

## **Part 2. Collation of public submissions received for New Zealand's Fourth National Action Plan draft (November - December 2022)**

- Transparency International New Zealand 52-56
- Trust Democracy NZ 57-75
- Citizens Advice Bureau Dunedin 76
- Members of general public 78-103



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Open Government Partnership New Zealand  
Te Kawa Mataaho Public Service Commission

## New Zealand's 4th Open Government Partnership National Action Plan (NAP4)

3 December 2022

Thank you for the opportunity to submit on this matter. Our lead expert on this topic is Laurence Millar.

*Other TINZ contributors to this submission include Julie Haggie.*

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### TINZ submission:

We are pleased to take this opportunity to comment on the public consultation on New Zealand's 4th Open Government Partnership National Action Plan (NAP4).

## Summary

The Open Government Partnership (OGP) offers an innovative model for co-development by civil society and government to improve public transparency and accountability. We are disappointed that this opportunity has not been seized in the three years that the NAP4 has been in development.

The process that was used for the development of the plan is not aligned with the OGP documented standards, nor the guide to public engagement created by the government in NAP3.

The huge effort from civil society and from the lead agency Te Kawa Mataaho (TKM) has delivered a plan that is primarily a collection of current work already under way within government. NAP4 does not reflect the stated wish of the Minister for the Public Service for bold initiatives, nor does it uphold the principle “to foster a culture of open government” set out in section 11 of the Public Service Act (2020).

Civil society groups have laboured with mostly volunteer resources, to drive real ambition in the plan. We brought intent and skills to the table, but most of our expertise and energy has been expended without purpose, because lead agencies were not willing to engage or make meaningful commitments.

We are pleased that our continued insistence on the importance of Te Tiriti o Waitangi as central to the commitments has been realised, and that there is a firm commitment for greater accessibility to government services and support.

## Comments

TINZ has been involved throughout the development of NAP4, and has experienced frustration at the lack of effective engagement and meaningful participation with civil society organisations (CSOs). Our comments here are in two parts – the process used to develop NAP4, and the commitments that are included in the draft.

## The process used to develop NAP4

The IAP2 defines a [spectrum of participation](#), and from the start of the NAP4 development process we encouraged Te Kawa Mataaho (TKM) to adopt a collaborative approach, as espoused by the OGP. The Policy Community Engagement Tool, which was developed during NAP3, is based on the IAP spectrum.

It is frustrating that the dominant mode of participation has been “Inform” with some aspects of “Consult”. A meaningful shift would have been towards “Involve”: *We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.* Had ‘involve’ been applied we would have seen active collaboration and co-leadership, co-design of commitments, enthusiasm towards innovative ideas, genuine discussion on practicalities and resourcing and broader and more targeted consultation.

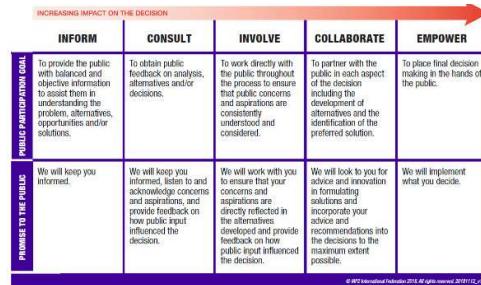
The draft NAP4 describes (pp 7-9) the development of the plan in a way that suggests there was extended consultation and dialogue. That is not our experience or view. . In March 2021, we signed, with other civil society organisations (CSOs), a letter to the Minister of State Services expressing our concern.

*We applaud your government’s success in passing the Public Service Act 2020, which requires Chief Executives to uphold the principle of fostering ‘a culture of open government’. The development of NAP4, containing commitments to action, provides an excellent opportunity to operationalise this principle and embed it in the Public Service. However, without a change to the process for developing NAP4, we have serious concerns about the value of engaging with the work to develop the plan, and believe that - counter to its intentions - OGP work in New Zealand will continue to feed cynicism about ‘co-creation’.*

It gives us no pleasure to report that the experience over the last three years has reinforced our concern about the process used by government officials. While we gave many hours of our time to provide ideas and comments, information was provided back by officials only after multiple requests and extended delays, as illustrated by the activities to create the draft plan that is the subject of this consultation:

- In July 2022, “fledgling commitments” were finalised.
- They were to be worked on individually by a representative of the lead agency and the relevant CSO for each commitment. This did not happen.
- Two months later, TKM distributed fully drafted commitments with an 8 day deadline to provide feedback. We provided our feedback by the deadline, which involved considerable analysis and comments.
- We received no feedback or further information on the commitments, other than a copy of an A3 summary that was provided to the Minister
- Two months later, after a series of requests, we received a copy of the draft commitments that had been sent for ministerial consultation
- During the five-month period while the commitments were developed, CSOs had no opportunities for meaningful engagement.

We have been encouraged by our interactions with the Minister for the Public Service, and have appreciated the opportunity to meet with him, and his response to our letters. It is clear that the minister supported many of the proposals from CSOs and he wrote in one letter that “we need to include a couple of bold initiatives” in NAP4. It appears that this ministerial leadership has not been translated into the commitments in the action plan.



On page 5 of the draft, it is stated that the Expert Advisory Panel (EAP) “*recommended greater priority be given to the OGP and the authentic co-production of ambitious, potentially transformative commitments*”. The commitments in the plan have not been co-created/co-produced, they are not ambitious and they are not transformative.

## The commitments in the draft NAP4

We set out below our comments on the individual commitments, and the implementation of NAP4.

Page	Topic	TINZ comment
11	<b>Commitment 1</b> Adopt a community engagement tool	<p>This is a prime example of how much the original ambition was watered down. An ambitious idea was proposed for a central seed fund that could be used (eg by local and central government, iwi and CSO), wanting to trial and review innovative community engagement methods such as citizens assemblies, with oversight by a multi-stakeholder forum. This would have enervated and resourced a collective commitment to community engagement.</p> <p>The commitment should include:</p> <ul style="list-style-type: none"> <li>publishing the report from the review of the use of the policy community engagement tool</li> <li>mandatory expectations that government entities will adopt the tool</li> <li>information on how the public will be involved in delivery of the commitment.</li> <li>provisions on co-designing enforceable minimum standards for public consultations (information gathering, co-design, publication)</li> <li>specification that the community of practice will be open to private sector public engagement consultants, CSOs, academics and interested members of the public</li> </ul>
15	<b>Commitment 2</b> Research deliberative processes for community engagement	<p>The commitment should include</p> <ul style="list-style-type: none"> <li>a requirement to establish a multi-stakeholder oversight group with a description of how group will work with the organisers of the deliberative processes to adapt to the NZ context</li> <li>publication of the evaluation of the deliberative processes pilot</li> </ul>
16	<b>Commitment 3</b> Establish an integrated, multi-channel approach to public services and support	<ul style="list-style-type: none"> <li>We are pleased to see this commitment has secured a sponsor agency, and that it includes provision for a cross-agency / civil society / NGO / iwi working group.</li> <li>Reference to the Plain Language Act 2022 is relevant in relation to written printed and online material</li> </ul>
20	<b>Commitment 4</b> Design and implement a National Counter Fraud and Corruption Strategy	<p>We are pleased to see this commitment to anti-corruption, though it mostly reflects work already in progress. The commitment should include</p> <ul style="list-style-type: none"> <li>a milestone to create a CSO, Māori and government working group to oversee the development of the strategy.</li> <li>explicit reference to how the strategy will be co-designed</li> <li>a milestone for co-design of ‘Phase 2’ work to extend the strategy to the private sector, by the end of 2024</li> </ul>

21 22	<b>Commitment 5</b> Increase transparency of beneficial ownership of companies and limited partnerships	<p>The commitment should</p> <ul style="list-style-type: none"> <li>• be explicit that the register will be public and sufficient detail provided to enable public identification of beneficial owners</li> <li>• include the requirement for a risk assessment of the use of trusts and how to improve the transparency of their use and ownership</li> <li>• include milestones for public consultation on the development of the legislation in addition to the standard select committee process</li> </ul>
23 24	<b>Commitment 6:</b> Improve government procurement transparency	<p>Less than 3% of government expenditure is currently published under the government mandatory rules for procurement. The description of this current state as “Room for improvement” is not accurate.</p> <p>The commitment should include</p> <ul style="list-style-type: none"> <li>• a milestone to involve CSOs in the co-design of the GETS application</li> <li>• a milestone for a policy to adopt the <a href="#">Open Contracting Principles</a>, which covers the full spectrum of procurement documentation</li> <li>• an explicit statement that all procurement data gathered will be published as open data, rather than simply providing access to ‘dashboards’</li> </ul>
26	<b>Commitment 7:</b> Strengthen Scrutiny of Exemption Clauses in legislation	<p>This commitment should include</p> <ul style="list-style-type: none"> <li>• a milestone to review the 85 clauses in legislation that override the presumption of availability of official information to identify which should be removed, and publish the results of the review</li> </ul>
28	<b>Commitment 8</b> Improve transparency and accountability of algorithm use across government	<p>The commitment should include</p> <ul style="list-style-type: none"> <li>• specification that the community of practice will be open to private sector algorithm experts, CSOs, academics and interested members of the public</li> <li>• a milestone to require government agencies to adopt the Charter in their management of data</li> <li>• a milestone to require government agencies to report on their use of algorithms in their Annual Report, and be subject to regular audit.</li> </ul>
29	Implementation plan	<p>The implementation plan should explicitly describe the value of co-creation and the role of civil society</p>
29	The Multi-stakeholder Forum (MSF)	<p>The current EAP requires people to apply and be selected by government to be a member.</p> <p>This arrangement should be explicitly ruled out for the future, and there should be a commitment for CSOs, Māori and other groups to choose representatives to serve on the newly-established MSF</p> <p>The MSF should be co-lead by government and CSOs</p>

Submission ends

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Our contact for this submission is:

Laurence Millar, Member with Delegated Authority on OGP.

