

# **Part 1. Collation of public submissions received for New Zealand's Fourth National Action Plan draft (November - December 2022)**

- IAP2 2-5
- Blind Low Vision NZ 6-7
- Amazon Web Services 8-9
- Citizens Advice Bureau 10-11
- Grey Power 12-14
- New Zealand Council for Civil Liberties 15-37
- OGP International Support Unit 38-40
- Environment and Conservation Organisations of NZ Inc 41-42
- Chief Ombudsman 32-48
- Taxpayers' Union 49-51

12 December 2022

Open Government Partnership Team  
Te Kawa Mataaho Public Service Commission  
P O Box 329  
Wellington 6140

DELIVERED BY EMAIL: ogpnz@publicservice.govt.nz

Dear Open Government Partnership Team

### DRAFT - New Zealand's Fourth National Action Plan 2023 - 2024

The International Association for Public Participation Australasia would like to take this opportunity to acknowledge and congratulate Te Kāwanatanga o Aotearoa (New Zealand Government) for the draft of New Zealand's Fourth National Action Plan 2023 – 2024.

This is a significant piece of work, IAP2 Australasia congratulate you on your commitment to public participation as the first of the four key themes that have been prioritised. Additionally, we thank you for applying and acknowledging the IAP2 principles and spectrum, which are widely used and globally recognised.

#### The Commitments

IAP2A continues to support this kaupapa to strengthen public participation in New Zealand and shares further tools, resources and thoughts that could be considered useful as the practice of engagement evolves in a post-Covid world.

##### Commitment 1 – Adopt a community engagement tool

- **Engagement Methods Tool:** a free online tool for IAP2 Australasia members, guides you through the engagement method principles, preparation and delivery for both virtual and in-person environments, as well as any tips or traps you need to be aware of. It helps you to bring people together, share information, collect and compile feedback, and ultimately, make better decisions.
- **Community of Practice:** IAP2 Australasia has almost 13,000 members with 10% of them in New Zealand, and three of our current directors live and work and actively contribute as engagement professionals in New Zealand. They could be a useful resource for the proposed Community of Practice and are happy to be involved.
- **Tools and resources:** the IAP2 Australasia website is rich in resources, including:
  - Case studies, including from the Core Value Awards;
  - Research and white papers;

- Practice notes; and
- Six resource hubs
  - Virtual engagement
  - Diversity and inclusion
  - Natural disasters
  - Infrastructure
  - Local Government
  - COVID-19

#### **Commitment 2 – Research deliberative processes for community engagement**

IAP2 Australasia has a strong commitment to research that strengthens and advances engagement practice and outcomes and this could be an area of shared interest.

Additionally, a member recently received an IAP2 Core Values Award for their research project '*The Value of Deliberative Democracy*'. Their six-year longitudinal study to understand the impact of deliberative experience on participants; support continuous learning and advancement in the field; and create an evidence base around the value of investing in deliberative engagement processes, can be used to support advocacy, education and used as a platform for conversations with decision-makers.

Please do let us know if you would like to discuss either of these matters further.

#### **Other items of interest**

- We have been hosting a series of local '[Hidden Gems of Engagement](#)' events with engagement practitioners across the motu and will be holding an [NZ Symposium](#) at Te Papa in Wellington in March 2023
- We will be launching our new, updated [learning model, curriculum and training offering](#) in early 2023
- We are committed to develop our [post-nominal](#), professional recognition program to lift professional levels
- Recently at the **IAP2 Australasian Conference** in Melbourne we announced our **Core Values Award Winners** – Far North District Council's Te Hiku o te Ika project won the Community Development, Project of the Year and International Project of the Year! It's a great example of the innovative work that takes place in Aotearoa – it focused on empowering local community to deliver initiatives via local businesses.
- IAP2 Australasia are committed to best practice Māori engagement in Aotearoa - we have been working on an organisational-level commitment and developed a draft **Māori Strategy**, we acknowledge that at a practice level we need to adapt our engagement processes to be inclusive and reflect Māori perspectives and cultural values. We plan to commence work with the NZ engagement community, and specialised iwi engagement advisors, as to how we progress with this initiative. We are working within the framework of both Te Arawhiti's Individual and Organisational Capability Components that aim to support a significant culture change across New Zealand's public service to strengthen and support Māori Crown relations.

### **Call to action for authentic engagement**

IAP2 Australasia as the peak body for engagement professionals, representing almost 13,000 members, calls for that promise to become a commitment to ensuring that authentic engagement remains an integral component of government decision-making, and is embedded into policy and regulatory frameworks.

### **Minimise social risk through engagement**

Conducting quality engagement provides:

- Communities, including Māori, the opportunity to input into projects providing valuable local knowledge
- the government with a channel to promote and increase understanding of its agenda;
- an important strategy in minimising social and political risk; and
- simply it provides best practice for the long-term reputation and legacy of being good stewards of public spend.

### **IAP2 Australasia policy position**

As the peak body for the community and stakeholder engagement sector, IAP2 Australasia, believes that engagement, when done well, improves environmental, social, and governance outcomes and increases trust in the democratic process.

Our three calls to action are:

1. Ensure authentic engagement;
2. Demonstrate a commitment to social accountability; and
3. Improve environmental, social, and governance outcomes.

### **In closing**

IAP2 Australasia calls for and encourages Te Kāwanatanga o Aotearoa to make a commitment to ensuring that authentic engagement remains an integral component of legislative and policy decision-making, improving environmental, social, and governance outcomes.

If you have any further questions, please do feel free to contact me directly using the details provided below.

Yours sincerely



**Marion Short**

CEO – IAP2 Australasia

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## About IAP2 Australasia

The International Association for Public Participation (IAP2) is the leading public participation organisation globally which seeks to promote and improve the practice of community and stakeholder engagement.

As an international leader in public participation, IAP2 has developed tools that are widely used and acknowledged. These are the **IAP2 Core Values for Public Participation** for use in the development and implementation of public participation processes; and the **IAP2 Spectrum** which assists with the selection of the level of participation that defines the public's role in any community engagement program. The Spectrum is widely used and is quoted in most community engagement manuals. Additionally, there is the **Quality Assurance Standard for Community and Stakeholder Engagement**, which is recognised as the international standard for public participation practice.

IAP2 Australasia has almost 13,000 members throughout Australia and New Zealand – and is committed to advancing the practice of community and stakeholder engagement through education, advocacy and building partnerships.

## Policy position

As the peak body for the community and stakeholder engagement sector, IAP2 Australasia, believes that engagement, when done well, improves environmental, social, and governance outcomes and increases trust in the democratic process.

We advocate for all communities to be authentically engaged in decisions that affect them through education and increasing awareness of authentic engagement and all its benefits, in alignment with the IAP2 Quality Assurance Standard for Community and Stakeholder Engagement.

Authentic engagement is founded on the IAP2 Core Values and recognises the six principles included in the UN Human Rights Council Guidelines on the effective implementation on the right to participate in public affairs;

- Enabling environment
- Safety
- Equality
- Empowerment
- Openness
- Remedies

## The evidence for engagement

- Better functioning cities and towns could deliver a \$29B increase in GDP in the long term.  
*Source: The Australian Infrastructure Audit 2019*
- Community opposition has contributed to the delay, cancellation or mothballing of more than \$20B of infrastructure projects in the last decade.  
*Source: The Australian Infrastructure Audit 2019*
- 80% of Australians indicate it is important that government considers the views of the community when planning of investing in major infrastructure  
*Source: The Australian Infrastructure Audit 2019*
- 82% of businesses said “communicating and engaging with stakeholders openly was seen as the most critical factor for building trust”  
*Source: Creating value and balancing stakeholder needs (KPMG and AICD survey – 2019)*
- License to operate is the No. 1 ranked risk – 2 years in a row.  
*Source: Top 10 Business Risks and Opportunities – 2020 (EY)*



8 December 2022

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## **Blind Low Vision NZ feedback on New Zealand's Fourth Open Government Partnership National Action Plan.**

Tēnā koutou katoa

Blind Low Vision NZ welcomes the opportunity to provide feedback on New Zealand's Fourth Open Government Partnership National Action Plan.

### **About Blind Low Vision NZ**

Blind Low Vision NZ is the operating name of the Royal New Zealand Foundation of the Blind, an incorporated charitable society under the Incorporated Societies Act 1908. We are motivated as a 'for purpose' organisation. Our community includes those individuals who are blind, deafblind, have low vision or may have a print disability. Blind Low Vision NZ's mission is to empower New Zealanders who are blind, deafblind or have low vision to live the life they choose. We have approximately 15,500 clients but we know around 180,000 Kiwis are blind, deafblind or have low vision and we are forecasting these numbers will increase to 225,000 by 2028.

Our services include providing vision loss rehabilitation, equipment and training to continue reading and communicating, and services that facilitate mobility, socialisation, recreation, education and employment.

### **Blind Low Vision NZ Feedback**

Blind Low Vision NZ fully supports Commitment 3. To establish an integrated, multi-channel approach to public service delivery and support which meet the diverse needs of all the people of Aotearoa and ensures access for all to public services and support.

When establishing the integrated multi-channel approach to public service delivery, Blind Low Vision NZ reminds the Public Service to take account of the 180,000 New Zealanders with print disabilities.

Public service delivery must follow the guidelines set out by the trans-Tasman Round Table on Information Access for People with Print Disabilities. The Round Table

guidelines were developed for the production of accessible formats, including audio, braille, large print, e-text and tactile graphics. These guidelines should be used by anyone producing alternate formats to ensure quality and usability for people with a print disability. For further information contact Blind Low Vision NZ, 0800 24 33 33.

Previous Open Government Action Plans have contained commitments that have not been supported by Government with the funding needed to do the work. This has led to either hopelessly under-resourced commitment implementation work, or forced departments to resource the work by taking money from elsewhere in their budget (which they resent).

Blind Low Vision NZ note that the Department for Internal Affairs (DIA) has been allocated to lead the commitment on multiple channels for service delivery. To ensure effective delivery of this commitment, Blind Low Vision NZ asks that specific funding is allocated to the project by DIA through a budget bid for Budget 2023.

Nāku noa, nā

Dianne Rogers  
General Manager, Policy and Advocacy  
Blind Low Vision NZ  
9(2)(a) privacy [redacted]  
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12 December 2022

**Re: Comments to New Zealand's Open Government Partnership National Action Plan 4 - 2023-2024**

Dear Open Government Partnership Team

Amazon Web Services (AWS) New Zealand Limited would like to congratulate the Public Service Commission on producing its Open Government Partnership (OGP) National Action Plan 4. We look forward to having the opportunity to engage with the agencies who will lead each of the commitments over 2023-2024, and with the Public Services Commission in its role as overall coordinator of the action plan.

In light of the anticipated positive impact of these programmes and the importance to the general public of New Zealand we recommend that implementation of each of the 8 commitments be implemented in the same spirit of consultation and engagement as the OGP action plan process. We would appreciate invitation to comment on these 8 commitments once further opportunities for consultation become available.

We recommend that each lead agency should proactively seek public and industry collaboration on the implementation of their respective commitments, including through outreach to relevant industry bodies and industry leaders, to leverage the broader knowledge and resources available in New Zealand to support action plan implementation. For example, AWS would very much like to offer a cloud technology perspective and use cases/experiences on at least the following commitments, although not limited to these commitments only:

- Commitment 3 - Establish an integrated, multi-channel approach to public services and support (DIA): In addition to exploring additional multi-channel options, we believe it is also important for the technology industry to continue to evolve digital user interfaces that use human centred design practices to support access for all community members to improve inclusion significantly, as well as investment in skills development. In addition to improving digital channels, we believe there are significant opportunities to use technology to enhance other channels too.
- Commitment 4 - Design and implement a National Counter Fraud and Corruption Strategy (Serious Fraud Office): We believe technology plays a critical role in assisting in fraud detection and should be leveraged across sectors in both the private and public sector. Any national strategy that considers fraud analysis should consider how this involves observing, tracking, inspecting, and analysing behaviours across multiple channels (customers, employees, vendors) to identify the right and wrong trends and understand where intervention should be applied. Understanding where vulnerabilities exist and closing them through at-scale analysis reduces the risk of fraud.
- Commitment 8 - Improve transparency and accountability of algorithm use across government (Statistics NZ). This is an important piece of work and would be happy to share



some updates on what AWS and our affiliates are doing. The AWS AI research community has been focusing on rendering AI decisions more transparent by providing explanations of an AI's decision. Bias can be introduced or exacerbated in deployed machine learning (ML) models when the training data differs from the data that the model sees during deployment (that is, the live data). Using technology to detect bias and test ML models becomes important therefore in improving transparency and accountability of these systems. Responsible use of these technologies is key to fostering continued innovation. AWS is committed to developing fair and accurate AI and ML services and providing customers with the tools and guidance needed to build AI and ML applications responsibly. See more online [here](#).

