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Suggestions for the 4th Open Government Partnership National Action Plan

Amnesty International is a global movement of over 10 million people who campaign for justice by investigating and exposing human rights abuses and mobilising our movement of supporters to take action.

We would like to see a comprehensive, independent review of the Official Information Act 1982 (the OIA).

For nearly 40 years, it has been a powerful tool for open and accountable government, and sometimes the only tool available to bring to light concerning actions by those in government. Some good practices regarding openness beyond what the OIA requires have developed. However there are also some serious problems with both the design and operation of the OIA, and this is preventing the Act from doing what it was designed to do – make government more open.

Why there needs to be a review, and why it needs a broad terms of reference

In March-April 2019, the Ministry of Justice sought public submissions on the question of whether issues with the OIA could be fixed through improvements in agencies' practices, or whether a review of the law was needed. The submissions highlighted a broad range of issues, including:

- Excessive deletions from documents released. Although the OIA contains grounds for withholding information, there is concern information is withheld for reasons not allowed by the Act, such as when it's seen as potentially controversial or politically damaging. People are also concerned by agencies' failures to explain how they have considered the public interest favouring release.
- Delays – requests are meant to be answered within 20 days at the most. This is important, particularly when people need access to information in a timely manner to participate in policy development or legislative processes.
- The OIA and Public Records Act haven't kept up with the massive changes in the technology used by departments to create, manage, find, publish and analyse information and data. Far more could be done with a strengthened OIA to create structures and mechanisms for proactive disclosure of information – in a way that enables the Ombudsman to hold departments to account without waiting for people to make an OIA request first.
- Investigations into complaints by the Ombudsman's Office can take months, meaning even if the information is eventually released the issue may no longer be topical making it hard to hold government to account.
- The need to expand the OIA to include bodies carrying out public functions such as the Auditor-General.

The seriousness of the issues raised show why there must be a review of the OIA, rather than relying on an ad hoc approach to practice improvements. The breadth of the issues raised also shows why the review must have a broad terms of reference. It must take a comprehensive approach, meaning that the OIA and the rest of the system it operates in is reviewed, rather than a limited look at only specific parts of the Act.

Process

We welcome the dialogue with members of civil society currently occurring. We would urge a critical look at how this process can ensure it upholds obligations under Te Tiriti o Waitangi, as well as an examination of who is missing, and what can be done to encourage and sustain wider participation.

Ngā mihi nui

Lisa Woods, Campaigns Director, Amnesty International