrusted authority is exercised in New Zealand. The working definition of an NIS is “the institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power”.

Beyond restraining the abuse of power, integrity systems should also be designed to ensure power is exercised in a manner that is true to the values, purposes, and duties for which that power is entrusted to or held by institutions and individual office-holders, whether in the public sector, the private sector, or civil society organisations.

The core structure of the NIS assessment is the research about the 12 ‘pillars’ that constitute New Zealand’s national integrity system. The NIS examines the principal governance systems of the Legislature (Parliament), the Executive (Cabinet), the Judiciary, the Public Sector, Law Enforcement and Anti-corruption Agencies, the Electoral Commission, the Ombudsman, the Auditor General’s office, Political parties, the Media, Civil Society and Business to assess whether they function well and are in balance with each other and thus help to guard against the abuse of power. It extends also to the societal foundations that support the pillars including the political, social, cultural and economic foundations. An enhancement for the NZ NIS was the addition of the environmental governance and Tiriti o Waitangi foundations. The New Zealand NIS is illustrated in the standard “temple diagram” below.

Local government was also assessed, though its score was subsumed in the larger public sector score. Each of the individual pillars of the NIS were assessed and scored against a set of indicators that measure each pillar’s capacity, governance, and role within the system.

⁴ http://www.transparency.org.nz/National-Integrity-System-Assessment
The core message of the report is that stronger action to promote and protect integrity in New Zealand is overdue. There are serious concerns over the interface between the political executive and public officials. There is evidence of an erosion of the convention that public servants provide the government of the day with free and frank advice, an apparent weakening over the last decade or so of the quality of policy advice that public servants provide to ministers and public concern about perceived non-merit-based public appointments.

There are also problems at the interface between central and local government. These include concerns about intervention by central government in the decision-making authority of local government bodies, and systemic weaknesses in the design and implementation of regulations.

Based on the evidence collected by the NIS assessment, seven primary recommendations were prioritised to represent seven key areas for change. The seven primary recommendations (supported by more detailed recommendations) are:

NIS Recommendation 1: Ministry of Justice to lead the development of a comprehensive National Anticorruption Strategy, developed in partnership with civil society and the business community, combined with rapid ratification of the UN Convention against Corruption (UNCAC).


NIS Recommendation 3: Transparency and integrity need to be strengthened in a range of priority areas:

   a Parliament
   b Political executive
   c Local government

NIS Recommendation 4: The integrity of the permanent public sector, and its role in promoting integrity should be strengthened in a range of priority areas:

   a Strengthen transparency and accountability for public procurement.
   b Strengthen integrity and accountability systems in public sector entity operations
   c Strengthen accountability in public policy processes

NIS Recommendation 5: Support, reinforce and improve the roles of key independent integrity agencies and bodies:

   a Electoral management
   b Judiciary
   c The Ombudsmen
NIS Recommendation 6: The business community, the media, and non-government organisations should take a much more pro-active role in strengthening integrity systems and addressing the risks of corruption as ‘must-have’ features of good governance.

NIS Recommendation 7: Public sector agencies should conduct further assessments and research to strengthen integrity systems over time.

Of these seven high level recommendations, the first five are all integral to the work that can be done by future (and current!) parliamentarians to build resilient integrity systems in New Zealand and to secure our place at the top of the anti-corruption index – the word perceptions has been left out on purpose. As we move towards the future this index continues to be populated with evidence, making it less about perceptions and more about data and facts. Future parliamentarians need to ensure we use the facts and data to take the steps required to maintain strong integrity systems and in this way, back up our reputation through assiduous practice aimed to be transparent and accountable with strong integrity systems led by good governance.

A major outstanding issue is New Zealand’s non-ratification of UNCAC. With almost every country in the world having ratified UNCAC, New Zealand stands out like a black eye, especially given international perceptions that it addresses corruption better than other countries. Since 2003 when the United National Convention against Corruption was widely adopted, New Zealand Parliamentarians have supported their non-ratification on the basis that they only support conventions when all their laws are consistent with requirements (unlike Australia who ratified UNCAC on the basis of what was planned, as to what laws currently exist). Only with the changes in the Crimes Act were Parliamentarians willing to sign up. As this is finally expected to happen in September 2015 it is (perhaps rather optimistically) hoped that ratifying UNCAC will be a non-issue for future parliamentarians.