Since 2013, AWS has been working closely with New Zealand businesses of all sizes and the public sector on improving their productivity, innovation and other digital transformation objectives. We welcome the opportunity to be a supportive resource in helping to implement New Zealand's OGP action plan.

As noted above, we further recommend that the OGP implementing agencies proactively seek support from relevant industry forums such as Digital Identity New Zealand, AI Forum, NZ Tech so as to leverage wider perspectives from industry on these important topics. We believe this would continue the open and consultative approach taken by the government in setting the national action plan.

We would be very pleased to meet with the OGP review team and the agency implementing teams, either in person or virtually, as you progress your work and we would be pleased to provide further written comments at the appropriate times. Please feel free to contact me at 9(2)(a) privacy or by phone on 9(2)(a) privacy

Yours sincerely,

Paul Keating  
Head of Public Policy  
Amazon Web Services New Zealand



12 December 2022

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Kia ora koutou

**Feedback on Draft National Action Plan under the Open Government Partnership**

On behalf of our entire organisation, we want to convey how delighted we are to see the inclusion in the draft Fourth National Action Plan (NAP4) of *Commitment 3: Establish an integrated, multi-channel approach to public services and support*. As the Minister for Public Services, Hon Chris Hipkins, and Te Kawa Mataaho are aware, the CAB has been advocating in earnest for this approach to public service design and delivery for the past three years. The NAP4 reflects this by stating that the need for multi-channel access to support and services aligns with the Citizen's Advice Bureau New Zealand petition to 'Leave no-one behind – Campaign to address digital exclusion'.

We are pleased that the Open Government Partnership (OGP) process has provided a mechanism to progress this important aspect of open government. Ensuring people can access public services and support in a range of ways – online, face-to-face, and over the phone – is essential for social inclusion, civic participation, and trust in government.

We are confident that an integrated, multi-channel service delivery environment will improve people's access to their entitlements and their ability to fulfil obligations in respect of government. By creating integration – both between agencies and across channels – this will support all people to get the help they need in the ways they need it. It will have particular benefits for Māori who are significantly impacted by digital exclusion and have expressed the value of interacting kanohi ki te kanohi. It will prevent the individual and societal costs that result when people face barriers to getting the information and services they need, and will enhance social inclusion and individual and community wellbeing. It will also build resilience into public systems and services and protect against the risks of relying too heavily on digital services.



There have been various acknowledgements in government policy documents of the need for other channels to sit alongside digital services. However, to date, there has been no coordinated across-government initiative to make sure this happens. We are hopeful that this programme of work, undertaken in collaboration with civil society organisations, will result in transformative changes to public services in order to meet the diverse needs of all people in Aotearoa.

We note that the Department of Internal Affairs (DIA) has been named as the lead agency for Commitment 3. We look forward to working closely with DIA to progress this work programme. Given DIA has been leading the digital transformation process for government, we ask that the Minister provides DIA with clear direction about the requirement to broaden their scope. Our experience so far has been that DIA has struggled to accommodate a multi-channel approach alongside its deliberate emphasis on digital transformation, digital public services, and digital inclusion as a solution to meeting the needs of those who are not online. Championing an integrated, multi-channel design approach will require a mind shift, as well as an extension of the previous framing of Paul James' role as Digital System Lead.

It is essential that DIA is supported through an adequate budget allocation to carry out this work and implement identified solutions. This includes being able to resource civil society partners and others as part of the research, co-design, piloting and implementation phases. We understand from other civil society organisations that a lack of resourcing has been one of the fundamental failings of previous national action plans under the OGP. Without the necessary resources to implement the Commitments, government agencies are unlikely to engage as genuine partners.

Thank you for the opportunity to participate in the OGP process so far and we look forward to continuing this mahi.

Ngā mihi nui

Sacha Green  
**National Advisor – Legal & Strategic**  
**Kaitohutohu ā-Motu – Te Ture me Ngā Rautaki**

[FW RESPONSE NEEDED BY 3PM FW Query re open government action plan - responses due by 3pm](#)



[today.msg](#)

## **COMMENTS ON THE FOURTH OPEN GOVERNMENT PARTNERSHIP NATIONAL ACTION PLAN 2023-24**

**DATE** 9/12/2022

### **1. Introduction**

1.1 This submission is made on behalf of the **Grey Power New Zealand Federation Inc.**

1.2 The contact is

Jan Pentecost

9(2)(a)

privacy

1.3 The Grey Power New Zealand Federation (Inc) is a non-sectarian and non-party political, advocacy organisation that aims to advance, promote and protect the welfare and well-being of older people.

1.4 The Grey Power New Zealand Federation (Inc) is made up of some 73 individual Associations with an overall membership of approximately 50,000.

1.5 An Open Government Partnership (OGP) National Action Plan (NAP) is a group of commitments to be delivered during the plan implementation period. The journey to develop this fourth New Zealand Plan began in 2019 and included public consultation. Its commitments are about a genuine, inclusive partnership between civil society and the public service. The aim is to strengthen democracy, build trust, and improve wellbeing.

NB: The **Open Government Partnership** (OGP) is an international agreement by governments to create greater transparency, increase civic participation and use new technologies to make their governments more open, effective, and accountable. New Zealand joined the OGP in 2013, with the Te Kawa Mataaho | Public Service Commission taking the leadership role for the Government.

(<https://www.publicservice.govt.nz/news/have-your-say-draft-fourth-national-action-plan-consultation/>)

1.6 The Grey Power NZ Federation wishes to comment on commitments 1, 2 and 3 of the Fourth Open Government Partnership National Action Plan 2023-24 (draft).

### **2. Comments:**

2.1 **National action plan commitment 1** is to adopt a community engagement tool by the Public Service of the Policy Community Engagement Tool (PCET) to lift the quality of community engagement.

Grey Power specifically believes that policy decisions, resulting from an inclusive and collaborative process, to achieve more credibility is worthwhile. And that requiring Public Service agencies to use the Policy Community Engagement Tool will improve how they design such engagement from the outset.

2.2 **National action plan commitment 2:** is to research and trial deliberative processes for community participation.

Grey Power considers that strengthening the range of available options for public participation is essential and we note that public authorities from all levels of government overseas increasingly use citizens' assemblies, juries, panels, and other representative deliberative processes to tackle complex policy problems (ranging from climate change to infrastructure investment decisions).

Grey Power agrees with the comment in the draft Fourth National Action Plan 2023/2024, p.13 that there is currently little use of deliberative processes in New Zealand. Consequently, there is an opportunity to improve community participation over a range of topics by government agencies and communities trialling and experimenting with deliberative processes.

Grey Power strongly recommends that a toolset and process that promotes true public engagement instead of the current method of requesting comments post policy development be implemented regarding commitments 1 and 2.

### **2.3 National action plan commitment 3 – To establish an integrated, multi-channel approach to public services and support.**

Grey Power has supported the Citizens Advice Bureau New Zealand petition to ensure that no-one is left behind because they cannot or do not wish to engage online and we agree that it is essential that accessibility and inclusion standards for public services that include offline channels in the present and the future need to be provided.

We also support the Better Later Life – He Oranga Kaumātua 2019 to 2034 strategy which promotes the intent of this commitment that people who do not use technology can still access the services they need; that different ways of accessing government services that meet the needs of all older people are required.

Thus, the provision of integrated, multiple channels for public service delivery which will include options to meet the diverse needs of all the people of Aotearoa to ensure access for all to public services and support is extremely important to Grey Power – older people are a cohort that are particularly disadvantaged; many are digitally excluded and are unable to access public services. In fact, research discloses that people over 75 years of age are much less likely to use digital devices than their younger cohorts. In the 65-74 age group the percentage of non-users is 10 percent, in the 75-84 age group it is 25 percent and for those over 85 years of age the rate is 50 percent. (World Internet Project New Zealand Internet in New Zealand in 2017

- [https://workresearch.aut.ac.nz/data/assets/pdf\\_file/0009/174915/WIP-2017.pdf](https://workresearch.aut.ac.nz/data/assets/pdf_file/0009/174915/WIP-2017.pdf)

Therefore, the implementation of this commitment will address the barriers people face when government services are delivered online.

As Lips et al found in 2020, they face barriers such as lack of access to computers and the internet, limited digital literacy, general literacy difficulties, various disabilities, lack of motivation to be online and privacy and security concerns. This prevents them from accessing public services which are a vital function in their everyday lives and many of this group are frightened and stressed; they are incredibly anxious, because they have no idea how they will manage their affairs independently in the future.

Grey Power is, of course, aware that although its cohort of interest is vulnerable older people this is not only an older persons' issue it is a public service issue that goes to the heart of effective, efficient public service delivery. "This requires government to maintain multiple coherent service delivery channels, such as digital, in-person and telephone as a key aspect of resilience." Consequently, this commitment must be taken up as a whole-of-government issue, through a system leader approach and / or with Te Kawa Mataaho as the lead agency. The existing fragmented, ad hoc system must be changed (<https://trustdemocracy.nz/wp-content/uploads/2022/10/OGP-CSO-letter-to-Minister-Hipkins-07-10-22.pdf>)

NB: References throughout these comments have been utilised from the Fourth Open Government Partnership National Action Plan 2023-24 (draft).

### **3. Summary:**

The Grey Power NZ Federation Inc. is pleased to have the opportunity to comment on this Fourth Open Government Partnership National Action Plan 2023-24 (draft) and we request that adequate, targeted funding, a specific allocation of resources and integration across public service agencies is provided to implement the commitments so that this plan does not just end up as a wish list.

This is important because several civil societies have commented that government national action plans are weak and that successive action plans have been treated by agencies as a set of commitments that just need to be ticked off rather than as tools to transform how government works with the public and civil society. Ministerial leadership will be needed to change this behaviour. (Letter to Minister Hipkins from the NZ Council for Civil Liberties, Internet NZ, Transparency International, Citizens Advice Bureau, Member Environment and Conservation Organisations of NZ, Trust Democracy and Network Waitangi Ōtautahi.



Hon Chris Hipkins  
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x.xxxxxxx@xxxxxxxxxx.xxxx.xx

12 December 2022

Dear Mr Hipkins,

## Draft of Aotearoa's Fourth Open Government Partnership National Action Plan

1. We are writing to provide our comments on the draft of New Zealand's fourth National Action Plan (NAP) as a member of the Open Government Partnership (OGP).
2. The Council's response follows the structure of the draft NAP. However, we also urge the government to take advantage of the OGP's rules on 'challenge commitments' and add the commitment on co-creation of a National Interest Analysis of the Aarhus Convention to the NAP next year.

### Introduction to the Plan

3. We are disappointed that, unlike previous NAPs, the draft NAP does not contain a ministerial foreword, as this is a valuable opportunity to signal ownership, leadership and expectations.
4. The very first sentence of the Plan's *Introduction* highlights the Te Kawa Mataaho's fundamental misconception of what the OGP is about. It seems to believe open government is about the Public Service, not the public, communities, civil society, local government, nor even government.
5. The second paragraph boasts about the Official Information Act (OIA) in a way that is oblivious to the history of the OIA in the context of OGP and previous New Zealand NAPs. Successive NAPs have failed to do anything of substance with regard to the OIA. No commitment was included in the third

NAP to strengthen the Official Information Act. Instead there was a weak commitment to consult on whether a review of the Act was needed. We continue to see poor behaviour by agencies and ministers with regard to the OIA despite the Commission's OIA Forum and publication of statistics.<sup>1</sup> The Commission itself has failed to comply with its duty to foster open government, by not seeking requesters' input into the advice it provided earlier in 2022 on an overhaul of the OIA statistics and publication of Cabinet papers. We highlighted the problem of secrecy clauses overriding the OIA in our briefing to you of December 2021. In spite of this, the commitment in this NAP relating to this issue does not include work to repeal or amend any of these clauses. In this context, trying to claim any credit for the OIA and its operation in the *Introduction* to this plan is quite strange.