9(2)(a) privacy

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12 December 2022

Dear Mr Hipkins,

**Draft of New Zealand'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. We address the draft commitments first, before encouraging the government to add the commitment on co-creation of a National Interest Analysis of the Aarhus Convention to the NAP next year in line with the OGP's rules on 'challenge commitments'. We then comment on other aspects of the draft action plan.

**Draft Commitments**

3. While Trust Democracy particularly welcomes the inclusion of commitment three in this Action Plan, overall this draft NAP continues the series of disappointing and unambitious OGP action plans, produced by successive New Zealand governments, that have been mostly filled with programmes of work that were either already taking place, or planned to take place. Civil society organisation (CSO) 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 New Zealand being a member of the OGP. The return on investment by civil society of time and effort must improve, or they are likely to decide – as several already have – that the opportunity cost for their other work is too high.
4. Throughout the NAP, there are milestones with start dates of January 2023. These are completely unrealistic, since it is widely accepted that substantive work does not begin in the public service until the beginning of February when everyone has returned from their summer holidays. The proposed end dates should recognise this and accordingly be put back a month, so that the full time period estimated for each milestone is actually available for the work.

5. Trust Democracy also notes that the NAP does not use the OGP's template for commitments, in spite of using them earlier in the process, and in spite of civil society providing completed templates for each commitment. This is disappointing and unfortunate and contrary to OGP process, as the templates require greater explanation of the 'theory of change' or 'intervention logic' for each commitment. This includes problem definition – which is different from the statement in the NAP of 'status quo', analysis of the causes of the problem, and 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 suffered from the government not using the OGP's template.
6. 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 media and private sector representatives). The claim that agencies are not resourced for this is both completely unsatisfactory and indicates profound ignorance of what the OGP is about and an inability to address this, 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>1</sup>*

7. 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>2</sup>*

8. Trust Democracy is deeply disappointed that the government has, yet again, opted for 'business as usual' with government implementing and civil society criticising. For an agency that continually boasts about levels of public trust in the public service, Te Kawa Mataaho's way of trying to strengthen levels of trust is unusual. There is no indication of willingness to co-create the national action plan with civil society.

### ***Commitment 1***

9. We agree 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

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<sup>1</sup> Action Plan Cycle, Open Government Partnership. <https://www.opengovpartnership.org/process/action-plan-cycle/>

<sup>2</sup> OGP National Handbook: Rules + Guidance for Participants, Open Government Partnership. Page 27. <https://www.opengovpartnership.org/documents/ogp-national-handbook-rules-and-guidance-for-participants-2022/>

milestone. We are deeply concerned 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 would demonstrate the Commission's failure 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.

10. The draft NAP needs to make clear what is meant by 'model standard' in the context of the PCET. Trust Democracy 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 public service principles (set out in section 12 of the Act). 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.
11. 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 to reflect this.
12. The draft commitment states that the PCET will be required for community engagement on 'significant initiatives'. What 'significant' means is undefined, and we are concerned by this. The vast majority of government policies and decisions are significant for at least 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 to allow people outside the public service to have input into the definition of 'significant' in the model standard.
13. Trust Democracy supports the establishment of a community of practice (CoP), and believes 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 is short on expertise in this topic – 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 the external experts.
14. However, 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 clear that while delivery of the following may be outside the scope of the commitment, what is within scope is design of the awareness raising, training, principles for revision of departmental strategies, policies and practices. We also recommend including work to implement, monitor, review, adapt and strengthen the CoP. This will create a much stronger and relevant commitment. It appears that the

government has not considered the community engagement recommendations in the IRM Transitional Report on NAP3.<sup>3</sup>

15. Trust Democracy 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. We were deeply disappointed by Te Kawa Mataaho's claim to ministers that "*it is too early*" to do this. On the contrary, we think it is long overdue to take this basic step towards improving the public service's performance on the low end of the IAP2 Spectrum of Public Participation. It would be a key initiative towards actually strengthening agencies' practices and effectively making life better for people wanting to engage with government. As we wrote to the Public Service Minister on 7 October 2022, other countries have had such minimum standards for 20 years. We also appended examples of what such a standard for public consultation could include. If the government and Te Kawa Mataaho are unwilling to countenance inclusion of this work in this NAP, it raises the important question of why we or other civil society groups should donate any further time and effort to this work. There is little point in a commitment on 'significant' public engagement when government is unwilling to pick the low-hanging fruit of basic standards for public consultation exercises.

### ***Commitment 2***

16. Trust Democracy strongly disagrees with the statement in the 'Status Quo' section that, "*The final audience for this work is agencies to support capability development and share lessons learnt*". The OGP membership is not just about the public service but all New Zealanders, including communities, organisations and local government. Given the recommendation in the draft report of the government's own Review into the Future of Local Government for much more local government use of deliberative engagement, and the existence of many other communities interested in deliberative and participatory processes in NZ contexts, including IAP2, surely the 'audience' is much wider? As noted above regarding Commitment 1, this has implications for the creation of a community of practice, and further demonstrates why this must be much broader in membership than government agencies.
17. It is highly likely that at least some, or even all, of the deliberative processes identified for inclusion in this commitment will not be organised by government agencies. It would be unethical and extractive to 'mine' these processes for public service learning only. The commitment should make clear what the public service is prepared to contribute to any public sector/civil society/community alliance. Trust Democracy suggests that Te Kawa Mataaho should, at a minimum, commit to organising and paying for independent process evaluation.
18. 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.
19. Milestone 3 states that it will "*evaluate the deliberative processes pilot*" (which should be plural, not singular, since the commitment refers to 'at least two examples') to identify the

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<sup>3</sup> New Zealand Transitional Results Report 2018-2021, Open Government Partnership, 2022, page 9.

[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)

lessons learnt. The commitment must specify that the evaluation will be published, so that the lessons learnt are shared with all.

20. Milestone 5 states that it will "*Identify future projects to use deliberative processes*". The milestone should be strengthened to state that the projects identified will be published. It also should make clear that Aotearoa's next NAP will have a commitment based on this work, where the government will either fund deliberative processes, or create a fund open to all organisations (government, local government, community) to support the use of deliberative processes.
21. Trust Democracy believes this commitment is ripe for strengthening during the lifespan of the NAP too, as permitted by the OGP. This could be done by adding a milestone to convene, with interested partner ministries, at least two representative deliberative processes (RDP) on useful but complex issues, and to use the results of these processes to identify what further work needs to be done to adapt such processes to New Zealand circumstances.

### ***Commitment 3***

22. Trust Democracy strongly supports this commitment. Coherent, well-funded and well-led action in this area is much needed and has been uncompleted work since the Channel Strategy programme was never completed by the eGovernment Unit at the then State Services Commission.
23. For the vision to be achieved, an 'open' approach to implementation will be essential: civil society must co-design this work with government. 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>4</sup> We are pleased that the commitment includes establishment of a cross-agency, civil society, and iwi working group. For this working group to succeed, act ethically, and not be extractive, civil society and iwi members of the group must be remunerated for their time, both at meetings and for work done in support of the commitment outside those meetings.
24. Successful implementation will require a dedicated budget and we expect the government to approve a 2023 budget bid by DIA to deliver this commitment, given its late inclusion in the draft NAP. Almost all commitments in previous NAPs have been expected to be successful without additional funding and this cannot be permitted to re-occur here.
25. Trust Democracy suggests that delivery of the commitment is more likely to be successful if work across the interdependent elements is enabled by an approach described by the McKinsey 7S framework: strategy, structure, systems, shared values, skills, staff and style.<sup>5</sup>
26. The commitment could be further strengthened by making an explicit connection to the work the government will have to do to implement the Plain Language Act 2022.

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<sup>4</sup> Digital Service Design Standard, <https://www.digital.govt.nz/standards-and-guidance/digital-service-design-standard/>

<sup>5</sup> See: [https://en.wikipedia.org/wiki/McKinsey\\_7S\\_Framework](https://en.wikipedia.org/wiki/McKinsey_7S_Framework)

#### *Commitment 4*

27. Trust Democracy supports the intent of this commitment. We applaud the formalisation of the Serious Fraud Office's work programme in the NAP. Given the value OGP places on participation and partnership, the NAP needs to indicate how civil society will be involved in its implementation. This programme should not be included if civil society does not have an active role in delivering it.
28. The commitment therefore needs to be strengthened by adding a milestone to create a joint agency, civil society and iwi working group to oversee work on the commitment. This needs to include an explicit reference to the strategy being co-designed with civil society and iwi.
29. 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*". However, a milestone relating to a 'Phase Two', or the future development of the strategy, is needed. Based on our experience of previous NAPs, this omission is an invitation for the future development work to disappear, without any meaningful accountability. The commitment must be strengthened by adding a milestone to specify co-design of 'Phase Two' of the work to extend the strategy to the private sector, to be completed by the end of 2024.
30. The commitment could be further strengthened by adding a milestone that the strategy's development will be informed by conducting and publishing a post-implementation review of the Protected Disclosures (Protection of Whistleblowers) Act 2022.

#### *Commitment 5*

31. Trust Democracy supports the intent of this commitment. However, given the value that the OGP places on participation and partnership, the commitment needs 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 delivering it. MBIE's failure to engage with civil society throughout 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 contrary to the OGP's ethos and suggests that its prior involvement in NAP development workshops sought to fend off proposals it did not 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 debases the currency of the OGP in Aotearoa.
32. This is already demonstrated by the fact the milestones in the NAP show that work on this commitment (milestone 1, drafting instructions for the legislation) commenced in September 2022, three months before this NAP will become 'live'.
33. Without a new preliminary milestone to establish a joint agency, civil society and iwi working group to oversee work on the commitment, 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.
34. The milestone timeline needs correction. Milestones 2 and 3 are shown as starting in January 2023, when milestone 2 (drafting the legislation) must occur before milestone 3 (introduce the legislation) can commence. Similarly, since Parliament does not sit in January,

milestone 3 cannot begin then. Milestones 2 and 3 need to be amended so that the end date of milestone 2 is prior to the start of milestone 3, and milestone 2 must begin in at least February 2023, after completion of milestone 1.