The important role of future parliamentarians will be to ensure that UNCAC is fully implemented, and that the proper gathering and analysis of data is prioritised and shared to guide capacity development efforts and inform policy decisions, implementation, and the monitoring of progress. Countries that ratify UNCAC are expected to go through a review every five years. By ratifying UNCAC and embracing the comprehensive review, the New Zealand Parliament puts itself in a stronger position to learn from the UN about what is working for other governments and what isn’t.

I hope by the time I present this paper, the Organised Crimes and Anti-corruption Bill will have been passed by Parliament and the New Zealand government is well on its way to ratify UNCAC. Compared with this evidence of progress, the other recommendations are literally still sitting in the starting gate.

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Committing to the spirit of the Open Government Partnership

NIS Recommendation 2
The government should develop, after wide public consultation, an ambitious cross-government New Zealand Action Plan for the international Open Government Partnership.

The Open Government Partnership (OGP) is a forum of countries working to ensure that member governments are more open, accountable and responsive to citizens. The OGP was launched in September 2011 by the USA and Brazil and aims to ‘secure concrete commitments from government to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen government.’ It is a multi-stakeholder initiative involving governments, NGOs and business. In September 2013, the Prime Minister announced New Zealand’s intention to join the Open Government Partnership (OGP).

As part of New Zealand’s membership of the OGP, we are required to demonstrate how the government will implement transparency, accountability, technology and innovation and civil society participation in government.

New Zealand’s OGP output to date compares unfavourably with other OGP members. One comparative measure that is applied is around the number of commitments agreed, with the commitments coming from the wider public and representing new initiatives, rather than existing government initiatives. New Zealand has 4 commitments, all but one (addressing the recommendations in TINZ’s NIS) have been commitments to government-generated commitments. In contrast, the average number of commitments in the Action Plans published by the first 41 counties was 22, with a median of 19 commitments. Although commitments vary quite widely across Action Plans, there is no doubt that, in terms of the number of commitments New Zealand’s Action Plan is, at the present lacking in ambition.

Another weakness of the current action plan is that, three of the current commitments are pre-existing, on-going initiatives. For example, two of these, Result 10 of the Better Public Service (BPS) Results programme (the public can easily complete their transactions with government in a digital environment), and the ICT Strategy and Action Plan to 2017 are not only pre-existing, but they have been around a long time and were developed mainly by networks of public servants with little outside feedback.

The fourth commitment, the Kia Tutahi (Standing Together) Relationship Accord, is an accord between the government and civil society. But as the Action Plan itself points out, this accord only ticks two of the seven boxes for the exercise. Hence other initiatives are necessary to fully meet the criteria set out by the international OGP body.
Another weakness noted by the OGP Support Unit is the lack of specificity on the activities, products and timelines of these pre-existing commitments makes it hard to evaluate what progress has been made and when desired outcomes will be achieved.

The one commitment in the 2015 version of the OGP Action Plan that is potentially ambitious is to consider and respond to the recommendations in TINZ’s 2013 National Integrity System (NIS) Assessment report. The government has indicated it will work with TINZ and other stakeholders to address the NIS recommendations over the next two years as the Action Plan develops over time. Again, a test of this will be whether in the first instance, the recommendations can be used to engage the wider public to translate them into actions that commit those who will undertake the actions with clarity about timelines and what outcomes are targeted,

Future parliamentarians need to be wary of squandering opportunities such as the OGP by demonstrating that they are serious about New Zealand having a truly open and accountable government. As Suzanne Snively, Chair of TINZ notes “The grand challenge of the Open Government Partnership is for governments to reengage with the people in an open and democratic way. It offers a precious opportunity to cement New Zealand’s place in the front rank of the world’s democracies.”

Current parliamentarians offered an opportunity like this need to demonstrate committed political leadership and interest. With NZ’s Action Plan at the bottom of the 65 member countries in the OGP in terms of its level of ambition, there is a lot of work required if future parliamentarians are going to sustain our democracy through meeting the expectations articulated by citizens.