6. The *Introduction* would be improved by focussing on the Public Service Act 2020 and its values and principles. The text does not even mention these. The Act's requirement for long-term insights briefings is welcome, but the processes for creating them and for stimulating public discussion leave a lot to be desired. For example, we note that Te Kawa Mataaho officials who were developing the Commission's LTIB on public participation refused a request from our Deputy Chair that they run a session with the civil society participants in the OGP NAP development process. This would have been a positive thing to cite in the *Introduction*. The OGP work is a major opportunity for the Government to give effect to the principles and values in the Public Service Act, and the failure to have situated NAP4 in this context undermines the assurances the Council and other CSOs received from the Public Service Commissioner at their meeting with him in June 2021.
7. The 4th NAP is an opportunity to build on commitments in previous NAPs, but the only place where this is made explicit in the *Introduction* is for engagement toolkit commitment in paragraph 4. The *Introduction* should explain the history of the other commitments – these are not the first commitments on the OIA, or the Algorithm Charter, or on publishing procurement data.
8. Likewise, we are disappointed by the failure of the *Introduction* to provide an update on commitments under previous NAPs. The Council believes this context is important and that people will be interested to know what is going to happen to commitments that were not completed (e.g. the creation and maintenance of an authoritative dataset of agencies that was commitment 11 in NAP3), and to know if there have been open government gains from previous commitments. This should explicitly draw upon the comments and recommendations made in the reports of Aotearoa's IRM reviewer, as they are an important part of the context for the new NAP.

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<sup>1</sup> Documented by the Ombudsman in his September 2022 reports.  
<https://www.ombudsman.parliament.nz/news/ombudsmans-oia-probe-uncovers-significant-gaps>

## Expert Advisory Panel's observations

9. The Council has repeatedly stated that the Public Service Commission's Expert Advisory Panel (EAP) does not meet the OGP's requirements for a genuine Multi-Stakeholder Forum (MSF), and we comment further on this issue in the section at the end of the plan on establishing an MSF.
10. The Council nevertheless welcomes the government's inclusion of the Advisory Panel's observations on the NAP creation process in the NAP.
11. The Council notes that the EAP "*recommended greater priority be given to the OGP and the authentic co-production of ambitious, potentially transformative commitments*". It is abundantly clear that, aside from Commitment 3 on multi-channel public services, the commitments in this NAP have not been co-created or co-produced, they are not ambitious and they are not transformative. We recognise that officials in Te Kawa Mataaho worked hard, but the turnover in staff during the NAP development period, combined with continuous failures of the department to steward institutional knowledge regarding the OGP, means that their efforts were misguided and have consequently reinforced a tired old trope of government retaining power, and civil society criticising them for it. This is not what the 'partnership' in OGP looks like when you read its guidance.
12. An underlying cause of the issues raised by the EAP is that after four NAP creation processes, it seems the Commission and government as a whole still does not understand the kaupapa and ethos of the OGP. The role you, as lead Minister, should play in the co-creation process does not seem to be understood. Nor is it apparent that the Commission knows how to leverage your and its own authority to ensure other government departments meet their responsibilities in the co-creation process.
13. To address this, Te Kawa Mataaho must invest in its officials, to ensure they are properly trained and have the skills to facilitate co-creation, as well as being adequately resourced to lead the high quality engagement with the public and multiple stakeholder groups that should be excited by the opportunity to get a project on a topic of their interest funded.
14. As the EAP contribution notes, civil society organisations (CSOs) wrote to you in March 2021 to highlight the importance of allocating sufficient funding to commitments. Without the incentive of bidding to be allocated additional funds to deliver commitments, other departments will regard engaging in OGP plans as additional work, with higher risks of public criticism, for no reward.
15. Without leadership and action to change the dynamic and incentives, it seems clear that this consistent record failure will continue, leading CSOs to decide that any work on OGP Action Plans is a waste of time and effort. We have structural weaknesses in civil society in Aotearoa, so any time allocated to OGP efforts comes with a significant opportunity cost. In the course of this NAP creation process, Hui E!, the Public Services Association, Child Poverty Action Group and Amnesty International have all withdrawn. It is apparent

from the drop-off in participation by officials from other government agencies that they too decided the potential benefits were not worth the work required.

16. The government should be under no illusion: civil society's trust in the NAP co-creation process has been breached yet again by the Commission and Commissioner during this NAP creation process and it will have to make major changes and put in serious effort to rebuild that trust.

## Our Story

17. This section begins with a statement that is either inadvertently honest about who actually developed NAP4, or is deeply confused about whether the public and CSOs were part of the MSF:

*The Fourth National Action Plan was developed by the Multi-stakeholder Forum (MSF), consisting of the EAP and officials from the Commission's open government partnership team.*

18. If the former, we think this gives the EAP too much credit, since it is clear that the commitments in the NAP have been determined, with the exception of commitment 3, entirely by government departments. If the latter, it is seriously in error as neither the EAP nor the arrangements for public and civil society participation in the NAP development process are a multi-stakeholder forum according to the OGP's Independent Reporting Mechanism's reports.
19. Other use of the term 'Multi-stakeholder Forum' or 'MSF' also indicates that the Commission seems to think that the membership of the EAP is comprised of people *representing* various sectors of society, when in fact the EAP's terms of references are clear that people appointed to it by the Public Service Commissioner for their personal skills and knowledge alone.<sup>2</sup> The appointment criteria make no reference whatsoever in the list of candidates' attributes to the person needing to be empowered to represent an organisation or sector. Therefore EAP members are not representatives of any organisation, let alone a sector of society. The terms of reference go on to say that,

*The EAP will be accountable for providing expert advice about OGP National Action Plan development and delivery to the State Services Commissioner.*

20. People appointed in an individual capacity by the Commissioner and who are accountable to the Commissioner can in no way be described as representatives of anyone else besides themselves. The Expert Advisory Panel is therefore just that, a panel of people who know about open government, not a Multi-Stakeholder Forum. If the people appointed were stakeholders of a multiple number of sectors, they would be put forward for

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<sup>2</sup> New Zealand Open Government Partnership Expert Advisory Panel Terms of Reference, September 2018. <https://ogp.org.nz/assets/Resources/eap/expert-advisory-panel-terms-of-reference-1.pdf>

membership by those sectors, and be accountable to the people who put them forward, not the Commissioner.

21. This section continues with another inaccurate statement:

*Following significant public workshops and engagement with civil society representatives in 2020 and 2021, in October 2021 the Minister for the Public Service identified four key themes for the Plan.*

22. The Minister did not ‘identify’ those themes for the Plan. They were identified by Commission officials following discussion with the EAP and CSOs, and proposed to the Minister in the *joint* report to him of 22 October 2021.<sup>3</sup> All the Minister did is confirm that he found those suggested themes acceptable.
23. Page 8 of the draft NAP, and the timeline on page 9, describes development of the plan with an assertion that the workshops held in April-May 2022 and the two meetings in July 2022 were “public”. This has the potential to be quite misleading both to the OGP and to New Zealanders.
24. If the use of the word ‘public’ is only meant to imply there were no restrictions on what attendees could say after the meetings about what took place, this would be accurate, but misleading in the context in which these statements are made in the ‘Our Story’ section on development of the NAP.
25. If this is meant to imply that the public were able to participate in these meetings it is simply false. No statement made by the Commission made in advance of the workshops and meetings indicated they were open to the public.
26. In its *OGP Update for March 2022*, the Commission stated:

***Developing the next National Action Plan*** Workshops with our Expert Advisory Panel (EAP), civil society groups (CSOs) and government agencies on the fourth National Action Plan will now start in April.<sup>4</sup>

27. There is no indication that members of the public could attend the meeting, nor that the meeting would be livestreamed to people who could listen to the discussion but not participate. Similarly limited participation references were made in the 27 April, 17 May, and 23 June updates published by the Commission.<sup>5</sup>

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<sup>3</sup> Note recommendation (a) on page 2, which states “Note the advice in this joint report has been developed with the OGP expert advisory panel (EAP), a range of civil society organisations (CSOs) and government agencies”.

<sup>4</sup> OGP Update for March 2022, Public Service Commission, 30 March 2022  
<https://ogp.org.nz/latest-news/ogp-update-for-march-2022/>

<sup>5</sup> See links to these updates from this page: <https://ogp.org.nz/latest-news/>

28. In a document dated 4 May 2022, distributed by the Commission to CSO participants in the April-May workshops on 26 May 2022, and entitled *Fact sheet: Open Government Partnership New Zealand*, it states in regard to the NAP development process:

*NAP4 April-May 2022 workshops with our Expert Advisory Panel, civil society groups, and government agencies are underway.*

29. Similarly, the agenda for both the 6 July and 13 July 2022 meetings, distributed by the Commission on 5 and 12 July, state that the meetings are between:

***Meeting: EAP, CSO and Officials Meeting***

30. The Council recommends the government amend the NAP to correct the statement that the meetings were ‘public’. The only public workshops during the NAP development process occurred in 2020 and early 2021, when ideas for commitments were collected at events organised by the Commission.

## **Te Tiriti o Waitangi**

31. The Council welcomes the inclusion of a section headed ‘Te Tiriti o Waitangi’. This is welcome. However, recognition that Te Tiriti o Waitangi had to be addressed in Aotearoa’s OGP work only came about because of civil society insistence that this issue must be addressed. We are deeply concerned that nine years after the country joined the OGP, Te Kawa Mataaho does not have structures, mechanisms or relationships in place for significant Māori involvement in the development of National Action Plans.
32. We are also concerned by the Commission’s reluctance to show leadership on this issue. Its approach seems to be that honouring Te Tiriti obligations in the design and implementation of commitments was something that was only the responsibility of the departments or agencies that would lead the individual commitments, and that it had no role to ensure this happened. This may align with the accountabilities set out in section 15 of the Public Service Act, but section 14 places obligations on the Commissioner and says he has “responsibility for developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives”. As the person to whom chief executives are accountable, the Commissioner can and should play a more active leadership role in ensuring commitment lead agencies honour Te Tiriti obligations in the design and implementation of NAP commitments.
33. The Council welcomes the fact that each commitment contains a section on Te Tiriti, but these are bland statements of aspiration and possible outcomes. They do not address key questions such as:
- How can honourable kāwanatanga be applied through the planning and implementation of the NAP4 and OGP commitments (Article 1).

- How can tino rangatiratanga be enhanced through the commitment (Article 2)
  - How can equality and equity be enhanced particularly for Māori through the commitment (Article 3).
34. This is likely due to the failure of commitment lead agencies to work with CSOs between mid-July and September 2022 to draft the commitments. If the government is to demonstrate that it takes Te Tiriti obligations seriously, lead agencies will have to work with Māori to develop answers to these questions as part of preparing their detailed commitment implementation plans.