35. The commitment is clear that the public will only have access to a limited subset of the beneficial ownership data held by government and available to government agencies. In light of the recent European Court of Justice decision on public access to registers of beneficial ownership in EU member states, this seems prudent.<sup>6</sup> However, the commitment 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 minimum data needs 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. A new milestone to complete this work in time to inform the drafting of the legislation is needed.
36. The commitment would be strengthened by 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. To demonstrate some synergy across commitments, government could deliver this piece of work by using a deliberative mini-public to explore the issues (including hearing from expert witnesses) and make recommendations to government for future strengthening of the beneficial ownership legislation.

#### *Commitment 6*

37. As with Commitment 5, Trust Democracy supports the intent of this commitment, but the same comments with regard to civil society participation and partnership apply here. (See paragraph 31 above.)
38. The commitment must be strengthened by adding a preliminary milestone to establish a joint agency, civil society and iwi working group to oversee work on the commitment.
39. 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. See the comments in paragraph 23 above about the Digital Service Design Standard.
40. Milestone two's end date after the end of the NAP lifespan shows that this is a pre-existing work programme that has not been adapted in any way through inclusion in this NAP. The end date for milestone two should therefore be amended to end in December 2024.
41. Milestone two also needs strengthening, to specify that the data gathered by the new 'integrated data system' will be published as open data. We are deeply concerned that the

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<sup>6</sup> EU Court of Justice decision to “invalidate” transparency in beneficial ownership is a blow to the right to know, European Federation of Journalists, 25 November 2022.

<https://europeanjournalists.org/blog/2022/11/25/eu-court-of-justice-decision-to-invalidate-transparency-in-beneficial-ownership-is-a-blow-to-the-right-to-know/>

'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 in the area of public procurement if it limits the public only to dashboards, which generally visualise data, but not offer it as open data.

42. Milestone three needs to be strengthened by including an undertaking to publish the report on the piloting of the data platform and system.
43. The commitment also needs strengthening by adding a milestone for the joint agency, civil society, iwi, media and private sector representatives to explore adoption of the Open Contracting Global Principles, so that the Government Procurement Rules (and any related legislation) can be amended to require the proactive publication of contract related information such as contracts themselves, reports on performance against the contract specifications, etc.<sup>7</sup> We would prefer the government committed itself in this NAP to adopt the Principles, but if it is unwilling to do this, the very least it could do to demonstrate this commitment being consistent with the OGP ethos is to include a milestone on exploring adoption of the Principles in conjunction with the non-government actors identified above.

#### *Commitment 7*

44. Trust Democracy supports the intent of this commitment. Although it has been included in response to civil society advocacy, it contains no reference to involving civil society in its delivery. Given the value OGP places on participation and partnership, the NAP needs to indicate how civil society will be involved in implementing this commitment. This should not be an OGP commitment if civil society does not have an active role in delivering this commitment.
45. We are also disappointed that the government has not adopted two other key aspects of the civil society recommendation.
46. First, the commitment in the NAP is now weaker than the version that went to Cabinet. That draft included the following statement:

*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.*

47. This statement has been removed from the NAP published for consultation, even though it was entirely factually accurate.
48. Trust Democracy wants this commitment strengthened by adding a milestone 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

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<sup>7</sup> The Open Contracting Global Principles, <https://www.open-contracting.org/what-is-open-contracting/global-principles/>

include assessment of section 14 compliance when new legislation will override the Official Information Act 1982 or its local government counterpart. We would prefer the commitment to be strengthened to require the government to assess new legislation that overrides the OIA against section 14 of the Bill of Rights Act, but if it is not prepared to go this far, facilitating this event should be the minimum.

49. 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 books and publish a report detailing which should be repealed and which amended. Failure to include this as a deliverable in the commitment signals that the government is not serious about reducing the official secrecy created over the years (with 20+ such provisions since October 2017 alone), and that by limiting the commitment to revised guidance for prospective legislation, it fully intends that further such secrecy clauses will be enacted in future.
50. This is contrary to the clear intent of 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.*

51. Every time the government relies upon the exception to the principle of availability due to the clause “*where that question arises under this Act*” by enacting secrecy provisions in other legislation, it is actively choosing to weaken the OIA and 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.

#### ***Commitment 8***

52. Trust Democracy supports the intent of this commitment. However, given the value OGP places on participation and partnership, the NAP needs to indicate how civil society will be involved in implementing this commitment. This should not be an OGP commitment if civil society does not have an active role in delivering it.
53. The commitment must be strengthened by adding a preliminary milestone to establish a joint agency, civil society and iwi working group to oversee work on the commitment.
54. The commitment also needs to be strengthened by amending milestone one to specify that the community of practice (or network) will be open to civil society, academics, private sector experts and interested members of the public. If it is not, we question how the Government Statistician would be complying with his statutory duty to foster a culture of open government.
55. The commitment should also be strengthened to mandate adoption of the Charter by all public sector agencies. It is unacceptable that even the low threshold of adopting a weak Charter is optional in 2022, when the government says it is concerned about the use of algorithms and wants to assure the public about their use within government departments and agencies.

56. Finally, the commitment should be strengthened to require government agencies to report on their use of algorithms in their Annual Reports, and be subject to regular external audit.

### Challenge commitments

57. Section 3.4 of the OGP's *National Handbook* sets out details of what the OGP calls 'Challenge Commitments'.<sup>8</sup> Essentially, countries can add up to two further commitments to their Action Plans after their formal adoption.
58. The *Handbook* states that it introduced the idea of Challenge Commitments 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".
59. Completion of Aotearoa's fourth NAP has been hampered by the failure of nearly all the relevant government agencies to work with civil society to draft commitments in the period mid-July to early September 2022. This has resulted in the exclusion of commitments that were strongly supported by the participating CSOs, and a weak NAP that once again is full of pre-existing work plans
60. Trust Democracy believes that the government should take advantage of the opportunity presented by the OGP's rules on Challenge Commitments, and add one or two further commitments to the NAP in 2023.
61. 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.
62. The ability of the public to participate in issues relating to the environment is 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 Convention as a key way in which member countries can bolster open government approaches to addressing environmental challenges.<sup>9</sup> Latin American OGP members are already including commitments in their Action Plans to implement aspects of the parallel Escazu Agreement.
63. A second challenge commitment could cover the use of deliberative mini-publics to support the work of select committees when they hold an inquiry into topics of their choice. The timing for such a commitment is propitious, given that the next year will also see the revision of Parliament's Standing Orders.

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<sup>8</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/>

<sup>9</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/>

## Other aspects of the National Action Plan

64. In this section of our response to the draft NAP, we comment on the Plan's introduction, the observations from the Expert Advisory Panel, the section entitled 'Our story' and the section on 'Undertaking the Plan'.
65. Trust Democracy is disappointed that, unlike previous NAPs, there is no foreword from the Minister in this plan nor statement by the Public Service Commissioner. Visibility of ministerial and public service leadership matters.

### *Introduction to the Plan*

66. The very first sentence of the Plan's *Introduction* highlights what appears to be a fundamental misunderstanding about the meaning and value of OGP. The Public Service Commission believes open government is about the Public Service, not the government, not local government, not civil society, not communities, not the public.
67. Similarly, the second paragraph is tone deaf to the history of the OIA in the context of OGP and previous New Zealand NAPs. In spite of a new government being elected in 2017, and the minister responsible for the work to create our Third NAP stating that it would be the most open and transparent government ever, no commitment was included in the NAP to strengthen the Official Information Act. Instead there was a weak commitment to consult on whether a review of the Act was needed. This was done poorly by the Ministry of Justice, which only made the submissions it received public following an OIA request. The poor quality review was then followed by obfuscation about its advice, the new Minister renegeing on the promise by his predecessor to re-write the OIA if Labour was re-elected in 2020, and continuing shortcomings in compliance with the Act despite 'education and reporting initiatives'.<sup>10</sup> The government's refusal to accept that a policy for the proactive disclosure of Cabinet papers is not a substitute for legislated obligations to publish information, nor the strengthening of rights to information that are designed to enable democratic public participation in the design of policies and services. The government's commitment to openness and transparency must be questioned when the commitment in the plan relating to secrecy clauses does not include work to repeal or amend any of these clauses.
68. Instead of trying to claim credit for the 40-year-old OIA and its operation in the *Introduction* to this plan, Trust Democracy recommends that the *Introduction* be centred around the Public Service Act 2020 and its values and principles. The Act is not mentioned until the third paragraph, and even then the text does not mention its values and principles. The Act's requirement for long-term insights briefings is welcome, but the processes for creating them and for stimulating public discussion are inadequate. We note that Te Kawa Mataaho officials themselves declined to run a session with civil society participants in the OGP NAP development process on its own long-term insights briefing (ironically on the subject of public participation). Surely the OGP should be a major part of the Government's programme to give effect to the Public Service Act, and NAP4 should be framed in this way. The failure to do this belies the assurances Trust Democracy and other CSOs received from the Public

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<sup>10</sup> See the Ombudsman's 12 reports on departmental compliance and practice in relation to the OIA, and the overall report 'Ready or Not', published in September 2022.

<https://www.ombudsman.parliament.nz/news/ombudsmans-oia-probe-uncovers-significant-gaps>

Service Commissioner at their meeting with him in June 2021 that these connections would be made tangible.

69. Trust Democracy also recommends that the *Introduction* includes more context for New Zealand's membership of the OGP. The reasons for NZ joining the OGP in 2013 are missing and this lack of strategic context suggests inadequate government knowledge of both the OGP and the Independent Reporting Mechanism's processes.
70. Trust Democracy recognises that it can be appropriate and desirable for commitments in a new NAP to build on work undertaken under previous NAPs, particularly for long-term ambitious commitments, but the only place where this is made explicit in the *Introduction* is for the engagement toolkit commitment in paragraph 4. The *Introduction* should make the lineage of the other commitments clear – these are not the first commitments on the OIA, or the Algorithm Charter, or on publishing procurement data.
71. Similarly, the *Introduction* should refer to commitments under previous NAPs. Trust Democracy is 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 and Aotearoa's progress towards more long-term open government.

