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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)

28 JULY 2021

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 Gillian Greer, Ann Webster, Julie Haggie and David Dunsheath.

TINZ submission:

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

Recommendations:

1. TINZ recommends that the Government **allocate** funding in Budget 2022 to implement the commitments in the NAP4.
2. TINZ recommends that the government **adopts** a genuine co-creation process for NAP4, in line with the Participation and Co-creation Standards published by the OGP
3. TINZ recommends that NAP4 contains procurement commitments to
 - **Publish** details of all COVID-19 procurements with details of the supplier and contract value.
 - **Publish** the supplier and contract value for all contract award data
 - **Update** the mandatory rules to remove all exemptions
 - **Engage** in the Open Contracting Partnership (<https://www.open-contracting.org/worldwide>)
4. TINZ recommends that NAP4 contains algorithmic transparency commitments to
 - **Update** the Algorithm Charter drawing on the findings of the review
 - **Introduce** requirements on government entities to comply with the Algorithm Charter
 - **Introduce** regulations to control the use of personal information by 3rd party algorithm providers
 - **Suspend** the use of Facial Recognition Technology by government until a Legal and Ethical Framework is in place.
5. TINZ recommends that NAP4 contains a Beneficial ownership commitment to
 - **Legislate** to implement a publicly available beneficial ownership register for companies and trusts
6. TINZ recommends that NAP4 contains an anti-corruption commitment to
 - **Include** anti-corruption clauses in all Free Trade Deals
7. TINZ recommends that NAP4 contains a foreign bribery commitment to
 - **Implement** the recommendations in the OECD report Exporting Corruption 2020

8. TINZ recommends that NAP4 contains a whistleblowing commitment to
 - **Study** the relationship between the Protected Disclosures Act, Privacy Act and Official Information Act
 - **Update** the Protected Disclosures Act to include the establishment of an independent oversight body
9. TINZ recommends that NAP4 contains Official Information Act commitments to
 - **Review** the Official Information Act
 - **Implement** the findings from the review
10. TINZ supports the recommendation from GOPAC (Global Organisation of Parliamentarians Against Corruption) that NAP4 considers including a commitment covering Parliamentary and local body elected representatives.

TINZ Investment in Open Government Partnership

The global purpose of TI is to hold power to account for the common good. TINZ invests its resources in participation and engagement as a civil society organisation, and OGP represents an important mechanism for this to occur. To that end, TINZ has/is:

- Assessed the engagement by government in the OGP in its [National Integrity System Assessment](#);
- Currently participating in a OGP Leaders Network collaboration with Stats NZ on Algorithmic Transparency;
- Promoted engagement in this NAP process and in all previous ones;
- Facilitated meetings of organisations to talk about what they see as important for the OGP;
- Consulted with its members on this submission; and submitted on the development of previous NAPs;
- Included articles on the OGP NAP process and on the IRM in its newsletters
- In its role as Secretariat to the Global Organisation for Parliamentarians against Corruption has promoted GOPAC engagement in OGP;

Budget for NAP4

1. We have participated in the development of the first three national action plans. We have found the outcomes from our participation fell well short of the statements included in the Open Government Declaration that New Zealand has signed up to. We are pleased that the government, led by Te Kawa Mataaho Public Service Commission (TKM), is taking a more participative approach to the development of NAP4.
2. As has occurred with the past three plans, NAP4 is being developed without budget for the commitments. Achieving ambitious goals requires funded projects, which can only happen if the development of the plan is integrated into the annual budget cycle. Previous commitments have been constrained in ambition and delivery by lack of funding.
3. We understand the value of individual government agencies contributing some funding to implement commitments in an OGP National Action Plan; however, commitments funded entirely within baselines will not achieve the bold and ambitious goals that are needed. We recommend that funding for NAP4 be **allocated** in Budget 2022, to match funding contributed from agency baselines; this could use a similar model to the [Digital Government Partnership Innovation Fund](#).
4. We support the Government decision to extend the period for co-creation of NAP4, and consider this provides an opportunity for the commitments in the plan to be included in Budget 2022. We also support the Government requesting agreement from OGP to defer submitting the plan to the OGP until June 2022. The need for budget-cycle alignment becomes even more imperative if the government decides that NAP4 should be a four-year plan (2022-2026).