## Draft Commitments

35. While the Council particularly welcomes commitment three in this Action Plan, overall this draft NAP is the latest in a series of disappointing and unambitious OGP action plans, produced by successive New Zealand governments, that have been filled with programmes of work which were either already taking place or already planned to take place. CSOs' suggestions for strengthening commitments have mostly been ignored, which leads not only to questions about why civil society should lend credence to this work by participating in action plan development, but why New Zealand is a member of the OGP in the first place. The action plans have consistently failed to demonstrate what value is added by being a member of the OGP. The government spends \$250,000 per year on membership fees for this organisation but does next to nothing to learn from other countries, does not invest in the knowledge and skills to co-create plans with civil society and the public, does not incentivise departments to take part by providing additional funding, and then wonders why it's not getting any rewards or plaudits for the money spent. Neither the government nor the public are getting any serious return on this investment, and the starting point for changing this has to be what you said you wanted in March 2020: a "*much more ambitious plan*".
36. A number of commitments contain milestones with start dates of January 2023. This is completely unrealistic, as no substantive work begins in the public service until the beginning of February, when everyone has returned from their summer holidays. The start dates should be in February 2023, with the end dates also put back a month, so that the full time period estimated for each milestone is actually available for the work.
37. The Council notes that the NAP does not use the OGP's template for commitments, and reverts to the poor structure of previous NAPs. This is very strange, considering Te Kawa Mataaho was using the OGP template earlier in the process. We note that in September 2022, CSOs provided officials with completed OGP templates for each commitment.
38. The failure to use the OGP's template is contrary to its requirements, and serves Aotearoa poorly. The OGP's change to the commitment templates was made in order to assist members with improving the quality of commitments by requiring greater explanation of the 'theory of change' or 'intervention

logic' for each commitment. This includes a proper problem definition (which is different from the 'status quo' statements in the NAP), analysis of the causes of the problem, a statement of the desired outcomes, as well as how each commitment will promote transparency, foster accountability and improve citizen participation in defining, implementing and monitoring solutions. The quality of the commitments in the draft NAP has therefore suffered from the government not using the OGP's template. Since Te Kawa Mataaho actually used the OGP template themselves earlier in the process, the shift away from them suggests that they couldn't be completed by commitment lead agencies in the time available. Running out of time in spite of being given an additional year to develop the plan is not satisfactory.

39. Throughout the NAP, government has rejected CSO recommendations that the work on each commitment be guided by a joint working group of agencies, civil society and iwi (with inclusion where relevant of other stakeholders). The claim that agencies are not resourced for this is both an unacceptable failure to comply with the statutory duty to foster a culture of open government and indicates profound ignorance of what the OGP is about, even after nine years of membership. The OGP itself states in relation to implementation of NAPs:

*Once the action plan has been submitted, the real work starts: Implementation. There are a few options during this phase. Business as usual: government implements, civil society criticizes. Or the version where both sides build a partnership, working together, setting up on-going coordination mechanisms, drawing on each-others expertise. A hybrid, with some organizations on the inside and a few others on the outside undertaking monitoring efforts is the third option.<sup>6</sup>*

40. The OGP's *National Handbook*, which sets out the rules and guidelines for OGP members says:

*Evidence from IRM reports and OGP's Decade Report show that continued stakeholder dialogue and participation during the implementation process is strongly correlated with high levels of completion and stronger results.<sup>7</sup>*

41. The Council is deeply disappointed that the government has, yet again, opted for what the OGP describes as 'business as usual': with government implementing and civil society criticising. For an agency that continually talks about the 'Spirit of Service' and boasts about levels of public trust in the

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<sup>6</sup> Action Plan Cycle, Open Government Partnership.  
<https://www.opengovpartnership.org/process/action-plan-cycle/>

<sup>7</sup> OGP National Handbook: Rules + Guidance for Participants, Open Government Partnership. Page 27. <https://www.opengovpartnership.org/documents/ogg-national-handbook-rules-and-guidance-for-participants-2022/>

public service Te Kawa Mataaho has a strange way of trying to serve the public and strengthen levels of trust.

*Commitment 1 – Community engagement tool*

42. The Council agrees with making use of the Policy Community Engagement Tool (PCET) compulsory across the public service. This is implied both by the use of the word ‘requiring’ in the ‘Ambition’ section, and in the undertaking to ‘Develop a model standard’ in the second milestone. However, we are worried that nothing in the draft commitment indicates that Te Kawa Mataaho will itself model good practice by involving civil society and interested members of the public in the delivery of this commitment. In our view, not to involve people outside government in the development of outputs promised in this commitment means the Commission itself is failing to comply with its statutory duty to ‘foster a culture of open government’. We met with the Public Service Commissioner in June 2021 to reiterate that work on the OGP commitments had to model fulfilment of the duty to foster a culture of open government and the Commissioner agreed with this proposition. To see this abandoned calls into question whether the Commission has been acting in good faith.
43. The Council believes the NAP should be explicit that the PCET will be a standard issued under section 17 of the Public Service Act 2020. Standards under section 17 are about public service conduct, and can include matters relating to the section 12 public service principles. Public engagement activities are clearly a matter of public servants’ conduct, and linked to the public service principle of ‘fostering a culture of open government’ set out in section 12(1)(d) of the Act.
44. Milestone 1 for this commitment states that the PCET will be reviewed. The review should include input from people outside the public service who were involved in the public engagement exercises where it was used, and the results of the review should be published. Wording of the commitment should be amended, as experience with previous NAP commitments indicates that unless this is stated explicitly we cannot rely on this happening.
45. The draft commitment states that the PCET will be required for community engagement on ‘significant initiatives’. What ‘significant’ means is undefined, which is problematic. Aside from decisions on individual cases, government policies and decisions are nearly always significant for a significant number of people and communities. One of the reasons why the commitment outputs must be developed with civil society and public input is so that people outside the public service have input into the definition of ‘significant’ in the model standard.
46. We support the re-establishment of a community of practice (CoP) – the State Services Commission previously facilitated one until 2008 – and believe that the commitment should explicitly state that membership of the CoP is open to people working outside the public service, in civil society, academia, and the private sector. Government departments are clearly short on expertise and

skills regarding this key issue – as demonstrated by Te Kawa Mataaho hiring external facilitators for development of this and the previous two NAPs – so its CoP can only be strengthened by including external experts.

47. The establishment of a CoP is not sufficient to achieve the desired outcomes of “*lift[ing] the quality of community engagement*”. Significant additional measures will be required to improve the government (and communities’) practices around public engagement. The commitment should be strengthened by adding in design of the awareness raising, training, principles for revision of departmental strategies, policies and practices.
48. The Council strongly supports calls made by civil society groups during development of the NAP for the commitment to be extended to include co-creation of mandatory minimum standards for government consultation exercises. Since the UK had an all-of-government Code of Practice on public consultation more than 20 years ago, we were shocked by Te Kawa Mataaho’s claim to ministers that “*it is too early*” to do this. On the contrary, it is long overdue. The *Introduction* to the NAP talks about lifting the quality and consistency of community engagement. To do so, co-design and adoption of minimum standards on consultation exercises is a vital basic step towards improving the public service’s performance on the low end of the IAP2 Spectrum of Public Participation. Inclusion of a milestone and deliverable on this issue would be a key initiative to actually strengthen agencies’ practices – which would benefit them and members of the public – which is the intent of the OGP, after all.
49. In our joint letter to you of 7 October 2022, we also appended examples of what such a standard for public consultation could include. The government says it wants to move its engagement practices up the IAP2 Spectrum of Public Participation. But if it is unwilling to strengthen practices at the lower end of the spectrum, why should anyone have confidence that its work at the upper end of the spectrum will be high quality. Time and effort must be dedicated to laying solid foundations first.

### ***Commitment 2 – Research deliberative processes***

50. The Council finds bizarre the statement in the ‘Status Quo’ section that, “*The final audience for this work is agencies to support capability development and share lessons learnt*”. It shows, yet again, a profound misunderstanding of the OGP, which is not just about the public service but all New Zealanders, including communities, organisations and local government. The ‘audience’ is clearly much broader. As noted above regarding Commitment 1, this has implications for the creation of a community of practice, and further demonstrates why this must have much more inclusive membership criteria than government officials.
51. In view of the underfunding of NAP commitments, it is clear that the deliberative processes identified for this commitment will not be organised by government agencies. ‘Mining’ these deliberative exercises solely for the government’s education would be extractive and therefore unethical. The

commitment should therefore make clear what the public service is prepared to contribute to any public sector/civil society/community work that is undertaking a deliberative exercise. At the very least, Te Kawa Mataaho should commit to paying for independent process evaluation that is then published.

52. The commitment should be strengthened by responding to the civil society request that a multi-stakeholder oversight group be convened to guide the delivery of this commitment. This will be key for milestones 2, 3 and 5.
53. Milestone 3 states that it will “*evaluate the deliberative processes pilot*” (which, since the commitment refers to ‘at least two examples’, should be plural, not singular) to identify the lessons learnt. The commitment must specify that the evaluation will be published, so that the lessons learnt are shared with all.
54. Milestone 5 states that it will “*Identify future projects to use deliberative processes*”. The milestone should be strengthened to state that work will be done to design a fund open to all organisations (government, local government, community) to support the use of deliberative processes.
55. The fact that the commitment is only about researching deliberative practices being used by others, and not the establishment by government of projects that will use them, is another indication of what happens when government does not act on CSOs’ calls for money to be put aside to fund OGP commitments.

### *Commitment 3 – Multi-channel public services*

56. The Council strongly supports this commitment. We have for some time been concerned about equitable access to public services by those who choose not to use digital channels, as well as those who are excluded for economic or accessibility reasons. Coherent, well-funded work is critical.
57. We are pleased that this commitment at least includes establishment of a cross-agency, civil society, and iwi working group. For this working group to succeed, civil society and iwi members of the group must be paid for their time, both at meetings and for work done in support of the commitment outside those meetings. To deliver this commitment, an ‘open’ approach to implementation will be essential. This would be consistent with the existing government Digital Service Design Standard principles such as Principle 1, “*Identify your users and understand their ongoing needs*” and Principle 7, “*Work in the open*”.<sup>8</sup>
58. Crucially, successful implementation will depend upon adequate funding for the work. We have seen too many commitments in previous NAPs lack in ambition, or fail to be delivered, due to the absence of additional funding

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<sup>8</sup> Digital Service Design Standard, <https://www.digital.govt.nz/standards-and-guidance/digital-service-design-standard/>

being allocated specifically for work on the commitment. This cannot be permitted to re-occur here. We expect the government to both invite and approve a budget bid by DIA to deliver this commitment.

#### *Commitment 4 – National Counter Fraud and Corruption Strategy*

59. The Council supports the intent of this commitment, but we see no indication of civil society participation in implementing it. Unless the commitment is amended to include CSO and other stakeholder participation, this should not be an OGP commitment.
60. The commitment is confusingly worded. The ‘Ambition’ section of the commitment refers to ‘Phase One’ of the strategy, and then says “*Future development of the strategy may include business and the private sector*”. The commitment needs to have a milestone relating to a ‘Phase Two’ for this future development of the strategy.
61. The Council hopes that Te Kawa Mataaho will be commissioning and publishing a post-implementation review of the Protected Disclosures (Protection of Whistleblowers) Act 2022. The commitment could be further strengthened by making an explicit connection between development of the strategy and learning from this review.

#### *Commitment 5 – Beneficial ownership*

62. Again, the Council supports the intent of this commitment, but again it does not belong in the NAP if civil society does not have an active role in delivering this commitment. MBIE’s complete failure to engage with civil society during the detailed commitment design stage of this NAP’s development (between mid-July and September 2022) indicates an unwillingness to work in partnership with civil society that is antithetical to the OGP’s ethos. It seems clear now that MBIE’s involvement in NAP4 workshops prior to mid-July 2022 was entirely defensive, to fend off proposals it did not already want to undertake. The government should not try to claim OGP credit for work that is not being designed or delivered in ways that not only exclude civil society but which would have been undertaken regardless of OGP membership. To do so will foster further scepticism (if not cynicism) about the OGP, when Aotearoa’s membership is already regarded by many as an ‘openwashing’ exercise.
63. The pre-existing nature of the project in this commitment is demonstrated by the milestones in the NAP showing that work on this commitment (milestone 1, drafting instructions for the legislation) commenced in September 2022, three months before this NAP will become ‘live’.
64. Unless the commitment is strengthened to ensure CSO and other stakeholder oversight of its delivery, non-public service input to the legislation will be limited to the eventual ability to make a submission to a select committee on the legislation. This is neither fostering a culture of open government, nor moving public service engagement with stakeholders up the IAP2 Spectrum.