#### *Expert Advisory Panel's observations*

72. Trust Democracy is clear that the Public Service Commission's Expert Advisory Panel (EAP) does not meet the OGP's requirements for a genuine Multi-Stakeholder Forum, and we comment further on this issue below.
73. We welcome the Commission's inclusion of the Panel's observations on the NAP creation process in the NAP itself. We believe that the *Introduction* could have picked up on some of the EAP's themes, and included the OGP as a mechanism for addressing some of the democratic and government deficits that have become obvious since COVID-19 arrived in 2020, such as the 2022 protest at Parliament, the extensive increase in inequality resulting from the government's economic response to the pandemic, and a severely-challenged health system.
74. Trust Democracy notes that the EAP "*recommended greater priority be given to the OGP and the authentic co-production of ambitious, potentially transformative commitments*". It is disappointingly 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 unlikely to result in the transformative change that OGP membership aspires to. Although officials in Te Kawa Mataaho worked hard, the staff turnover during the NAP development period – combined with the apparently continuing failures of the department to steward institutional knowledge regarding the OGP – has meant that their work was not productive. It is apparent that after three previous NAPs, the Commission still does not understand the kaupapa and ethos of the OGP, the roles of its Minister and itself in the co-creation process, nor how to ensure other government departments understand and meet

their responsibilities in the co-creation process. Until Te Kawa Mataaho invests in Aotearoa's OGP membership and ensures officials are trained adequately, we fear that this failure will continue, leading CSOs to abandon work on future OGP National Action Plans.

75. We want to be crystal clear so it cannot be spun in any self-assessment or claims to the media or Parliament, that the trust of the civil society organisations involved in the NAP co-creation process has been breached again by the Commission and Commissioner during this NAP creation process and that significant work is needed on its part to rebuild that trust.

### *Our Story*

76. This section begins with a statement that is deeply puzzling:

*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.*

77. Since this section discusses the involvement of the public and CSOs, we are confused as to whether Te Kawa Mataaho means that the public and CSOs were part of a 'Multi-stakeholder Forum' conforming to the OGP's requirements, or if it is (perhaps unintentionally) being honest about who actually developed the plan.
  78. If the former, this is a serious error as neither the EAP nor the arrangements for public and civil society participation in the NAP development process are a multi-stakeholder forum, as documented in the OGP's Independent Reporting Mechanism's reports. If the latter, 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, largely by government departments.
  79. 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 are appointed to it by the Public Service Commissioner for their personal skills and knowledge alone.<sup>11</sup> The appointment criteria make no reference whatsoever to the person needing to be empowered to represent an organisation or sector. They are not representatives of any organisation or 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.*
80. People appointed in an individual capacity by the Commissioner and who are accountable to the Commissioner can never be described as representatives of anyone else. The Expert Advisory Panel is no more than 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 membership by those sectors, and be accountable to the people who put them forward, not the Commissioner.

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<sup>11</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>

81. 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.*

82. 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>12</sup> All the Minister did is confirm that he found those suggested themes acceptable.
83. 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 for both the OGP and New Zealanders.
84. 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 it is misleading in the context in which these statements are made in the ‘Our Story’ section on development of the NAP.
85. If the word ‘public’ is instead meant to imply that the public were able to participate in these meetings, we point to the fact that no statement made by the Commission made in advance of the workshops and meetings indicated they were open to the public.
86. 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>13</sup>*

87. 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>14</sup>
88. 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*, 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.*

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<sup>12</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>13</sup> *OGP Update for March 2022*, Public Service Commission, 30 March 2022 <https://ogp.org.nz/latest-news/ogp-update-for-march-2022/>

<sup>14</sup> See links to these updates from this page: <https://ogp.org.nz/latest-news/>

89. 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*

90. Trust Democracy strongly urges the government to 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**

91. We are pleased to see there is a subsection headed 'Te Tiriti o Waitangi' at the foot of page 8. It is important to note that recognition that Te Tiriti o Waitangi had to be addressed in Aotearoa's OGP work came only because of civil society insistence that this issue must be addressed. We are concerned that nine years after Aotearoa New Zealand joined the OGP, the Commission does not have structures, mechanisms or relationships in place for significant Māori involvement in the development of National Action Plans.
92. We were also concerned by the Commission's approach that honouring Te Tiriti obligations in the design and implementation of commitments would only be the responsibility of the departments or agencies that would lead the individual commitments, with no role for the Commission to ensure this happened. This may align with a strict reading of section 15 of the Public Service Act, but the section 14 obligation on the Commissioner and public service chief executives states they have "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 must play a more active leadership role in ensuring commitment lead agencies will honour Te Tiriti obligations in the design and implementation of NAP commitments.
93. We are pleased that each commitment contains a section on Te Tiriti, but note that they include anodyne statements of aspiration and possible outcomes and 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).
94. This means that commitment lead agencies, immediately after adoption of NAP4, will need to begin the work to develop answers to these questions, in conjunction with Māori, as part of preparing their detailed commitment implementation plans.

### *Undertaking the Plan*

95. This section of the NAP, on pages 29-30 contains three subsections: Implementation, The Multi-stakeholder Forum, and The Independent Reporting Mechanism. We address them in turn.

## Implementation

96. 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.*

97. 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. This includes Te Kawa Mataaho itself, in spite of public participation being the subject of its own Long Term Insights Briefing and its two NAP commitments being on the subject of public participation or ‘community engagement’. As we noted in our introductory comments, the OGP itself is very clear that,

*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.*

98. And 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.*

99. Unless the commitments in the NAP are revised to specifically require civil society and other stakeholder participation in the delivery of commitments, our experience from previous NAPs is that 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

100. The statement on page 29 of the draft NAP which describes what an OGP Multi-stakeholder Forum may be, includes the sentence “*The Multi-Stakeholder Forum (MSF) is an established space for ongoing dialogue and collaboration between government and civil society representatives and leads the open government processes within a country.*” As a statement of the model it is unremarkable.
101. However, 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” is problematic.
102. As should be apparent from previous comments in this submission, 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 or even any organisation they may lead or be involved with. The EAP is only an advisory group to the Commissioner – not even the Minister – and has no decision-making rights. It cannot “lead the open government processes” in this country.

103. Trust Democracy is confident that if it and the other CSOs involved in the current OGP work are not members of the purported current MSF, none exists.
104. Since honesty is the first step in building trust between potential partners, the government should be honest and state in the NAP that Aotearoa has not had a genuine Multi-stakeholder Forum but intends to develop one in the first half of 2023. Such a statement of intent could be made tangible and explicit if it was turned into an additional NAP commitment. Such honesty on this topic would clearly demonstrate good faith, which will be essential for the design and establishment of a new and compliant Multi-stakeholder Forum.
105. 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
106. 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 this 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 providing ideas or a negotiating brief to the officials undertaking the NAP development work on a day-to-day basis.
107. Trust Democracy firmly believes that the MSF must 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. Officials from Te Kawa Mataaho and other government agencies should participate in the MSF as equals with civil society representatives.

108. If the MSF is to have sector representatives (e.g. Māori, civil society and possibly private sector), they must be selected and appointed to the MSF only by the people and organisations they represent. Public servants or the Minister cannot veto who can serve on the MSF.
109. 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, the Forum will be executive, not advisory. Te Kawa Mataaho must provide the secretariat, in the same way that the Ministry for the Environment provided the secretariat to, and supported the work of, the Bioethics Council.
110. In light of the consistently poor experiences of civil society groups over the last nine years of Aotearoa’s membership of the OGP, and for civil society to consider it worth their while to participate in the work again in future, Trust Democracy believes government ministers must show courage and leadership to create a truly empowered MSF. 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 enable Te Kawa Mataaho to model expectations for the rest of the Public Service on giving effect to their 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.

### The Independent Reporting Mechanism

111. This section is underdone and should appear towards the start of the NAP, not as the last word. The reason for this is that the NAP should begin by saying how it will be addressing the insights and recommendations from not just the IRM report on the just-completed NAP, but on outstanding issues and recommendations from all previous IRM reports. Accountability documents are pointless unless those they are meant to hold to account show publicly how they will be acting on the lessons learned and recommendations from such documents. 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.
112. With regard to this commitment, the IRM’s *Transitional Results Report*, released in March 2022, 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>15</sup>*

113. In spite of this, the Department did not provide any communication to any of the non-government participants in the work on this commitment between 2018 and 2021, and certainly not the ‘two-phased implementation plan’ reported in 2022.

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<sup>15</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)

114. This IRM 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.*” First, the Transitional Results Report, as its name signals, was an interim report format as the OGP’s 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 Co-creation and Participation Standards. It also fails to mention that after producing the *Results Report* following implementation of the NAP, the IRM researcher will be producing a *Co-Creation Brief* ahead of the co-creation of 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.*” Trust Democracy recommends that since Te Kawa Mataaho appears to have lost the institutional knowledge regarding the IRM work and not be up to date, it should familiarise itself with the timeline and work products of the IRM.<sup>16</sup>
115. This section should not only provide a link to where the IRM reports can be found on the OGP’s website, but to how Dr Eppel can be contacted by those interested in commenting on Aotearoa’s OGP activities.