Over all, there is a need for current parliamentarians to add new and bold measures to the Action Plan. There is a serious need for initiatives that deal with increased transparency and increased civic participation. Only then will they leave a legacy that can empower future parliamentarians.

Note how our (still high) rankings on some of the international measures of integrity, openness and transparency have slipped. For example:

- In 2013 New Zealand ranked first equal out of 182 countries in Transparency International’s 2013 Corruptions Perceptions Index with a score of 91, in 2014 New Zealand became second, still scoring 91 while Denmark moved ahead with a score of 92.
- Coming first out of 132 countries on the 2013 Social Progress Index, in 2015 New Zealand is fifth.
- Sitting at fourth out of 77 countries in the 2013 Global Open Data Barometer, New Zealand is fifth in 2015.

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This is not good enough – New Zealand simply cannot afford to take its status for granted. Work is required now to wake up our Parliamentarians to the fact that our reputation is slipping away. We must ensure that in the rapidly changing New Zealand (and global) environment, that current parliamentarians equip future parliamentarians to maintain and improve New Zealand’s reputation. An open and corruption-free government it is vital to build on our successes and to be responsive to the challenge to do even better.

As the Open Government Partnership New Zealand Action Plan states:

“Stakeholders were interested in understanding how Government made its decisions rather than simply a focus on releasing data on government agency websites. In addition, the public consultation process is not as open, transparent or inclusive as it could be.”

The OGP is based around the principal that by Government working in partnership with civil society at the start of the policy cycle (rather than at the end of the process), there is potential for citizens to see demonstration of government’s responsiveness and for Government to see the rewards of being even more open and transparent. A framework for routine public participation in policy development is required.

Another OGP requirement is for the Action Plan to be innovative. Stakeholders felt working on the National Integrity System assessment recommendations in collaboration with civil society provided the opportunity for innovative solutions.

This leads us to the next NIS recommendation.

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Who is guarding the guardians?

NIS Recommendation 3: Transparency and integrity need to be strengthened in a range of priority areas:

- Parliament
- Political executive
- Local government

There are weaknesses in parliamentary oversight of the executive. These include the use of urgency to pass controversial legislation, and the lack of specialist expertise and committees to hold the executive to account.

Current parliamentarians can find useful insights in the NIS about priority actions to strengthen parliamentary oversight of the executive, including through a review by Parliament of its select committee structure and consideration of establishing new cross-cutting specialist committees, for public accounts, for treaties, and for human rights, providing select committees with more independent analytical support.

Other measures need to be taken such as establishing an agreed cross party Code of Conduct for MPs and introducing systems that can provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on, and scrutinise lobbying of MPs and Ministers. While increased transparency and accountability are important outcomes on their own, they also provide a basis for parliamentarians to acquire greater knowledge over time about the more effective policy when effectiveness is measured in terms of improving the lives of their citizens.

There is a growing body of literature that shows that reductions in corruption support the reduction of poverty and increase in security and stability for a nation’s people.

By introducing a centralised approach to the systematic proactive release of official information, including Cabinet papers, by all public entities future parliamentarians would be ensuring that New Zealanders had access to all decisions being made on their behalf about their future.

New Zealand’s hard won reputation as one of the least corrupt countries in the world is at risk. Other countries look to New Zealand for leadership in good business conduct and transparency is one of the central pillars of that behaviour. In order to maintain the success we have established as a leader in the fight against corruption future parliamentarians must lead the strengthening of these pillars, even if at times it means agreeing to checks and balances they find uncomfortable. A shying away from openness and integrity will have no place for the future parliamentarian. Backroom deals just undermine democratic process and demanding accountability for this kind of deal is exactly why we have come together to hold power to account.
One of the most effective ways of ensuring accountability is by having a strong, independent public service where free and frank advice is embraced both public officials and by their Ministers.