65. Milestones 2 and 3 are both bizarrely shown as starting in January 2023. Since milestone 2 (drafting the legislation) must occur before milestone 3 (introduce the legislation) can commence, this needs to be fixed. Similarly, since Parliament does not sit in January, there is no way in which milestone 3 can begin then.
66. Access to information about beneficial owners is, like all access to official information, an exercise in weighing competing public interests. In this case, the privacy of owners against the public interest in being able to establish control over companies and partnerships to ensure compliance with laws. The MBIE work programme and commitment address the need to weigh these interests by stating that the public will only have access to a limited subset of the beneficial ownership data held by government and available to government agencies.
67. The European Court of Justice decision of 22 November 2022 on public access to registers of beneficial ownership in EU member states is that full public access was not an infringement on owners' privacy that had been adequately justified.<sup>9</sup> This indicates that the government's approach to this may be prudent.
68. However, there has been considerable CSO and media disquiet with the ECJ's decision, since cutting off public access to the registers of beneficial owners means that they can no longer effectively investigate issues such as fraud, corruption and tax evasion. The commitment in the NAP needs to be strengthened by addressing this issue. First, by adding an explicit statement that experience to date shows that government agencies alone do not have the capacity to use all the data available to them in order to achieve the desired anti-corruption and fraud reduction outcomes. Second, by saying that the commitment therefore will explore – with civil society and media input – what is the minimum data needing to be published, as open data, to enable these key actors to play their part in investigating issues relating to corruption, fraud and tax evasion. This second statement needs to be reflected by adding a milestone for this work, which must be completed in time to inform the drafting of the legislation.
69. The government has demonstrated, in the Data and Statistics Act 2022, that it is willing and able to invest in building a system for deciding on researchers' applications to access the data held by Statistics NZ. Accordingly, this commitment should be strengthened to state that the legislative design stage will explore, with CSOs and the media, how such a mechanism for access to beneficial ownership data can be done in ways that enable connections to be made with other datasets (necessary to trace connections and actions that

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<sup>9</sup> *Anti-money-laundering directive: the provision whereby the information on the beneficial ownership of companies incorporated within the territory of the Member States is accessible in all cases to any member of the general public is invalid.* European Court of Justice media release, 22 November 2022. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-11/cp220188en.pdf>

may be unlawful). A process for applying to access the data must also have an independent complaints mechanism that can overturn decisions to refuse access.

70. The Council also supports Transparency International NZ's view that the commitment should be strengthened by having a milestone and deliverable for work to assess the risk posed to corporate governance by the use of trusts, and how to improve the transparency of their ownership and use.

#### ***Commitment 6 – Procurement information and data***

71. Again, the Council supports the intent of this commitment – we proposed a commitment on this topic in our submission of 28 July 2021 – but given the value OGP places on participation and partnership, the NAP needs to be strengthened by requiring CSO, iwi, and other stakeholder involvement in implementing it. Again, we must point out that MBIE deliberately failed to work with civil society on the detailed drafting of this commitment in the mid-July to early September 2022 period.
72. Milestone one – design changes to the GETS application – must be strengthened to state that the design work will be undertaken with the input of civil society, iwi, media and representative groups from the private sector. This goes back to compliance with the government's Digital Service Design Standards on including users in the design of tools and services, as well as with the Public Service Act principle on open government.
73. Milestone two shows that this is a pre-existing work programme that has not been adapted in any way through inclusion in this NAP, because it has an end date after the end of the NAP lifespan. Failure to complete the work specified in milestone two by December 2024 will impact the ability of the OGP's Independent Reporting Mechanism to assess delivery of the commitment. The end date for milestone two should therefore be amended to end in December 2024.
74. Milestone two also needs substantial strengthening, to specify that the data gathered by the new 'integrated data system' will be published as open data. It is unacceptable that the 'Ambition' section of the commitment says only that the public will have access to procurement information "*via a suite of dashboards*". Since the commitment says that the data will be collected "*in alignment with the Open Contracting Data Standard*" the data should be published using this standard. The government will not achieve its desired outcomes regarding improved quality and value for money from public procurement if it limits the public only to dashboards, which are typically about visualising data, not publishing open data for re-use by others.
75. Milestone three needs to be strengthened in two ways. First by committing to pilot the system not just within the NZ Government Procurement team, but with a government department or agency outside MBIE. Second, by inclusion of an undertaking to publish the report on the piloting of the data platform and system.

76. Achievement of the government’s desired outcomes would also be made more likely if the commitment were strengthened by requiring proactive publication of contracts and related documents, in line with the Open Contracting Global Principles.<sup>10</sup> This would align well with the government’s policy on proactive release of Cabinet papers and OIA responses. However, this policy needs to be underpinned by amending the Government Procurement Rules and any related legislation. Fundamentally, the government needs to embrace the principle that ‘openness is the price of winning business from the public sector’.
77. If the government is not ambitious enough to do this immediately, the commitment could be strengthened by adding a milestone for the joint agency, civil society, iwi, media and private sector representatives to explore the issues involved in adoption of the Open Contracting Global Principles.

#### *Commitment 7 – Secrecy clauses*

78. The Council briefed you in December 2021 on the long-standing problem of successive governments introducing laws containing provisions that override the OIA. Such clauses are contrary to the clear intent of Parliament in enacting the OIA, section 5 of which states:

*The question whether any official information is to be made available, where that question arises under this Act, shall be determined, except where this Act otherwise expressly requires, in accordance with the purposes of this Act and the principle that the information shall be made available unless there is good reason for withholding it.*

79. Every time the government relies upon the exception to the principle of availability, due to the phrase “*where that question arises under this Act*”, by enacting secrecy provisions in other legislation, it is actively choosing to weaken the OIA. Crucially, it is also signalling that it does not trust Parliament’s decision to empower the Ombudsman to make decisions on whether the disclosure of information would be harmful to the public interest.
80. While the Council is pleased that there is a commitment relating to this issue, it is also deeply disappointed by the weakness of the commitment.
81. Not only is there no reference to involving civil society in its delivery, but it does not include the other two key aspects of the civil society recommendation to you.
82. First, the commitment in the draft NAP is now weaker than the version that was circulated to us in advance of Cabinet considering it. The draft provided to us included the following statement:

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<sup>10</sup> The Open Contracting Global Principles, <https://www.open-contracting.org/what-is-open-contracting/global-principles/>

*New legislation is scrutinised for compliance with the New Zealand Bill of Rights Act 1990. However, the Bill of Rights scrutiny does not recognise the Official Information Act 1982 as implementing section 14 of the Bill of Rights Act 1990 and Article 19 of the International Covenant on Civil and Political Rights.*

83. This statement has been removed from the NAP published for consultation, even though it was entirely factually accurate.
84. The Council wants this commitment strengthened. We would prefer this to be done by simply including a statement that the government will assess new legislation that overrides the OIA against section 14 of the Bill of Rights Act. If it is not prepared to take this basic step to comply with international interpretation of Article 19 of the International Covenant on Civil and Political Rights, then a milestone should be added to the commitment. This should specify that the Ministry of Justice will convene a public event, perhaps in conjunction with the Law Commission and a university law school, and with panellists including those nominated by civil society groups, to discuss the amendment of Bill of Rights scrutiny of legislation to include assessment of section 14 compliance when new legislation will override the Official Information Act 1982 or its local government counterpart. The Ministry will produce and publish a report on the event and develop a joint submission to the Minister of Justice on the next steps.
85. Second, the commitment should be strengthened by including the other proposal made by civil society, that the government conduct a review of the existing secrecy clauses on the statute book and publish a report on which should be repealed and which amended. Failure to include this as a deliverable in the commitment signals not only that the government is not serious about reducing the official secrecy created over the years (with 20+ such provisions since October 2017 alone), but that by limiting the commitment to revised guidance for prospective legislation, it fully intends that further such secrecy clauses will be enacted in future. Is this really the signal that the government wants to send with its 4<sup>th</sup> OGP Action Plan?

#### ***Commitment 8 – Algorithm Charter***

86. Yet again, the Council supports the intent of this commitment, but it needs amending to indicate how civil society will be involved in implementing it. This should not be an OGP commitment if civil society does not have an active role in overseeing delivery of it.
87. The commitment must therefore be strengthened by adding a preliminary milestone to establish a joint agency, civil society and Māori working group to oversee work on the commitment. Failure to create such a working group that includes Māori would seem to be a *prima facie* breach of sections 14 and 15 of the Data and Statistics Act, to accompany a failure to comply with the duty to foster open government.

88. The commitment also needs to be strengthened by amending milestone one to specify that the community of practice (or network) that will be created will include civil society, academics, private sector experts and interested members of the public.
89. The commitment should also be strengthened to make adoption of the Charter by all public sector agencies mandatory. The Council has long stated that the Charter is already too weak and that legislation is needed. It is quite unacceptable that even the low threshold of adopting a weak Charter is optional, at a time when the government says it is concerned about the use of algorithms and wanting to assure the public about their use within government departments and agencies.
90. Paragraph one of the ‘Status Quo’ section emphasises the independent review of the Algorithm Charter’s first year of operation. In doing so it attempts to conceal that the Charter is several years old, and that a second and, just marginally, a third annual independent review should have been published by now. The Commitment should be strengthened by adding a new milestone for annual independent reviews of every agency’s implementation of Algorithm Charter, and the degree of success that implementation has had on achieving the OGP Principles.
91. Paragraph two of the ‘Status Quo’ section claims a number of benefits for the Algorithm Charter: risk management policies, ethics committees, and stocktakes, amongst others. The Council notes that these benefits are not supported by the IRM, and therefore finds their assertion here to be suspect. The further claim that agencies have “been transparent with the public about the types of algorithms that are being used” is simply untrue. The Council believes that the reason that the IRM failed to substantiate the benefits claimed in paragraph two, is that the implementation of the algorithm charter is being performed behind a curtain of secrecy. The Council agrees with the IRM’s assessment that a tiny handful of agencies have published a mere hint of information.
92. The commitment should be strengthened by adding a new milestone for every agency to make their algorithm risk management policies publicly available, and to keep them updated.
93. The commitment should be strengthened by adding a new milestone for every agency to establish an ethics committee to oversee algorithms. Each of those committees should include academic, iwi, and CSO representatives in addition to all of government experts from, for example, Statistics New Zealand. The membership of these committees, their decisions, and the minutes of their meetings should also be publicly available.
94. The commitment should be strengthened by adding a new milestone for government agencies to report on their use of algorithms in their Annual Reports.

95. The commitment should be strengthened by adding a milestone for government agencies to commission external audits of existing algorithms. Proposed new algorithms should also be externally audited before they are used. A schedule of annual audits should be established to establish public trust that the algorithms in use are the algorithms which were approved. All of these reports should be publicly available, with the pre-commissioning report for new algorithms published at least 30 working days before their first use.
96. Finally, the commitment should be strengthened by adding a new milestone for the lead agency, Statistics New Zealand, to conduct pre-implementation consultations for new algorithms, to commission an independent review of those consultations, and to prepare tools, guidance, and other supports so that other agencies are ready to commit to pre-implementation consultations in the next NAP.

### **Challenge commitments**

97. Section 3.4 of the OGP's *National Handbook* sets out details of what the OGP calls 'Challenge Commitments'.<sup>11</sup> These enable countries to add one or two further commitments to their Action Plans after their formal adoption.
98. Challenge Commitments were introduced by the OGP in 2021 "*to enhance flexibility and allow countries that are implementing an action plan to respond to emerging national priorities by using the OGP platform and its participation and co-creation mechanisms*".
99. Finalisation of Aotearoa's fourth NAP has been impeded by the failure of nearly all of the relevant government agencies to work with CSOs to draft the commitments between mid-July and early September 2022. The Ministry for the Environment did not speak to us at all before providing inaccurate advice that rejected even the idea of exploring the implications of accession to the Aarhus Convention.
100. The Council therefore believes that the government should take advantage of the opportunity presented by Challenge Commitments, and add one or two further commitments to the NAP in 2023.
101. Our first choice would be the commitment for civil society and government to co-create the National Interest Analysis of the implications of Aotearoa acceding to the UN's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as the Aarhus Convention.
102. Environmental issues are continually emerging, and we highly doubt the OGP itself would reject Aotearoa proposing to add a commitment on this topic, given the OGP's own research has identified accession to the Aarhus

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<sup>11</sup> OGP *National Handbook: Rules + Guidance for Participants*, Open Government Partnership, 2022. Page 27. <https://www.opengovpartnership.org/documents/ogp-national-handbook-rules-and-guidance-for-participants-2022/>

Convention as a key way in which member countries can bolster open government approaches to addressing environmental challenges.<sup>12</sup> Latin American OGP members are already including commitments in their Action Plans to implement aspects of the parallel Escazu Agreement.