### Closing Comments

116. After actively participating in what we understood to be a ‘co-creation’ process to develop the NAP, Trust Democracy is not happy that we had to write a 19-page submission to document the many issues in the draft NAP. Many of the issues our submission highlights could, and should, have been worked through before the draft NAP was published for consultation.
117. Trust Democracy hopes that future co-creation processes will be properly planned and resourced so that the work is complete well before deadlines for submitting the NAP to the OGP. It will also be important for the co-creation process to be considered more ‘acceptable’, ‘good’ and satisfying for participants than the process for NAP4.<sup>17</sup>

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<sup>16</sup> These can be found here: <https://www.opengovpartnership.org/irm-products-and-process/>

<sup>17</sup> According to Rowe, Frewer and Marsh in their 2004 paper ‘Evaluation of a Deliberative Conference’, acceptance criteria include representativeness, independence, early involvement, influence and transparency; good process criteria include resource accessibility, task definition, structured decision making and cost-effectiveness.

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**From:** CAB Dunedin <dunedin@cab.org.nz>  
**Sent:** Friday, 2 December 2022 2:20 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Support of the draft National Action plan

**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Kia ora

This email is to let you know we support the inclusion of Commitment 3 in the draft National Action plan.

We would ask that adequate resources are allocated to be able to successfully carry out the work please. Thanks!

Ngā mihi nui,

**Anna Leslie**  
Manager | Kaiwhakahaere



**Te Pou Whakawhirinaki o Ōtepoti**  
**Citizens Advice Bureau Dunedin**

Rodgers House, 155 Princes Street, Dunedin  
PO Box 5263, Dunedin 9054  
Phone 03 4716166 0800 367 222  
Email: [dunedin@cab.org.nz](mailto:dunedin@cab.org.nz)  
Website: [www.cab.org.nz](http://www.cab.org.nz)



*Disclaimer: If this email wasn't intended for you please do not use, disclose or copy this information.  
If you received this email in error please notify the sender. Thank you.*



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**From:** 9(2)(a) privacy, Friday, 2  
**Sent:** Friday, 2 December 2022 1:20 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Inclusion of Commitment 3 in National Action Plan .....

**Importance:** High

**This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.**

Hello,  
This is my personal opinion.  
The commitment 3 has my full personal support.

As a result of our strong and persistent advocacy, '**Commitment 3 – Establish an integrated, multi-channel approach to public services and support**' has been included in the consultation draft of New Zealand's [National Action Plan under the Open Government Partnership](#).

Commitment 3 focuses on:

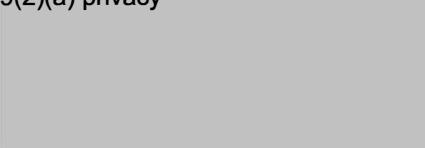
"the provision of integrated, multiple channels for public service delivery – channels to include options which meet the diverse needs of all the people of Aotearoa and ensure access for all to public services and support. This will address the barriers people face when government services are delivered online, with limited alternative options for non-digital participation."

Thank you

*"I feel like there is a perfect balance between the big vision and the detail and that takes us close to the true magic and aliveness of life. A small happening that contains all the heart of the vision - like a dew drop suspended on a leaf reflecting all the surroundings."*

(Elizabeth Connor 2020)

9(2)(a) privacy



*PEACE (abbr) – People Enjoying Acts of Compassion and Empathy*

**From:** 9(2)(a) privacy  
**Sent:** Saturday, 3 December 2022 12:19 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Leave no-one behind - Digital exclusion

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Kia ora,

I noticed and experienced increased frustration and stress amongst older citizens who are not IT literate and struggle to get things done in a requested timeframe. I am also wondering about people with disabilities who do need a person to talk to, to be able to sort out required tasks and obligations! Families who struggle financially might not have the means to do things digitally.

PLEASE provide In-Person-Services to INCLUDE dis-advantaged citizens and uphold Te Tiriti o Waitangi!

THANK YOU

Kind regards,  
9(2)(a)

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**From:** 9(2)(a) privacy  
**Sent:** Wednesday, 14 December 2022 10:48 am  
**To:** Open Government Partnership New Zealand  
**Subject:** NAP4

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Kia Ora

I have been reading with interest the 4th Open Government Partnership National Action Plan (NAP4),  
**particularly around the 3rd commitment to address digital exclusion.**

As a volunteer at CAB, I often meet people who struggle to access or fill in government forms and although the library offers computer/internet access, they do not have the staff capacity to support those who need help. I notice that the new initiatives will not be in place until Dec 2024. Meanwhile, we will have to help many people. Can I suggest that CAB and libraries are given extra funding during the interim period to help with this load?

Nga mihi nui

9(2)(a) privacy

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**From:** 9(2)(a) privacy  
**Sent:** Monday, 12 December 2022 10:09 am  
**To:** Open Government Partnership New Zealand  
**Subject:** National Action Plan feedback - Commitment 3

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Hi

It is my understanding that this large document is to help and enable people who are at risk, have issues, digitally disadvantaged, older generations, have issues with eyesight, have hearing issues, have mental health issues to provide feedback on how things should change. Like being easier to contact businesses, access their information, make complaints without going online filling in a form and waiting for someone to call them back and if they get a call back do not explain correctly and hope the people they call back don't think they are being scammed. Maybe even have someone at the end of the phone willing to listen. To their complaint they have. Complaining to the police about what has happened to you or even making a complaint about the service or lack thereof. Every angle to complain or find information or get information seems to be made extremely difficult. Cause if you complain with ease then you're not counted in their complaints and they don't have to sort it out.

But to provide feedback someone needs to be able to access the document and feedback form or able to understand which means the people I've mentioned above are unlikely to be able to do this and need to be prioritised

Thanks

9(2)(a) privacy

**From:** 9(2)(a) privacy  
**Sent:** Friday, 2 December 2022 9:35 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Submission

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

**SUBMISSION ON NATIONAL ACTION PLAN.**

I strongly support Commitment 3 being included in the National Action Plan . There are a significant number of people who for various reasons are unable to digitally access government services. There are others who live in places where there's no internet. I've personally experienced the frustration of unreliable internet that chops in and out and even when working, can be extremely slow. The government and telcos advise that in some cases, people will never get the Internet for cost/benefit reasons. It's a basic human right for all people to be able to access government services without undue difficulty. The inclusion of commitment 3 in the National Action Plan will ensure all New Zealanders can access Government services without undue difficulty. I ask that this be implemented and that adequate resources be provided so that user-friendly, alternative means of public service delivery can be provided.

9(2)(a) privacy

9(2)(a) privacy

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**From:** 9(2)(a) privacy  
**Sent:** Wednesday, 30 November 2022 9:53 pm  
**To:** Open Government Partnership New Zealand  
**Cc:** Elizabeth Eppel  
**Subject:** Suggested amendment to Page 30 of NZ's draft 4th OGP National action plan

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Kia ora, OGP NZ Point of Contact

Thank you for the opportunity to comment on NZ's draft 4th OGP National Action Plan.

We note that the paragraph describing the IRM and its NZ researchers does not cover the full IRM process. We offer the following suggested alternative paragraph. Our suggested changes are highlighted in **bold**:

The Independent Reporting Mechanism (IRM) is OGP's accountability arm. **Over each action plan cycle, the IRM provides three independent, evidence-based, and objective reports to hold OGP members to account to support their open government efforts. The Co-Creation Brief informs the co-creation planning process based on collective and country-specific IRM findings. The Action Plan Review reports on the new action plan's characteristics, strengths and challenges and the Results Report assesses the level of completion of action plan commitments and checks compliance with OGP standards and criteria.** Elizabeth Eppel, appointed in 2022 as the new IRM for New Zealand, will prepare the Action Plan Review. Elizabeth succeeds Keitha Booth, who was New Zealand's second IRM from 2017 to 2022.

Please come back to us if you need further information or wish to discuss our suggested changes,

Best wishes

Keitha Booth and Elizabeth Eppel

9(2)(a) privacy



**From:** 9(2)(a) privacy  
**Sent:** Friday, 2 December 2022 11:41 am  
**To:** Open Government Partnership New Zealand  
**Subject:** support for commitment 3 in national action plan

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

I totally support Commitment 3 in the National Action Plan. Being up to date with technology should not be a requirement for participation in a democracy. And although it may be 'efficient' to use technology, one of the down sides is that discussion of pros and cons is not encouraged. We all need to find our own Truth, and have the courage to voice it as well as the openness to listen to other's Truths. There are many other basic actions and information that need to be made available through means other than digital technology.

9(2)(a) privacy

**From:** 9(2)(a) privacy  
**Sent:** Friday, 2 December 2022 11:10 am  
**To:** Open Government Partnership New Zealand  
**Subject:** Commitment 3 of OGP

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Hello!

I would like to express my support of Commitment 3 of the OGP.

Not all of us are comfortable doing everything online, for various reasons. And not all of us are comfortable doing everything over the phone either.

Many of us are older, have impaired eyesight or hearing loss, are disabled, dyslexic, uncertain, or may not have English as our first language. Many people can't afford the cost of waiting on their phone for long periods for someone to answer a centralised government department number. All of these quite common problems mean there is a sizeable portion of the population who need to be able to sort out issues with public service providers face to face, but who are being denied the opportunity.

This is extremely important.

Yes, online services are useful, as are automated telephone services – but only to those able to use them. And not everyone – for whatever reason – has the ability.

Public services should be available to all the public.

Thank you for reading this email; I hope I have made my point quite clear, and thank you for giving me the opportunity to comment.

Yours,  
9(2)(a) privacy

Sent from my iPhone

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**From:** 9(2)(a) privacy  
**Sent:** Friday, 2 December 2022 11:24 am  
**To:** Open Government Partnership New Zealand  
**Subject:** Commitment 3

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

I am writing in support of Commitment 3 as part of protecting and enhancing multi-channel avenues of communication with public services .  
It is vital online is not the only channel . Online only would prevent or inhibit access for many in Aotearoa.

9(2)(a) privacy

Sent from my iPhone

---

**From:** 9(2)(a) privacy.  
**Sent:** Saturday, 3 December 2022 5:42 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Feedback on National Action Plan under the Open Government Partnership

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Kia ora,

As a volunteer interviewer for some nine years with Citizens Advice Bureau I fully support Commitment 3:

the provision of integrated, multiple channels for public service delivery – channels to include options which meet the diverse needs of all the people of Aotearoa and ensure access for all to public services and support. This will address the barriers people face when government services are delivered online, with limited alternative options for non-digital participation.”