**Respecting the role of an independent Public Sector**

NIS Recommendation 4: The integrity of the permanent public sector, and its role in promoting integrity should be strengthened in a range of priority areas:

- a Strengthen transparency and accountability for public procurement
- b Strengthen integrity and accountability systems in public sector entity operations
- c Strengthen accountability in public policy processes

Phil O’Reilly, Chief Executive of Business New Zealand said prior to the launch of the TINZ NIS Assessment in 2012, that “New Zealand’s high trust public sector is its greatest competitive advantage⁸”. Who would have thought integrity in public servants could do that for New Zealand’s economic prospects?

An independent public service where all appointments are merit based, is an essential component of an active participatory democracy. It is best-placed to support the democratically elected government of the day with free and frank advice, and protecting NZ citizens from the excessive use of Executive power.

An independent review of the respective responsibilities of Cabinet, Ministers and public servants, with a view to clarifying the conventions concerning the duty of, and capacity for, free and frank advice between the political executive and the public sector is recommended by the NIS. For the purposes of future parliamentarians, the wider public has an opportunity through the OGP to ask current parliamentarians to conduct a self-review of their relationship with the public service.

Evidence suggests that the needs of future parliamentarians and their constituents will be more effectively carried out by a public service with strong institutional memory, capacity and capability to serve Ministers and the public efficiently with evidence based high quality policy advice and effective administration.

One of the most basic of all principles underpinning the public service must be neutrality and therefore a future parliamentarian would steer clear of ever interfering with the appointments process for public servants.

Fundamental to this is the understanding that the core public service must implement the programme of the democratically elected government of the day. That is their role and function. That is their constitutional place. A Minister may choose to ignore their free and frank advice once heard but then must be willing to defend their decision to the public.

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The best public servants are the courageous ones, because they are aware of how valuable the ability to give free and frank advice is to our democracy. Current and future parliamentarians are empowered by the people to be accountable for valuable public services such as education and well-being. Modern organisations of the size of government departments expect their leaders to be well educated and to be continuously engaged in learning and professional development. A major learning of senior management is that employees are more productive in positive constructive environments where authoritarian and bullying behaviours towards public servants are unacceptable.

Electoral management and the Office of the Ombudsman

NIS Recommendation 5: Support, reinforce and improve the roles of key independent integrity agencies and bodies:

a Electoral management
b Judiciary
c The Ombudsmen

As Murray Petrie notes in The TINZ National Integrity System Assessment 2013: From findings to recommendations and on to implementation⁹.

“Serious problems exist at the interface between political party financing and the public purse. The combination of continuing concerns about the transparency of political party financing and of donations to individual politicians, a long-term decline in the number of New Zealanders belonging to political parties (reducing their legitimacy and increasing their reliance on private donations and public funding), and a lack of full transparency of public funding of the parliamentary wings of the parties, interacts with the refusal to extend the coverage of the Official Information Act 1982 to include the administration of Parliament.”

One of the most problematic features of our current electoral management involves political finance – how politicians raise and spend their funds, including indirect state funding provided opaquely to the parties in Parliament, and how the state attempts to regulate their activities. This problem is not unique to New Zealand – it is shared as the most pressing issue by almost all democracies. Current parliamentarians with the wisdom to address this issue, have the potential to refer to other countries to understand possible solutions and to work together cross political parties to find solutions. With political parties sufficiently resourced to represent diverse segments of society, future parliamentarians will be better equipped to carry out their role effectively representing their diverse constituencies.

Currently political legitimacy in New Zealand is a major problem with declining membership in political parties and growing distrust. The growing influence of money on politics globally is probably one of the greatest threats to democracy and freedom. Historically a lot of effort

has gone in to limiting the worst excesses of this threat. To quote the 1986 Royal Commission on the Electoral System, it is not fair "if some in the community use their relative wealth to exercise disproportionate influence in determining who is to govern and what policies are to be pursued"\(^\text{10}\).

Anonymous donations and donations made by non-citizens from overseas are fundamentally corrosive to our democratic system. Future Parliamentarians should not tolerate this lack of transparency around funding and the possibility of undue influence from secret funders. The same applies to those campaigning on behalf of political parties. It is important that there is transparency around who is involved in funding campaigns (and how much they are spending) as secret campaigners cannot be held accountable for their activities.