103. A second challenge commitment could adopt the Council's recommendation that a review be undertaken of the confidentiality terms imposed on external experts who serve on expert advisory groups across government. This was suggestion 8 in our submission of 28 July 2021. This issue continually affects the ability of CSOs who participate in government policy development work. Such confidentiality terms are, in our view neither necessary nor justified infringements on CSOs' freedom of expression rights, supposedly guaranteed under section 14 of the NZ Bill of Rights Act. Instead, they are designed to enable public servants to keep all the power in a policy development process. This is a clear open government issue, and one that is long overdue for the government to tackle.

## **Undertaking the Plan**

104. The final section of the NAP contains three subsections: Implementation, The Multi-stakeholder Forum, and The Independent Reporting Mechanism. These are addressed below.

### *Implementation*

105. The draft NAP states that:

*Following the publication of the Fourth National Action Plan, the key stakeholders involved in the work under each commitment will continue to work on the implementation process. While the commitments may have milestones and specific outputs, the details of the specific activities required of stakeholders to realise the milestones will typically have more detailed plans.*

106. As the Council has noted throughout this response to the draft NAP, it is very difficult to see how 'the key stakeholders' will be involved in the work, or the development of the detailed plans, given that – aside from commitment 3 – no mention is made in the commitments to the involvement of civil society or other stakeholders in the delivery of the commitment. Shockingly, this includes Te Kawa Mataaho itself, in spite of public participation being the subject of its own Long Term Insights Briefing and the two commitments it will lead being on the subject of public participation or 'community engagement'. As noted in our introductory comments, the OGP itself is very clear that governments can opt for 'Business as usual: government implements, civil society criticises', or it can invest in building a genuine partnership by setting up on-going coordination mechanisms to draw on each other's expertise.

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<sup>12</sup> Open Government Approaches to Environmental Justice, Open Government Partnership, 2022. Pages 47-62. <https://www.opengovpartnership.org/documents/justice-policy-series-part-iii-accountability-for-democratic-renewal/>

107. The OGP now has 10 years of experience and data on the implementation of National Action Plans. It states that,

*Evidence from IRM reports and OGP's Decade Report show that continued stakeholder dialogue and participation during the implementation process is strongly correlated with high levels of completion and stronger results.*

108. The Council's experience of previous NAPs is that unless the commitments in the NAP are revised to specifically require civil society and other stakeholder participation in the delivery of commitments, this will not occur. Aotearoa's delivery of its Open Government Action Plan will then fall as short of the OGP guidance on delivery as it has on co-creation.

### *The Multi-stakeholder Forum*

109. Statements made on page 29 of the draft NAP describe what a Multi-stakeholder Forum may be in the context of the OGP. It includes the sentence "*The Multi-Stakeholder Forum (MSF) is an established space for ongoing dialogue and collaboration between government and civil society representatives and lead the open government processes within a country.*" As a statement of the model it is unremarkable.
110. What is really problematic is the statement on page 30 that "*During the first half of 2023, New Zealand's current MSF will be leading work on the design and establishment of a new Multi-stakeholder Forum.*"
111. The assertion that New Zealand currently has a OGP-compliant MSF is simply untrue. The members of the EAP are not "*civil society representatives*" and they do not "*lead the open government processes*" within Aotearoa. The people appointed by the Commissioner as individual experts in matters relating to open government, are not representatives of civil society as a whole, nor even of any organisation they may lead or be involved with. Further, the EAP is only an advisory group and has no decision-making rights, so it cannot "*lead the open government processes*" in this country.
112. The Council is confident that if it and the other CSOs involved in the OGP work are not members of the purported current MSF, none exists.
113. Honesty is the first step in building trust between potential partners, so the government should simply be honest and state in the NAP that Aotearoa has not, up until now, had a genuine Multi-stakeholder Forum. A lack of honesty on this topic does not demonstrate good faith, which will be essential for the design and establishment of a Multi-stakeholder Forum.
114. Issues that must be addressed in the creation of a MSF include the following:
  - Identification of the stakeholders
  - How a person may claim to be a representative of any stakeholder or sector of society that has a stake in the OGP work

- Evaluation of those claims – different sectors may have varying approaches to deciding who may legitimately claim to represent them
  - Obligations on representatives with regard to seeking input from those they represent, and reporting back to them
  - The functions, powers and decision-making rights of the Forum
  - Who chairs the Forum
  - Financial and resource support for the work of the Forum and paying members for their time
115. Development of this and previous NAPs has shown that while ultimate decision-making on the contents of a NAP rests in the hands of Cabinet, officials and ministers have been unclear on the role of the Minister for the Public Service in the process. This has led to failures of leadership, through a lack of participation in the co-creation work, a lack of visibility to other agencies that has led them to believe the OGP work can easily be ignored without consequences, and a lack of provision of ideas or negotiating brief to the officials undertaking the NAP development work on a day-to-day basis.
116. The Council firmly believes that the MSF must therefore be co-chaired by the Minister for the Public Service and a civil society representative. This would finally give meaningful effect to the word ‘Partnership’ in the title of the OGP.
117. Officials from the Commission and other government agencies should participate on the MSF as equals with civil society representatives, but this does not mean there should be an equal number of public servants who are members of the MSF as there are non-government members. Just as society is made up of greater number of people who are not public servants, the membership of the MSF should reflect this.
118. Māori, civil society and any private sector representatives on the MSF must be selected and appointed to the MSF only by the people and organisations they represent. There can be no question of public servants or the Minister vetoing who can serve on the MSF.
119. If the government wants the MSF to fulfil the role of ‘leading’ the open government processes in Aotearoa, and to take on the responsibilities described in the boxes on page 30 of the draft NAP, it is clear that the Forum will not be advisory, but executive. Te Kawa Mataaho’s role should be to provide the secretariat.
120. Civil society has had consistently poor experiences over the last nine years of Aotearoa’s membership of the OGP. If the government wants this membership to continue, and to have any meaning, the Council believes government ministers must have the courage to show leadership and require the creation of a truly empowered MSF.
121. The Council believes this is an essential action if civil society are to consider it worth their while to participate in the work again in future. Not only would this

move a key international commitment made by governments up the IAP2 Spectrum from the current sub-par ‘consult’ level towards the proper level of ‘empower, but it would show Te Kawa Mataaho modelling expectations for the rest of the Public Service on giving effect to the duty to ‘foster a culture of open government’. From a Te Tiriti o Waitangi perspective, the Crown would also finally be honouring its obligations in the OGP work. It would also be able to point to this when assessments are made of Aotearoa’s progress on Sustainable Development Goal 16.7.

### *The Independent Reporting Mechanism*

122. This section is weak. The Council believes that the shift in IRM products to include a *Co-creation Brief* being provided to government and civil society in advance of NAP development means that instead of only viewing the IRM as an accountability exercise that comes at the end of a NAP, this section should appear towards the start of the NAP.
123. This would also frame the update that the NAP should begin with, explaining how it will be addressing the insights and recommendations from not just the IRM report on the just-completed NAP, but on outstanding issues from all previous IRM reports. For example, this NAP completely fails to address the lack of completion for commitment 11 in NAP3, and how this could be addressed in NAP4.
124. With regard to NAP3 commitment 11, the IRM’s March 2022 *Transitional Results Report* stated that:

*The Department of Internal Affairs has now scoped and identified resourcing required to deliver a two-phased implementation plan beginning in early 2022, involving Build and Release (phase 1) and Maintain and Develop (phase 2). Some of the required resourcing has been committed to Phase 1, with work ongoing to secure the remainder. The department is also working towards identifying a system owner for the dataset.<sup>13</sup>*

125. In spite of this, the Department of Internal Affairs has not communicated any information on progress to any of the non-government participants who voluntarily worked on implementation of this commitment between 2018 and 2021, and certainly not the ‘two-phased implementation plan’. This is not good enough.
126. The section contains an inaccurate statement that “*A key output of the IRM is the ‘Transitional Results Report’, delivered at the end of the implementation of a National Action Plan.*” This highlights the loss of institutional knowledge about the OGP within Te Kawa Mataaho. First, the Transitional Results Report, as its name indicates, was an interim report format as the OGP’s

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<sup>13</sup> New Zealand Transitional Results Report 2018-2021, Open Government Partnership, 2022, page 23. [https://www.opengovpartnership.org/wp-content/uploads/2022/03/New-Zealand\\_Transitional-Results-Report\\_2018-2021.pdf](https://www.opengovpartnership.org/wp-content/uploads/2022/03/New-Zealand_Transitional-Results-Report_2018-2021.pdf)

Independent Reporting Mechanism transitioned from an earlier assessment methodology to its current one. Second, the section omits to mention the IRM reviewer will first be producing an *Action Plan Review* that assesses the quality of commitment design and compliance of the process for creating the NAP with the OGP's standards. Finally, it also fails to mention that the IRM researcher will be producing a *Co-Creation Brief* ahead of the start of work on NAP5, to provide “*an overview of the opportunities and challenges for open government in a country context and presents recommendations drawing on lessons and examples from comparative international experience and previous IRM reports.*”<sup>14</sup>

127. This section should not only provide a link to where the IRM reports on Aotearoa’s performance as a member of the OGP can be found on the OGP’s website, but also to how the new IRM researcher, Dr Eppel, can be contacted by those interested in commenting on Aotearoa’s OGP process and activities.

## Conclusion

128. The Council, which has no paid staff, has actively participated in what we thought would be a ‘co-creation’ process to develop NAP4. We have donated hundreds of hours of volunteer time to trying the help the government comply with its OGP membership obligations. We have done so not for the sake of compliance, but so that the beneficial outcomes of compliance with the OGP’s co-creation and participation standards could be realised, through commitments that are better designed and more ambitious because they were drafted together with CSOs and other stakeholders.
129. Many of the issues our submission highlights could and should have been worked through far earlier in the NAP development process. If the co-creation standards had been adhered to, we would not find ourselves in this tired old situation of attributing accountability for processes gone wrong, because higher quality participation would have resolved the issues earlier.
130. Some suggestions for the future, without which we may well not participate again:
  - Create an MSF that has executive authority to lead NAP co-creation and oversee implementation (as detailed above);
  - Create an ‘OGP commitment fund’ in advance of the NAP development cycle, of between \$5-10 million, so departments are incentivised to participate instead of seeing it as a risk of being saddled with unfunded work; and
  - Put systems in place to safeguard institutional knowledge of the OGP, and to actively learn from other countries’ experiences of the OGP.

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<sup>14</sup> These can be found here: <https://www.opengovpartnership.org/irm-products-and-process/>

## Overall

- To strengthen open government impact, the commitments can proactively identify civil society leads, and the roles of civil society and the public in commitment milestones.
- To ensure that considerations related to Te Tiriti o Waitangi are fully embedded in implementation of each commitment, it would help to directly incorporate these considerations into the content of commitment milestones.
- For further IRM advice on commitments carried forward from the previous cycle, please see the IRM [Transitional Results Report](#) and [Design Report](#) for New Zealand's third action plan.

## Commitment 1

- This commitment could concretize its intended scope - What will constitute a “significant initiative”?
- To embed agencies’ use of the community engagement tool, TKM could link implementation of the tool to its assessments of agency Chief Executives meeting their duty under s. 12 of the Public Service Act 2020.
- Beyond reporting requirements, it would be valuable to incorporate milestones that, with civil society, measure agencies’ uptake of the tool, and evaluate whether this form of public engagement has made implementation of policies smoother.
- Spain made a [related commitment](#) in the 2020 action plan that you may find useful for inspiration and learning.