This is of special intent to me as I have seen how people who do not have digital resources or skills or whose first language is not English struggle with accessing and using resources and communication tools available only by digital means. I also see how much resource CAB needs to put in to plug this gap, often without equivalent resourcing from the agencies who use only digital means of communication.

Ngā mihi,

9(2)(a) privacy

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**From:** 9(2)(a) privacy\_\_\_\_\_  
**Sent:** Sunday, 4 December 2022 12:20 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Draft National Action Plan

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Tēnā koutou

I believe it is critical to include Commitment 3 - Establish an integrated, multi-channel approach to public services and support, in the National Action Plan. I volunteer at Citizens Advice Bureau and see endless clients who are unable to access government services on-line. The reasons and ages vary hugely but we support them all by printing forms and/or assisting with out on-line documents. Sometimes it can be quite simple but other times the client can have very complex situations that really need face to face support. Resources need to be allocated at a government level to continue supporting our most vulnerable members of society, especially as access gets harder and harder for these individuals. We need a more inclusive approach to public services across Aotearoa.

Nāku, nā  
9(2)(a) privacy

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**From:** 9(2)(a) privacy  
**Sent:** Friday, 2 December 2022 1:26 pm  
**To:** Open Government Partnership New Zealand  
**Subject:** Commitment 3

This email was sent from someone outside of Te Kawa Mataaho. Please take extra care.

Please action commitment 3 all New Zealanders Have the right to be informed about govt decisions and actions not everyone is able to access or use online and internet and coming are in this manner Ensuring there are adequate resources to action commitment 3 is vitally important or nothing will change

9(2)(a) privacy



## Have your Say on NZ's Open Government Partnership National Action Plan Inclusiveness in public services

Status: Published and open  
[Challenge Dashboard](#)

I like that the OGP national action plan aims to avoid digital exclusiveness and to aim to always have person-to-person options available for the public.

The two pitfalls that I can see need to be avoided are firstly that it becomes a box-ticking exercise and secondly that these options are offered in such a way that they frustrate the user instead of enabling them. Choosing the non-digital option at present often leads to long wait-times and a feeling that by insisting on dealing with a real person you are somehow being a nuisance or some kind of antediluvian. However, there are also organisations both public and private that implement inclusive services in smart and helpful ways. While it may be seen as an expensive option in the short term, it's surely cheaper and better in the long run to take consumers with you, to let them know that they are dealing with real people, not unfeeling bureaucracies.

To ensure that the fine sentiments are put into practice the funding and strategies need to be guaranteed and a system set up to verify that public services are offering non-digital alternatives in good faith.

### Why the contribution is important

Please refer to middle paragraph above.

(I tried to copy the paragraph to paste it here but the digital option failed me!)

by on December 02, 2022 at 11:42AM

[Edit idea](#) | [View idea in public site](#)

Votes so far 0.0 (0 votes)

# Have your Say on NZ's Open Government Partnership National Action Plan

## Community Engagement

Status: Published and open  
[Challenge Dashboard](#)

I really like the focus on community/consumer engagement in the draft. The health system has engaged with consumers through multiple channels and would be a great place to research for the wider Public Service. For developing a consumer engagement tool, the Health Quality and Safety Commission have recently created the Code of expectations for health entities' engagement with consumers and whānau, which itself was created with consumer input. Types of engagement have included co-design projects, where consumers and project staff work together to produce appropriate services, and this model has been widely adopted in health, with the HQSC creating modules to assist health entities in carrying this out. HQSC and various Te Whatu Ora districts also have consumer councils, advisory groups, networks, and special interest groups that provide various levels of consumer and community insight, and their Terms of Reference would be a good place to look into, as well as their consumer managers and quality improvement teams.

### Why the contribution is important

It is important because engaging consumers with not only what the Public Service is doing but also allowing them to synthesise what is important to focus on for them, what direction a project or service should take and general public business should create better buy-in and outcomes.

by [9\(2\)\(a\) privacy](#) on November 28, 2022 at 11:59AM

[Edit idea](#)  [View idea in public site](#)

Votes so far  0.0 (0 votes)

9 December 2022

**SUBMISSION TO** the Social Services and Community Committee on the [Charities Amendment Bill](#) to amend the Charities Act 2005 (via [www.parliament.nz](http://www.parliament.nz)), **and** the Open Government Partnership Team, Te Kawa Mataaho Public Service Commission, on [the draft Fourth National Action Plan document](#) (*by email to [oapnz@publicservice.govt.nz](mailto:oapnz@publicservice.govt.nz)*).

## **SUPPORT FOR CLAUSE 20 OF THE CHARITIES AMENDMENT BILL**

I support the proposal in clause 20 of the Charities Amendment Bill to insert a [new Section 42G \(Duty to review governance procedures\)](#) in the Charities Act 2005.

The proposal aligns with the principles in The Good Governance Code that was developed by the community sector, for the community sector, and published by the Community Governance Aotearoa Trust in November 2022.

If enacted, the annual duty to review governance procedures should be communicated to the public via digital channels in addition to legislation.govt.nz.

## **RECOMMENDATIONS**

I recommend that the milestones in New Zealand's Fourth National Action Plan for the Open Government Partnership (2023-24, 'NAP 4') are developed to:

1. include actions and deadlines to enable the implementation of the [Plain Language Act 2022](#) eg. appointment of [Plain Language Officer\(s\)](#) for <https://register.charities.govt.nz>
2. ensure that the Charities Service (Ngā Ratonga Kaupapa Atawhai) website is within the scope of 'Phase 1: Scoping of Work Programme' of **NAP 4 Commitment 3 (Establish an integrated, multi-channel approach to public services and support)**

### ***Suggestions:***

- the flowchart guidance on [www.charities.govt.nz/news-and-events/blog/annual-reporting-timeline](http://www.charities.govt.nz/news-and-events/blog/annual-reporting-timeline) (refer **Appendix A**) should be integrated in the workflow and guidance via [register.charities.govt.nz](https://register.charities.govt.nz) (and reminder email notifications, if any), so each charitable entity is encouraged to present its annual financial statements at its annual general meeting (as required by [Section 86 of the Incorporated Societies Act 2022](#)) before complying with the filing deadline in [Section 41\(1\) of the Charities Act 2005](#)
- the home page for the Charities Service (Ngā Ratonga Kaupapa Atawhai) website should be developed or replaced so it is easier for the target audiences to access and use relevant information and communication channels (refer **Appendix B**)

## **ACCESSIBILITY AND COMPLEXITY OF PUBLIC INFORMATION**

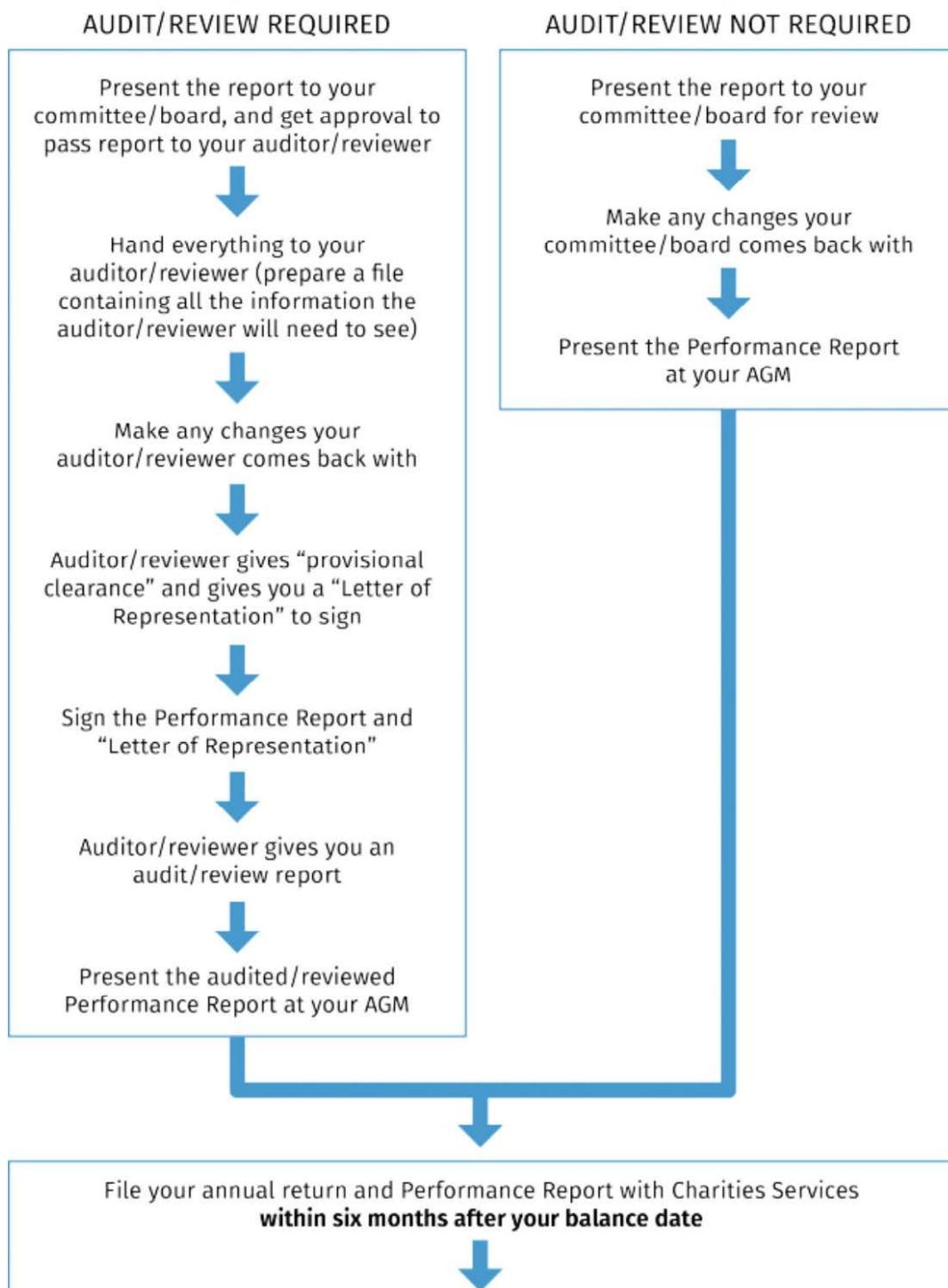
**Appendix C** of this submission sets out seven pages of screenshots to illustrate the complexity and volume of the messaging via [www.dia.govt.nz/Policy-decisions-to-modernise-the-Charities-Act-2005](http://www.dia.govt.nz/Policy-decisions-to-modernise-the-Charities-Act-2005).