Consultation

5. As OGP makes clear, *the collaboration of citizens, civil society, political and official champions and other stakeholders is essential to developing, securing and implementing lasting open government reforms*. To that end OGP has developed [Participation and Co-creation Standards](#) (P&C Standards), which has two sections. The first details basic requirements that all signatory countries are expected to meet. The second is advanced steps - the standard countries should strive for. We have used this standard as the benchmark for our comments on consultation towards the NAP4.
6. The Public Service Act 2020 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.
7. We acknowledge the effort by Te Kawa Mataaho to set up an online platform to gather inputs from the public, and that it has also sought opportunities to consult with communities through workshops around New Zealand.
8. We advocate for deeper and more effective engagement with the public and civil society organisations, leading to co-created commitments that are drafted with the government, not by the government. For example, the UK Action Plans specify not only the lead government department but also the partner civil society organisations.
9. In the spirit of OGP, Transparency International New Zealand invited civil society agencies (CSOs) to a meeting, and eleven attended – there is very strong interest in OGP and considerable goodwill, whilst also a good dollop of cynicism. At that forum attendees expressed support for a process that would genuinely reflect the Basic Level requirements of the P&C Standards, and aspirations for meeting the Advanced Level.
10. This group provides an opportunity to establish a multi-stakeholder forum, with a substantial level of engagement from CSOs throughout the whole of the OGP cycle including the NAP planning process. This is quite different to the Expert Advisory Group concept (guidelines on running such a forum are available on [the OGP website](#)).
11. We suggest that of all government consultations, the one that establishes a National Action Plan for the Open Government Partnership should involve co-creation. It is also the intent of the government to head this way (noting recommendations for better methods of public participation in both the DPMC Policy Project guidance and the Royal Commission of Inquiry report into the Christchurch terrorist attack). We are encouraged that TKM are planning to move towards a co-creation process in partnership with CSOs.
12. We recommend that the government **adopts** a genuine co-creation process for NAP4, in line with the Participation and Co-creation Standards published by the OGP.

Our priorities for NAP4

13. We have identified eight areas, discussed below, where we suggest ambitious goals and commitments:
 - Government procurement
 - Algorithmic transparency
 - Beneficial ownership
 - Anti-corruption clauses in all Free Trade Deals
 - Foreign bribery legislation
 - Whistleblowing legislation and practice
 - Official Information Act
 - The role of elected officials in the civics process

14. We have also received additional suggestions from our members relating to active citizenship and removing the confidentiality clauses in services contracts, particularly in the health and social services sector. We have encouraged our members to contribute directly on the on-line platform.

Government procurement

15. The Government Rules for Procurement 4th edition require agencies to:

- seek opportunities to include NZ businesses and promote inclusive economic development within New Zealand.
- openly advertise on the Government Electronic Tenders Service (GETS) any procurement over \$100,000
- publish a Contract Award Notice on GETS including the expected spend under the contract,

These rules are in line with global best practice, and Transparency International New Zealand strongly supports the work of MBIE to develop and publish the Government Rules for Procurement and the guide to emergency procurement. We also commend MBIE for publication of contract awards notices as Open Data, enabling scrutiny of expenditure decisions.

16. The COVID-19 pandemic has required quick decisions to move vast amounts of resources, increasing the risk of fraud and corruption. Transparency enables people to see that resources are going towards fighting the virus, relief and economic recovery where most needed. However only 26 award notices relating to COVID-19 emergency procurement were published in 2020, and only five contained information on the value of the contract. It is completely unacceptable that there is no transparency of government COVID-19 expenditure. Government agencies have been making unprecedented levels of emergency expenditure without complying with the procurement rules approved by Cabinet.
17. There are two fields that are key to the transparency of government procurement – the contracted supplier and the value of the contract. In the last financial year (July 2019 to June 2020), a total of 2,281 notices of contract awards were published on GETS, but only 1,978 (87%) properly reported supplier information and only 793 (35%) included information on the value of the contract. This information is known by government agencies when they sign a contract with a supplier and non-publication is either careless or negligent.
18. The total of contract values published on GETS is \$1.016 billion, which is just 2.5% of the total annual government expenditure. This means that the financial details of 97.5% of government expenditure is not reported – despite the cabinet approved procurement rules requiring the data to be published. The rules include exemptions but the volume of the gap suggests that the rules are being used to avoid the principles of transparent procurement.
19. Transparency International New Zealand recommends that the National Action Plan NAP4 contains commitments to
- **Publish** details of all COVID-19 procurements with details of the supplier and contract value.
 - **Publish** the supplier and contract value for all contract award data
 - **Update** the mandatory rules to remove all exemptions
 - **Engage** in the Open Contracting Partnership (<https://www.open-contracting.org/worldwide>)

Algorithmic transparency

20. Statistics New Zealand released an [Algorithm Charter](#) in 2020 that contains a framework to guide government agencies in the use of algorithms and lists key actions that they should take in areas such as Transparency, Data, Privacy and Ethics. Statistics NZ are conducting a review of the impact of the Charter in 2021. TINZ supports this charter, which needs a stronger mandate.