## Commitment 2

- As a useful resource, the OECD has outlined [ways to institutionalise deliberative democracy](#), including giving citizens a right to demand a deliberative process, requiring deliberation before certain kinds of policy decisions, sequencing deliberative processes throughout the policy cycle, or connecting deliberation to parliamentary committees.
- Exploring and testing the application of deliberative processes within New Zealand’s context is an important and valuable exercise. There is a large amount of international evidence and case studies that could be drawn on to support this commitment. The OECD’s Deliberative Wave report is one such resource to particularly consider. If helpful, the OGP Support Unit can point you to additional resources and connect you with peers in other countries for support and guidance. A peer learning exercise could be considered as an additional activity within the commitment, which we would be happy to support.

## Commitment 3

- The commitment mentions identifying best practices from other service models. The OGP policy page also provides other examples ([Actions for Transparent and Accountable Digital Governance](#)) on digital transformation from other members that sought to enhance public services.
- It may be useful to consider specific targeted outreach to groups less likely to use the platform in order to ensure that their voices are also heard. We know from research into who uses similar digital platforms in other countries that people who are wealthier, better

educated, middle aged and male are often over-represented, while poorer and marginalized groups are under-represented. In addition to planning for outreach to Maori peoples to understand potential digital exclusion barriers, you may want to detail potential barriers for other stakeholders (eg women, youth, elderly, rural, etc) and state that you plan dedicated consultation with these communities or organizational representatives to understand their public service priorities, barriers to entry, and other unanticipated issues.

#### Commitment 4

- Can this commitment offer greater specificity on what is intended to be included in the National Counter Fraud and Corruption Strategy?
- What will civil society's role be in developing and implementing this strategy?
- It would be valuable to incorporate milestones that, with civil society, measure uptake of the strategy and evaluate its impact and lessons learned.
- As a useful resource, the commitment can incorporate the recommendations of the [National Integrity System Assessment](#) conducted by TINZ.

#### Commitment 5

- It may be useful to see further details with regards to the content of the legislation that will be proposed to the Parliament (for instance, clarify whether a central register of BO information will be created, the format intended for the disclosure of BO information, whether public availability will be guaranteed, etc.)
- This commitment could align the intended beneficial ownership database with Open Ownership's [Beneficial Ownership Data Standard](#).
- To allow the public to use the intended beneficial ownership database to fully contribute to accountability efforts, this commitment can plan for consultation with experts and civil society to ensure that the public has sufficient free access to beneficial ownership information.
- This commitment could add milestones to encourage utilization of the beneficial ownership database information.

#### Commitment 6

- Will this commitment release new government procurement information?
- This commitment could plan to update the Government Procurement Rules to support release of all awarded government contracts as open data and adoption of OCDS, as well as giving MBIE power to enforce compliance.
- As GETS contract notice releases represent a small portion of the total annual government expenditure, this commitment will be most impactful if it addresses all government procurement data, including actual contracts. This could span contracts awarded via tendering on the GETS platform, as well as those awarded via panels of pre-approved suppliers and those directly awarded without public tendering.
- It may be helpful to consider including an accountability aspect which CSO partners can help with. For instance, also explore activities that include CSO partners which can come in the form of identifying priority datasets for visualization, pilot sectors to look into,

or developing a feedback mechanism that can support policy reforms.

- The government can also take a look at the OGP's [Open Contracting and Public Procurement](#) policy page that provides recommendations to strengthen procurement systems. Also worth noting that the Support Unit is in the process of establishing a CoP on Open Contracting for Asia Pacific in collaboration with OCP, and we can invite them to join once operational.

#### Commitment 7

- Consider civil society requests to carry out the review independently, not by the Ministry of Justice.
- The planned review could include proactive publication policy and secrecy clauses.
- It would be valuable to plan for strong civil society and public engagement in the review process, and in the commitment's efforts to strengthen access to government information.
- This commitment could concretize plans to strengthen processes and guidance to better reflect the presumption of disclosure of government information and the application of the public interest test under the OIA.

#### Commitment 8

- To further improve the Charter's implementation, this commitment could offer greater clarity about cross-government leadership, oversight, monitoring, and appropriate data management.
- This commitment could take measures to ensure that the Chief Data Steward has enforcement power across government, that the Charter is being applied consistently across agencies, that agencies publish a catalogue of the algorithms they are using, and that the Charter's implementation support document provided to the Minister in 2020 is published.
- We look forward to creating opportunities to share learnings from this process with peer countries and tackle key implementation questions including as part of New Zealand's engagement in the [Open Algorithms Network](#).



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## **Open government Partnership National Action Plan 4**

### **Submission by the Environment and Conservation Organisations of NZ /Aotearoa Inc (ECO)**

#### **1. Introduction to ECO**

**ECO** is a national organisation of organisations who hold a shared concern for the environment, for conservation and sustainability. We aim to give a voice to the environment while also respecting and honouring te Tiriti o Waitangi.

#### **Our Details:**

Details: NGO

Organisation:

Name: The Environment and Conservation Organisations of Aotearoa/NZ Inc

Email: [eco@eco.org.nz](mailto:eco@eco.org.nz) (and copy in Cath Wallace as well please)

Tel 04 385 7545

Not for publication

Person Contact:

Cath Wallace, Vice-Chair ECO and the Climate Change working group ETS lead;  
9(2)(a) privacy

#### **ECO's long-standing interest in Open Government.**

ECO has long followed the issue of open government and the choice and design of policies and policy instruments. We were instrumental in the genesis of the Official Information Act, have watched the evolution, opening and closing of official information in NZ and elsewhere the and promise and problems associated with the design, lack of funding and commitment to open government and successive OGP National Action Plans. We have been part of the core group of Civil Society Organisations who worked with officials and we are signatories to the letter expressing our disappointment at the lack of ambition in the proposed NAP4, including the rejection of doing even a National Interest Assessment of NZ acceding to the Aarhus Convention.

We will not rehearse again the detail of our disappointments or our critique of the limitations of what has been promulgated by officials and Cabinet as NAP4, instead we turn here to the further opportunities reinforce open government.

We are grateful to Andrew Ecclestone for the work he has done in coordination of the Civil Society Organisation Core Group. He has drawn our attention to the opportunity presented under s3.4 of the OGP National Handbook to provide for the addition of "Challenge Commitments" to the Commitments included in the NAP, in NAP4 in this case. We suggest two such Challenge Commitments below:

1      We know that the preparation and passage of the Resource Management Act replacement Bills and the policies and measures relating to climate, waste, fresh water and pollution, have stretched the capacity of the Ministry for the Environment this year, so we do understand why MfE may have baulked at further work. We ask that the issue of a co-created National Interest Analysis of NZ acceding to the Aarhus Convention be revisited. The Convention is titled the UN's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and it has a South American counterpart, the Escazu Agreement.

2      Addressing problems with the Official Information Act's implementation:

a)      Having worked enormously hard for decades to get the Official Information Act in place and properly functioning, we are very concerned that there is a high degree of obstructionism from some government agencies in the implementation of the OIA, and we would like to see these issues addressed.

b)      The resistance to the OIA has escalated to some agencies and some ministers actually presenting laws to Parliament that exempt these from the operation of the OIA: this is deeply corrosive of open government and we wish to see a programme to reconsider and reverse such exemptions.

c)      Further, we ask that a commitment to include in this second Challenge Commitment also a review and reversal of policies to limit or shut down the right of experts and contributors to government stakeholder panels, advisory groups and peer review teams who have to pledge secrecy in order to engage in discussions. This means vital information and proposals are suppressed instead of being open for discussion.

These three practices are eroding open government and thus depriving Aotearoa of the very benefits of participatory open government that provide for high quality decisions, policies and laws and that underpin democratic legitimacy.

Thank you for your attention to these matters – we hope to work with you in the spirit of co-creation.

Nga mihi nui,

Cath Wallace, Vice Chair of ECO



12 December 2022

Open Government Partnership Team  
Te Kawa Mataaho Public Service Commission

By email: [ogpnz@publicservice.govt.nz](mailto:ogpnz@publicservice.govt.nz)

Dear Open Government Partnership Team

I appreciate the opportunity to provide comments on New Zealand's draft Fourth Open Government Partnership (OGP) National Action Plan.

### **General Comments**

As the Chief Ombudsman, I am an Officer of Parliament independent of executive government. The remit of the Ombudsmen has expanded over time, and now includes:

- Investigating alleged or suspected maladministration on receipt of a complaint or of the Ombudsman's own motion under the Ombudsmen Act 1975 (OA).
- Reviewing decisions by central and local government agencies on requests for information under the Official Information Act 1982 (OIA) and the Local Government Official Information and Meetings Act 1987 (LGOIMA).
- An enhanced oversight role over Oranga Tamariki—legislated for but not yet in force—which will include new functions, duties and powers under the Oversight of Oranga Tamariki System Act 2022. The Act will extend the application of the OA (and thus the OIA) to care and custody providers as defined by that Act.
- Monitoring the rights of disabled people, in line with New Zealand's obligations under the United Nations Convention on the Rights of Persons with Disabilities (Disability Convention).

The OIA and LGOIMA hold special significance with respect to New Zealand's commitments under the Open Government Partnership. These Acts have their origins in the General and Supplementary Reports of the Committee for Official Information—also known as the Danks Committee—which were issued in the early 1980s.<sup>1</sup> In its General report, the Danks Committee recognised that even in 1981, it was:

*...generally accepted that the Government has a responsibility to keep the people informed of its activities and make clear the reasons for its decisions. The release and dissemination of information is recognised to be an inherent and essential part of its functions.*

<sup>1</sup> Danks Committee, *Towards Open Government - General* and *Supplementary* reports available here:  
<https://www.ombudsman.parliament.nz/resources/towards-open-government-danks-report>

*...The assumption on which both the Government and interested groups are now tending to work is that official information should be made available to the public, unless there are good reasons to withhold it in the interests of the community at large.*

*...We therefore consider that the system based on the Official Secrets Act should be replaced by a new set of arrangements. The Government should, in our view, reaffirm its responsibility to keep the public informed of its activities and to make official information available unless there is good reason to withhold it. Grounds for withholding information from the public should be set out clearly, along with the basic principle.*

The Danks Committee recommended the enactment of what ultimately became the OIA, including a starting presumption that official information must be made available on request unless good reason exists for withholding it.<sup>2</sup> This was followed 5 years later by the LGOIMA, with the same starting presumption.<sup>3</sup>

The Danks Committee recognised that its proposed freedom of information regime would both prompt and require a substantial cultural change within executive government. It helped pave the way for this cultural change by recommending that legislation expressly contain the purpose:

***To increase progressively the availability of official information to the people of New Zealand in order to enable their more effective participation in the making and administration of laws and policies, and thereby to enhance respect for the law and to promote the good government of New Zealand*** (emphasis added).

In doing so, the OIA tacitly endorsed and provided a framework for further progressive developments to open executive government up to the public's scrutiny.

It is in this context that it is helpful to recognise New Zealand's achievements, including recent innovations such as the proactive release of Cabinet material. Notably, it was the repeated release of Cabinet material under the OIA without adverse consequences occurring—sometimes at the recommendation of the Ombudsmen but, increasingly frequently, simply on request—that helped provide assurance to, and encouraged, executive government that proactive release should be explored.

### **Strengthening Commitments through reference to the Disability Convention**

I am pleased to see that the Plan and a number of its Commitments recognise the needs for government information to be accessible and useable by all members of New Zealand society, and for engagement and consultation to be meaningful and effective. Notably:

- Commitment 1 notes that meaningful engagement requires those who are affected by decisions to have a say in policy design, development and decision making. Meaningful engagement with diverse people and communities, from an inclusive and collaborative

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<sup>2</sup> Section 5 of the OIA.

<sup>3</sup> Section 5 of the LGOIMA.

perspective, will help make better decisions and increase public trust and confidence in government.

- Commitment 2 notes the need to undertake research to learn more about how alternative deliberative processes, including representative deliberative processes, can be adapted to work in the New Zealand context.
- Commitment 3 recognises the need for executive government to provide integrated, multiple channels for Public Service delivery, including options which meet diverse needs of all the people of New Zealand and ensure access for all to public services and support.