Please design future messaging with more care, to enable the positive impact that is envisaged by **NAP 4 Commitment 2 (Research deliberative processes for community engagement)**, and the Plain Language Act 2022.

Thank you for considering this submission.

## APPENDIX A

Extract from [www.charities.govt.nz/news-and-events/blog/annual-reporting-timeline](http://www.charities.govt.nz/news-and-events/blog/annual-reporting-timeline)



## APPENDIX B

<https://www.charities.govt.nz>

The screenshot shows the homepage of the Charities Services website. At the top, there is a navigation bar with links for Home, Log in, News & Events, About Charities Services, Contact us, Facebook, and a search bar labeled "Search the site". Below the navigation bar, the website features a large logo on the right side with the text "Supporting charities — in New Zealand — for stronger communities". On the left, there is a sidebar with links for "Charities in New Zealand", "Annual returns/Ngā hokinga ā-tau", "COVID-19 information", "Reporting standards", "Resources/He Rauemi", "Update charity details", and "Te Ao Māori". In the center, there is a section titled "Hot topics" which includes a link to "One-on-one clinics with Charities Services every Thursday". To the right of this, there is a "Events" section with a link to "All events". Further down the page, there is a "Subscribe to Newsletters" section with fields for Name and Email, and a "Subscribe" button. At the bottom, there are links for "Search the Register", "CommunityNet Aotearoa", "Log in", "About Charities Services", "Glossary", "Make a complaint", "Privacy statement", "Terms of use", "Social Media Terms and Conditions", "Copyright", "Like us on Facebook", "Physical Address" (Charities Services, 45 Pipite Street, Wellington Central 6011), and "Postal Address" (Charities Services, PO Box 12138, Thorndon, Wellington Central 6144). There are also logos for Te Kawanatanga o Aotearoa (New Zealand Government) and Te Tari Taiwhenua Internal Affairs.

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## Policy decisions to modernise the Charities Act 2005

### Charities Amendment Bill

Updated 1 November 2022

- > Policy decisions to modernise the Charities Act 2005 (June 2022)
- > Frequently asked questions (updated 23 September 2022)
- > Cabinet material approving the introduction of the Charities Amendment Bill (31 October 2022)
- > Release of briefing papers leading to policy decisions (July 2022)
- > Policy documents 2018-2019
- > Contact the team

The Minister for the Community and Voluntary Sector, Hon Priyanca Radhakrishnan has announced a suite of changes to improve the operation of the Charities Act. The policy decisions are set out below.

Read the Minister's announcement here: [Charities Act changes to benefit NZ Communities](#) (2 June 2022)

*Regulatory decision-making*

Frequently Asked Questions

Changes will be made to the regulator's decision-making processes:

- [Te Rātā Atawhai, the Charities Registration Board](#) (the Board) will be required to publish all decline and deregistration decisions and provide a clear process for charities to object to significant decisions.
- The timeframe for submitting information to Charities Services on administrative matters (such as providing more information on an application) will be extended from 20 working days to two months.
- Charities Services will be required to consult with the sector when developing significant guidance material.

These changes acknowledge that many charities are run by volunteers and need more time to engage with the decision-making process. The changes support charity participation in the regulatory system, provide greater clarity on regulatory decision-making, and allow charities to focus on their important mahi.

The number of members of the Board will also be increased from three to five. This will improve the Board's diversity of backgrounds and experience and address potential quorum and conflict of interest issues.

### *Appeals framework*

The Taxation Review Authority will be used to hear first appeals under the Charities Act instead of the High Court. Stakeholders noted during consultation that the High Court was often inaccessible because it was legally complex, costly, and time consuming. The High Court will still function as an appeal court for decisions by the Taxation Review Authority.

The Taxation Review Authority will provide greater accessibility than the High Court in the appeals process by allowing charities to self-represent. This will reduce charities' costs and make the process less formal.

The range of decisions that can be appealed will include significant decisions made by Charities Services (as well as the existing decisions made by the Board). The timeframe for lodging an appeal will be extended from 20 working days to two months.

### ***Compliance and enforcement powers***

It is important to have the appropriate compliance and enforcement functions in a regulatory system to ensure the effective functioning of the system and make it clear for participants in the system to understand their obligations.

Three changes will be made to improve the compliance and enforcement functions for charities. These changes will:

- make explicit the currently implicit obligations for charities to remain qualified for registration. These obligations are maintaining charitable purpose, having a rules document, and having qualified officers;
- clarify what is meant by serious wrongdoing, defined as an offence punishable by two or more years of imprisonment; and
- allow the Board to disqualify an officer for serious wrongdoing or a significant or persistent breach of obligations, without deregistering the charity.

### ***Charities accumulating funds***

Larger charities in tiers 1 to 3 will be required to report the reasons for their accumulated funds (including cash, assets or other resources). The reporting is intended to provide greater clarity on why funds are held and improve public trust and confidence in the charitable sector.

This is not a legislative change and will be implemented through a change to the annual return form. Charities Services will work with iwi to design changes to the annual return form to reflect te ao Māori views of accumulation.

### ***Reporting requirements for very small charities***

The Department's Chief Executive will have the power to exempt very small charities from the financial reporting standards set by the External Reporting Board to reduce the compliance burden while balancing the needs of transparent reporting. The threshold will be developed in regulations (in consultation with the sector). The Department's analysis suggested a threshold of annual payments under \$10,000 and total assets under \$30,000 that would benefit 12 percent of all registered charities.

Charities that are exempt from the reporting standard will still be required to file an annual return with basic financial information.

## ***Officers of charities and governance improvements***

The definition of officer will be amended to capture all persons with significant influence over the management or administration of the entity, regardless of the type of entity. The definition in the Charities Amendment Bill will align with the definition of an officer in the Incorporated Societies Act 2022.

The disqualifying factors to becoming an officer will be updated. Persons who have been convicted of an offence relating to the financing of terrorism will be prevented from holding an officer role in a charity.

The minimum age requirements to be an officer will be changed. At least one officer of the charity will need to be 18 years old or over (while the remaining officers can be 16 years old or over).

Officers are collectively responsible for the governance of the charity. The Charities Amendment Bill will specify that the role of an officer is to support the charity to meet its obligations for greater clarity.

Charities will also be required to review their rules document every year to ensure its governance arrangements are up to date and appropriate.

These changes are intended to improve the accountability and governance of charities, as well as creating greater alignment with other legislation that charities might be governed by such as the Companies Act 1993, Trusts Act 2019, Incorporated Societies Act 2022, and the Charitable Trusts Act 1957.

## ***Cabinet paper and Regulatory Impact Statement***

For more detail on the policy decisions, please refer to the Cabinet paper and the Regulatory Impact Statement here:

- [Minute and Cabinet paper - Modernising the Charities Act \(PDF, 1.3MB\)](#)
- [Minute of Decision: Modernising the Charities Act 2005](#)
- [Cabinet paper: Modernising the Charities Act 2005: policy proposals](#)
- [Regulatory Impact Statement - Modernising the Charities Act \(PDF, 2.1MB\)](#)

(To view diagram below, click on image for PDF version - 1MB)