The Sustainable Governance Indicators Network puts this question to governments:

"To what extent is private and public party financing and electoral campaign financing transparent, effectively monitored and in case of infringement of rules subject to proportionate and dissuasive sanction?"\(^\text{11}\)

In answering this question, Belgium scores the highest mark – current parliamentarians wanting the best for New Zealand should be asking how we can achieve the same or better so that our future parliamentarians are better equipped to lead a larger population with a growing number of ethnicities.

All of Belgium’s political parties are mainly financed by the state and private contributions to political parties are limited. Electoral campaigns are subject to tight regulations on allowed spending. After the election, campaigns are scrutinized in detail. Any infringements are acted on either by the candidate losing the right to be elected, or more commonly financial sanctions are implemented. Tight financial control is also exerted during non-electoral periods.

By looking to examples like this of current best practice, and improving further on them current parliamentarians can prepare the way to lead in the area political party financial and electoral transparency.

**The role of the Office of the Ombudsman in future parliaments**

There are several ways in which future parliamentarians could improve upon the work of their predecessors in terms of transparency and open government. The first would be for the current parliamentarians to take a leadership role so that the wider public service embraces the open provision of public information and to ensure that the Office of the Ombudsman is well supported both financially and in terms of staffing so future parliamentarians can meet the demands of the public in a timely manner.


Secondly to increase the reach of the Office of the Ombudsman to cover parliamentarian’s information, and its ability to sanction Ministers who do not comply with the Official Information Act (OIA). The OIA and the Office of the Ombudsman are essential components of our democratic apparatus keeping New Zealand relatively free from corruption and the excessive application of power and is a powerful tool for increasing the legitimacy of governments if well supported.

Global Organisation of Politicians against Corruption (GOPAC)

Surveys of public trust in professions often rank parliamentarians among the least trustworthy. Whether this reflects higher standards for people seeking public office or not, such lack of trust seriously undermines the capacity of parliamentarians to effectively carry out their duties related to corruption prevention.

By joining the Global Organisation of Politicians against Corruption12 (GOPAC) future parliamentarians can work together to address this perception.

GOPAC is an international network of parliamentarians founded in October 2002 dedicated to good governance and the engagement of Parliamentarians in combating corruption throughout the world. Since its inception, GOPAC has provided information and analysis, established international benchmarks, and improved public awareness through a combination of global pressure and national action.

It is unique in that it is the only international network of parliamentarians focused solely on combating corruption. Its members represent more than 50 countries in all regions of the world. They are current or former legislators or legislators who have been denied their right to take office. Their collaboration is non-partisan.

GOPAC’s programming model uses Global Task Forces (GTF) to promote agendas identified by membership through a regionally representative group of parliamentarians that champion each topic. The GOPAC Board and Global Secretariat support GTFs with handbooks, workshops and capacity building among parliamentarians worldwide. Through its GTFs GOPAC can support the introduction of legislative and oversight changes in national parliaments to control corruption, promote good governance and hold the Executive more accountable to the people. Examples of current GTFs are Anti-Money Laundering, United Nations Convention against Corruption (UNCAC), Parliamentary Oversight, Parliamentary Ethics and Conduct and the Participation of Society.

The vision is to achieve accountability and transparency through effective anti-corruption mechanisms and inclusive participation and cooperation between parliamentarians, government and civil society. To achieve this vision, GOPAC’s mission is to assist and support parliamentarians in their advocacy and legislation to make governments accountable and transparent.

12 http://gopacnetwork.org/overview/
In conclusion

It is clear from the above that there is much work for our current parliamentarians to do to prepare the ground for our future parliamentarians to govern. But they can do this with the support of New Zealanders who are proud of our history of leading on issues – from signing te Tiriti o Waitangi, being the first country to give woman the vote, the country that said no to nuclear powered ships and by refusing to tolerate apartheid in South Africa.

Should they shy away from the challenge of increasing transparency, integrity and good governance in New Zealand, or should they look back at New Zealand’s proud history as a world leader on matters of integrity and be determined to make it a part of our proud future in their role as parliamentarians? I for one know what I will be advocating for now so that I can vote for a future parliamentarian who is prepared for the complex problems that the future will bring.
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