I commend these initiatives, as they look likely to strengthen the ability of disabled people, including tāngata whaikaha Māori, to engage with and participate in democracy in New Zealand.

I also consider, however, that the Plan and the relevant Commitments could be further strengthened through explicit reference to New Zealand's obligations under the Disability Convention. Of particular relevance, the preamble of the Disability Convention recognises:

- that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others (Preamble, point 5); and
- the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices (Preamble, point 14).

As New Zealand is a signatory to the Disability Convention, its public sector agencies are required to have in place mechanisms that allow disabled people to use services independently, and to provide a variety of reasonable accommodations to disabled people and their supporters.

'Reasonable accommodation' is defined in Article 2 of the Disability Convention as:

*...necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*

Also relevant is Article 9, which relates to accessibility and requires governments to take appropriate measures to ensure that disabled people are able to live independently and participate fully in all aspects of life. This includes access, on an equal basis with others, to information, communication and other services. These measures include the identification and elimination of obstacles and barriers to accessibility, including through:

- promoting other appropriate forms of assistance and support to disabled people to ensure their access to information (Art 9(2)(f)); and
- promoting access for disabled people to new information and communications technologies and systems, including the Internet (Art 2(9)(g)).

Almost a quarter of New Zealanders report having a disability. In a practical sense, New Zealand must and will, in giving effect to Commitments under the OGP, also give effect to its obligations under the Disability Convention. This being the case, it seems appropriate also to recognise the relevance of the Convention through express reference to it within the Plan and its Commitments.

### **Commitment 7 – Strengthen scrutiny of OIA exemption clauses in legislation**

I am particularly heartened to see Commitment 7 within the draft National Action Plan, which seeks to strengthen the scrutiny afforded to draft legislative clauses that propose to override the disclosure requirements set out in the OIA (and, presumably, also the LGOIMA) (secrecy clauses).

Commitment 7 refers to a review process taking place over 2023 in this respect. I would expect to be consulted further as part of that process.

The Commitment recognises that there has been, over time, an increasing number of legislative clauses which have impacted on New Zealand’s freedom of information regime, some in ways that even the government has recognised is detrimental.<sup>4</sup> It notes more than 85 secrecy clauses in legislation, of which 20 were added since 2019.

I agree that there needs to be careful scrutiny of future legislative clauses which seek to oust or modify the application of the OIA and the LGOIMA. This very concern has prompted me to make a number of submissions on related government policy or draft legislation. Recent examples include my submissions on the Accessibility for New Zealanders Bill,<sup>5</sup> the Data and Statistics Bill,<sup>6</sup> and the Civil Aviation Bill.<sup>7</sup>

My concerns centre on the risk that such secrecy clauses will detrimentally impact the ability of New Zealanders to exercise their constitutional and fundamental human rights to seek and receive information. The courts have described the right to seek information under the OIA and the LGOIMA as a ‘*constitutional measure*’,<sup>8</sup> and ‘*an important component of New Zealand’s constitutional matrix*’.<sup>9</sup> The OIA and the LGOIMA are also vehicles by which New Zealanders may exercise their fundamental freedom to seek and receive information, as enshrined in section 14 of the New Zealand Bill of Rights Act 1990 (NZBORA). It follows that the OIA and the LGOIMA, as constitutional measures which reflect fundamental freedoms, should not be curtailed lightly.

Where it is proposed that Parliament legislates for a specific class of information, or for an agency, to be exempt from the application of the OIA or the LGOIMA, there ought to be a substantive and principled justification for doing so, and that justification must be weighed against the impact it would have on the constitutional and fundamental human rights of New

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<sup>4</sup> Andrea Vance of Stuff.co.nz, *Gagging the official information act: why new secrecy clauses are a worry*, 29 July 2022, available at: <https://www.stuff.co.nz/national/129170465/gagging-the-official-information-act-why-new-secrecy-clauses-are-a-worry#:~:text=%E2%80%9CA%20secrecy%20clause%20can%20cover,the%20ones%20in%20the%20OIA.%E2%80%9D>

<sup>5</sup> Social Services and Community Committee submissions, *Accessibility for New Zealanders Bill - Office of the Ombudsman*, available at: [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCSS\\_EVI\\_125643\\_SS4062/office-of-the-ombudsman](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCSS_EVI_125643_SS4062/office-of-the-ombudsman)

<sup>6</sup> Governance and Administration Committee, *Data and Statistics Bill – Chief Ombudsman*, available at: [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCGA\\_EVI\\_116197\\_GA20878/chief-ombudsman](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCGA_EVI_116197_GA20878/chief-ombudsman)

<sup>7</sup> Transport and Infrastructure Committee submissions, *Civil Aviation Bill – Chief Ombudsman*, available at: [https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCTI\\_EVI\\_115765\\_TI2218/chief-ombudsman](https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/53SCTI_EVI_115765_TI2218/chief-ombudsman)

<sup>8</sup> *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 at 391.

<sup>9</sup> *Kelsey v Minister of Trade* [2015] NZHC 2497, at para 19.

Zealanders to seek and receive information. This is particularly relevant where, as in many cases, there already appears to be grounds within the OIA and the LGOIMA which are designed to protect the interests cited as justification for an exemption or other form of carve-out.

I note that the draft recognises:

*There are current safeguards in place, which include the legislative process, guidelines and the Legislative Design and Advisory Committee. It is also the Ministry of Justice's (MoJ) role, for example, to provide advice on Bills that interface with the OIA. This commitment will review existing guidance to identify any gaps in the application of the guidance or the guidance itself. It will propose recommendations to strengthen guidance and controls around this process. This may include consultation with the Office of the Ombudsman.*

In addition, I note that Cabinet Manual currently states:

***Officers of Parliament***

*7.42 Officers of Parliament should be consulted in their areas of interest as appropriate: for example, the Office of the Ombudsmen over the application of the Ombudsmen Act 1975 to a new agency. If proposed legislation would establish a new officer of Parliament, the Office of the Clerk should be consulted, following which the Minister responsible for the bill should consult the Officers of Parliament Committee (a select committee chaired by the Speaker) at an early stage before the legislation is developed.*

Regrettably, however, the Ombudsmen have not always been consulted on policies or draft legislation which affect the application of the OIA and the LGOIMA. Where consultation has occurred, it often has been late in the process, and well after the proposed policy or legislation has already taken shape and provisions relating to information access and/or limits on disclosure have been crafted.

I therefore would suggest that steps be taken to ensure the Ombudsmen are consulted as early as possible in any policy-shaping or legislation drafting process including secrecy clauses, to ensure that any relevant concerns can be identified and addressed at the earliest possible stage. Taking this step would afford an appropriate significance to rights which are both fundamental and constitutional in nature.

For the same reasons, I also support a careful review of any and all ***existing*** secrecy clauses which impact on the application of the OIA or the LGOIMA, to ensure that the fundamental and constitutional rights of New Zealanders are not being curtailed unnecessarily and that any limitation on these rights is justified and proportionate. This is particularly necessary in circumstances where drafters of current and future legislation appear to be increasingly reliant on legislative precedent not just as a model for secrecy clauses but as a justification for their very existence.

Thank you again for the opportunity to comment on the draft Fourth Open Government Partnership National Action Plan.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Boshier".

Peter Boshier  
Chief Ombudsman



12 December 2022

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## SUBMISSION ON THE DRAFT FOURTH NATIONAL ACTION PLAN

### About the Submitter

1. Founded by David Farrar and Jordan Williams in 2013, the *Taxpayers' Union*'s mission is Lower Taxes, Less Waste, More Accountability.
2. We enjoy the support of some 200,000 registered members and supporters, making us the most popular campaign group championing fiscal conservatism and transparency. We are funded by our thousands of donors and approximately two percent of our income is from membership dues and donations from private industry.
3. We are a lobby group not a think tank. Our grassroots advocacy model is based on international taxpayer-group counterparts, particularly in the United Kingdom and Canada, and similar to campaign organisations on the left, such as Australia's *Get Up*, New Zealand's *ActionStation*, and *Greenpeace*.
4. The Union is a member of the *World Taxpayers Associations* – a coalition of taxpayer advocacy groups representing millions of taxpayers across more than 60 countries.
5. Nothing in this submission is confidential and we would welcome the opportunity to discuss this submission with you further.

## Commitment 4

6. The *Taxpayers' Union* considers that that this commitment is far too weak and does not go anywhere near far enough, or fast enough.
7. We note, with great concern, the statements that:
  - a. NZ Police estimate between \$700m and \$1.4bn in government funds is lost to fraud every year; and
  - b. research commissioned by the Serious Fraud Office estimates that, taking into account loss due to error, between \$5bn and \$10bn is lost due to fraud and error every year and these estimates do not include losses attributable to corruption.
8. The draft states<sup>1</sup> that each year the government spends \$51.5bn on the goods and services to support public services, infrastructure, economic growth, and the wellbeing of New Zealanders.
9. If even approximately correct, these fraud and error figures are staggering and represent up to a 20% misappropriation or misreporting of government expenditure.
10. It is difficult to understand how the government's annual financial statements receive an unqualified audit report when it appears government expenditure may be materially misstated.
11. The draft action plan does not explain how these fraud and error estimates were derived and we welcome the Expert Advisory Panel's more detailed explanation of how these estimates were calculated. Regardless, the *Taxpayers' Union* will be following up this issue with the respective organisations to gain a complete understanding of how the estimates were prepared and what this means for the accuracy of the government's financial statements.
12. It's all very well to design a strategy, but the sheer scale of the estimated fraud and error demands immediate action and investigation – nothing less will do. The commitment must be to immediately investigate, prosecute and stamp-out fraud, error, and corruption.

## Commitment 6

13. The *Taxpayers' Union* supports this commitment to improve the transparency of government procurement.
14. Increasing the transparency of government procurement processes will reduce compliance costs for businesses tendering for government contracts. This will facilitate greater competition and help reduce the costs to government and taxpayers.
15. Designing a new procurement system is not without significant cost and difficulty. The *Taxpayers' Union* supports the initial focus on further developing the Government Electronic Tendering Service (GETS) to improve the information it can publicly provide. However, care needs to be taken when looking at designing new systems as costs can rapidly escalate, especially if the scope begins to broaden. It is important to not let the pursuit of perfection be the enemy of the good.

<sup>1</sup> Page 23

## Commitment 7

16. The *Taxpayers' Union* considers that that this commitment to scrutinise legislative clauses that propose to override the disclosure requirements of the Official Information Act 1982 (OIA) is too weak and does not go far enough.
17. In our view there should be no such clauses in any legislation. The OIA already has sufficient protections for privacy, commercial sensitivity, free and frank advice, amongst other reasons for non-disclosure of official information. The *Taxpayers' Union* is not aware that the existing non-disclosure provisions in the OIA are preventing the Government from obtaining any of the information it needs for decision-making. Inserting clauses in legislation to override the disclosure requirements of the OIA is unnecessary and therefore redundant.
18. The *Taxpayers' Union* is concerned that there are now more than 85 such clauses in legislation and that 20 of these have been added in the last three years. We regularly use the provisions of the OIA to obtain relevant information from government and fully understand how difficult it can be to obtain this information under the OIA. Inserting clauses to override the provisions of the OIA just makes it harder to obtain relevant information where there is a public interest in its disclosure and insufficient justification for withholding that information.
19. This commitment needs to be restated to remove all legislative clauses that override, or propose to override, the disclosure requirements of the Official Information Act 1982.

## Concluding Comments

20. Of the three commitments that The *Taxpayers' Union* has commented on, only Commitment 6 looks fit for purpose. Commitments 4 and 7 are passive and need to be strengthened so that they are commitments for action. The estimated scale of fraud and error in government procurement is so large that it demands immediate action and investigation. Designing a strategy to address this potentially major problem is woefully inadequate.
21. Similarly, scrutinising legislation for clauses designed to get around one of the most important public policy disclosure requirements is simply inadequate. Immediate action is required to excise such unnecessary and redundant clauses from all legislation. A failure to do so belies any government's claim to openness, honesty and transparency.

Yours faithfully,  
New Zealand Taxpayers' Union Inc.



**Ray Deacon**  
Economist  
9(2)(a) privacy