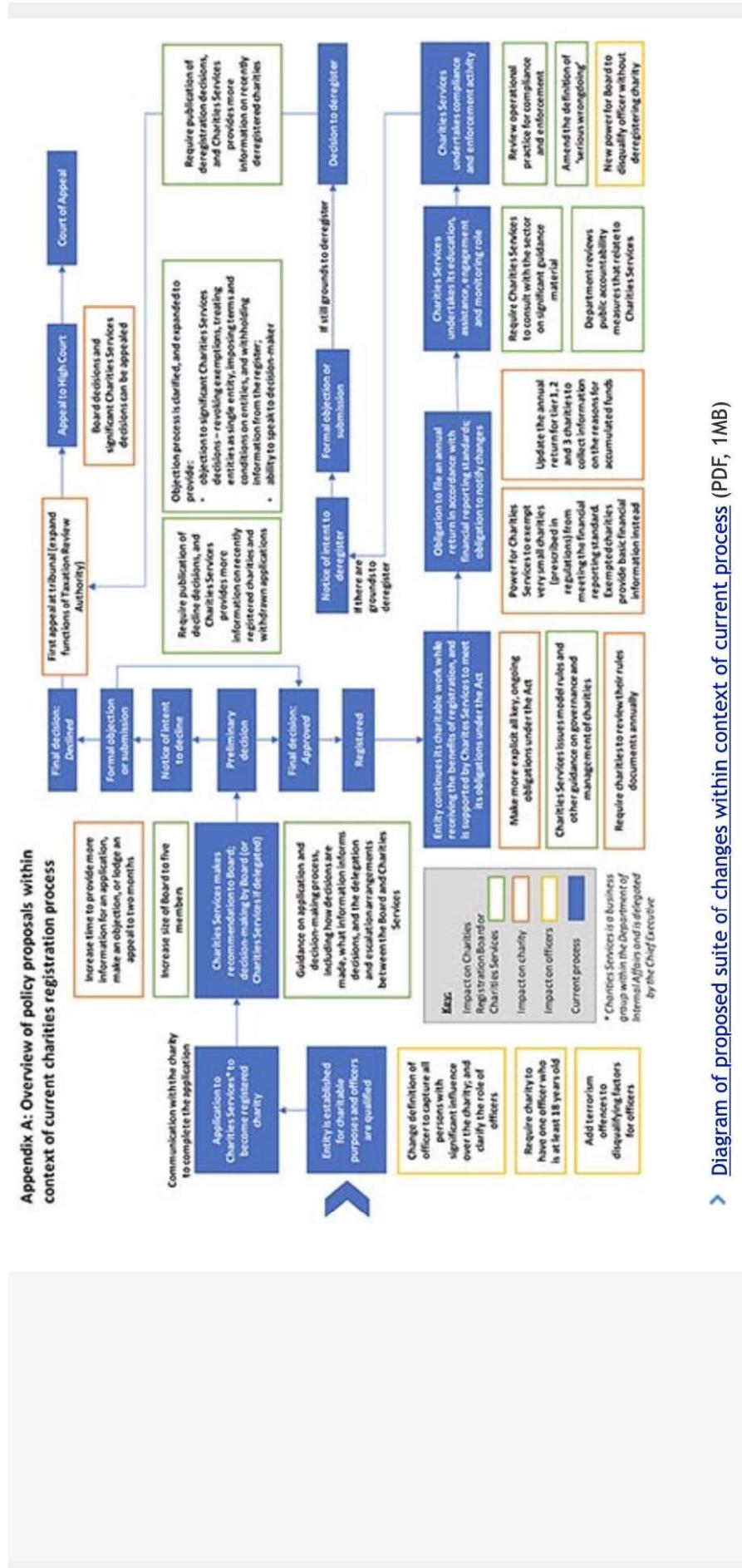


Diagram of proposed suite of changes within context of current process (PDF, 1MB)

*Cabinet material approving the introduction of the Charities Amendment Bill*

➤ Cabinet material approving the introduction of the Charities Amendment Bill (PDF, 1.3MB)

*Release of briefing papers leading to policy decisions (published July 2022)*

The Department has proactively released briefing papers relating to the policy work to modernise the Charities Act:

**Cover sheet:** Briefing papers relating to the policy work to modernise the Charities Act [PDF, 129KB]

1. [Policy briefing - options for progressing work on the Charities Act](#) [PDF, 1.7MB]
2. [Policy briefing - scope of work to progress modernising the Charities Act](#) [PDF, 1.8MB]
3. [Objectives for modernising the Charities Act, and early analysis of reporting requirements for small charities](#) [PDF, 1.2MB]
4. [Information briefing - accumulation of funds by large charities](#) [PDF, 2.4MB]
5. [Information briefing - charities with business activities](#) [PDF, 1.5MB]
6. [Modernising the Charities Act - options to test with stakeholders - charities accumulating funds and charitable business activities](#) [PDF, 1.8MB]
7. [Modernising the Charities Act - options to test with stakeholders - reporting requirements for small charities](#) [PDF, 2MB]
8. [Modernising the Charities Act - introduction to the regulator](#) [PDF, 2MB]
9. [Modernising the Charities Act - introduction to appeals](#) [PDF, 1.5MB]
10. [Modernising the Charities Act - introduction to the obligations of charities and officer duties](#) [PDF, 1.5MB]
11. [Modernising the Charities Act - the appeals framework](#) [PDF, 1.2MB]
12. [Modernising the Charities Act - options to test with stakeholders - the regulator](#) [PDF, 3.1MB]
13. [Modernising the Charities Act - options to test with targeted stakeholders about officers of charities](#) [PDF, 12.5MB]
14. [Modernising the Charities Act - Advice on preferred option for charities accumulating funds](#) [PDF, 1.3MB]
15. [Modernising the Charities Act - Advice on recommended option for reporting requirements for small charities](#) [PDF, 2.4MB]

16. [Modernising the Charities Act - advice on recommended option for officers of charities](#) [PDF, 1.2MB]
17. [Final proposals to modernise the Charities Act 2005](#) [PDF, 3.1MB]
18. [Final Cabinet paper on policy proposals to modernise the Charities Act 2005](#) [PDF, 1.1MB]
19. [Modernising the Charities Act 2005 - Minor and technical amendments](#) [PDF, 1.2MB]
20. [Modernising the Charities Act 2005 - Taxation Review Authority Powers and Procedures for Charities Act Appeals](#) [PDF, 1.2MB]

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## *Policy documents 2018-2019*

- February 2019: [Modernising the Charities Act 2005 Discussion document](#) (PDF, 0.72mb)
- February 2019: [Modernising the Charities Act 2005 Quick read](#) (PDF, 5.15mb)
- February 2019: [Cabinet paper: Review of the Charities Act 2005: Release of Discussion Document](#) (PDF, 0.61mb)
- February 2019: [Cabinet Social Wellbeing Committee Minute of Decision: Release of Discussion Document](#) (PDF, 0.64mb)
- February 2019: [Cabinet Minute of Decision: Release of Discussion Document](#) (PDF, .62mb)
- December 2018: [Review of the Charities Act 2005: Engagement Strategy](#) (PDF, 700KB)
- May 2018: [Terms of reference](#) (PDF, 217KB)
- May 2018: [Cabinet paper: Terms of reference to review the Charities Act 2005](#) (PDF, 731KB)
- May 2018: [Cabinet Social Wellbeing Committee Minute of Decision: Charities Act 2005 Review Terms of Reference](#) (PDF, 663KB)

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## *Contact the team*

If you can't find the information you need on this page or if you have any further questions please email [charitiesact@dia.govt.nz](mailto:charitiesact@dia.govt.nz)

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## **Commitment 1: Adopt a community engagement tool**

Community engagement relies on trust and having modes of engagement that are accessible and easy to use. A “tool” that sets up a digital only model that isn’t accessible or available to more than 20% of the population would fail on both counts.

Top priorities need to be

- Improving Accessibility of Government Communications
- Resourcing community groups such as Citizens’ Advice Bureau who help people in Aotearoa overcome digital exclusion barriers
- Resourcing community groups such as Disabled Person’s Assembly and Maaori community groups and marae who provide alternatives to digital channels to support community engagement, representation and advocacy

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

No. Work through a process of community led collaboration and codesign on what is needed and how to do it. There is already a wealth of information and examples within community circles and public sector agencies within Aotearoa of this being done. Don’t re-invent the wheel and don’t look to overseas for what is already here.

The Wellington based iwi and their use of citizen assemblies (Talanoa/Wananga) to work is good but BZ Government also needs critical voices on what should be done differently or better. Recommend Tina Ngata for one view, Anjum Rahman and Inclusive Aotearoa Collective and The Workshop for others.

## **Commitment 3: Establish an integrated, multi-channel approach to public services and support**

Yes. Government needs to ensure resources are allocated to successfully carry out this work of supporting a range of channels for engagement and information, including and not limited to

- Resourcing community groups such as Citizens’ Advice Bureau who help people in Aotearoa overcome digital exclusion barriers
- Resourcing community groups such as Disabled Person’s Assembly and Maaori community groups and marae who provide alternatives to digital channels to support community engagement, representation and advocacy
- Making a commitment to and resourcing provision of NZ Sign Language in

#### Government info videos

- Providing Braille versions of consultation documents
- Requiring electronic documents and emails to be accessible for blind and low vision people including labelling images for screenreaders and providing documents in Word and/ or read online not just as PDFs. PDFs are NOT accessible.
- Supporting or paying navigators who help people with learning delays or other communication needs.

Endorse the aims of the Citizen's Advice Bureau New Zealand petition to 'Leave no-one behind – Campaign to address digital exclusion' but want more provision for people who would still be excluded through poor understanding of digital needs, and through issues of housing insecurity and poverty. More resourcing should be provided to libraries, marae and other community spaces for digital devices and assistance for those who can use devices with help but who lack access to them.

#### **Commitment 4: Design and implement a National Counter Fraud and Corruption Strategy**

One way to enhance fraud and corruption monitoring is to enable the public to have greater access to information and means to require evidence and documents to be presented. The Government should ratify the Aarhus Convention on sharing Environmental Information.

Whistleblower protections help but more scrutiny is needed. This could include implementing recommendations of the Chief Ombudsman with respect to OIA improvements and to also extend LGOIMA provisions along similar lines.

See also calls to Overhaul the OIA

<https://amnesty.org.nz/joint-calls-overhaul-oia>

#### **Commitment 6: Improve Government Procurement Transparency**

Definitely need to improve GETS and other Procurement channels but even more so, require agencies to follow them.

Look at recent allocation of \$5M by CreativeNZ to private sector company that had raised concerns with Callaghan Innovation. CreativeNZ didn't appear to follow

procurement consultation guidance and this has resulted in public mistrust of decision.

<https://thespinoff.co.nz/pop-culture/05-12-2022/cnz-just-picked-embattled-agency-we-are-indigo-for-a-5m-digital-arts-platform>

Government should work with NZ tech industry group NZRise on better rules for procurement.

<https://nzsri.org.nz/sustainable-procurement-new-zealand/>

#### **Commitment 7: Strengthen scrutiny of Official Information Act exemption clauses in legislation**

Definitely Yes.

<https://www.rnz.co.nz/news/on-the-inside/480307/chief-ombudsman-s-oia-inquiry-another-pointer-to-govt-s-lack-of-transparency>

and

<https://www.stuff.co.nz/national/129170465/gagging-the-official-information-act-why-new-secrecy-clauses-are-a-worry>

Recommend Government work with NZ Council for Civil Liberties or similar civil society organisations on this

#### **Commitment 8: Improved transparency and accountability of algorithm use across government**

Objective

To strengthen the transparency and accountability of algorithm use across government through improved supports to implement the principles of the Algorithm Charter for Aotearoa New Zealand.

Yes and work with experts on Maaori Data Sovereignty on meeting their needs too.