21. Government agencies use external expertise and outsourced providers to operate algorithms; as a result, these third parties build a database of personal data about New Zealanders. We consider that specific regulation is required on the concentration of personal information by 3rd party algorithm providers.
22. Facial recognition technology (FRT) is a particularly dangerous instance of the use of algorithms, and has been found overseas to exacerbate systemic racism. There are particular issues for Māori in the use of facial recognition. A number of government agencies are already using FRT in projects without any public knowledge or oversight. There is no Legal or Ethical Framework for the use of FRT in New Zealand.
23. Transparency International New Zealand recommends that the National Action Plan NAP4 contains commitments
 - **Update** the Algorithm Charter drawing on the findings of the review
 - **Introduce** requirements on government entities to comply with the Algorithm Charter
 - **Introduce** regulation to control the use of personal information by 3rd party algorithm providers contracted by government agencies
 - **Suspend** the use of FRT by government until a Legal and Ethical Framework is in place.

Beneficial ownership

24. A beneficial owner is a person or organization that has the right to receive income or profits from an entity; they benefit even though the legal title may belong to another. New Zealand's looseness around the registration of overseas beneficial owners leaves us exposed to corruption in the form of costly white-collar crime. There is evidence that some of the world's biggest drug gangs are laundering money through New Zealand.
25. The European Union's 5th Anti-Money Laundering Directives require beneficial ownership registers that include trusts, and extends registration requirements beyond trusts. New Zealand needs to move forward on trust registration to keep up with European Union developments, which are global best practice in transparency.
26. In addition the recently published [FATF/AML Mutual Evaluation report for Zealand](#) notes that the country needs to focus more on improving the availability of beneficial ownership information, strengthening supervision and implementation of targeted financial sanctions. A public register would reduce the duplication created by the anti-money laundering legislation where currently each business and financial organisation has to maintain its own register of overseas beneficial owners. It would also enable scrutiny by media and researchers – this is how substantial money laundering and tax avoidance has been revealed in the past.
27. The beneficial ownership register for trusts should be similar to that required in the companies register (without telling the general public about financial affairs in any detail); this would normally be sufficient for police and financial intelligence units to investigate when dealing with money laundering and criminal offences.
28. Transparency International New Zealand recommends that the National Action Plan NAP4 contains a commitment to
 - **Legislate** to implement a publicly available beneficial ownership register for companies and a beneficial ownership register for Trusts

Anti-corruption clauses in all Free Trade Deals

29. New Zealand and China concluded negotiations of an upgrade to the bilateral Free Trade Agreement in 2019, including a new Government Procurement chapter to the FTA, with commitments to laws and policies to conduct procurement with integrity and to prevent corruption.

30. Transparency International New Zealand recommends that the National Action Plan NAP4 contains a commitment to

- **Include** similar anti-corruption clauses in all Free Trade Deals

Foreign bribery legislation

31. Foreign bribery is not an abstract phenomenon; it has huge consequences for both the payer and recipient. Money lost to foreign bribes creates significant economic repercussions, triggers unfair competitive advantages and results in fewer public services for the people who need them most. The 2020 report *Exporting Corruption 2020: Assessing Enforcement of the OECD Anti-Bribery Convention*, finds that active international enforcement against foreign bribery is shockingly low.

32. In New Zealand, the combination of an excellent reputation coupled with lax enforcement of foreign bribery is an extremely dangerous one. Organised crime and corrupt entities may see New Zealand a soft target for legitimising their activities.

33. The report contains detailed recommendations for New Zealand:

- Improve availability of statistics and information on investigations, mutual legal assistance requests and cases in relation to foreign bribery
- Develop central registers (new or existing) to ensure public accessibility of beneficial ownership information for all New Zealand companies and trusts
- Remove the "routine government action" (facilitation payment) exemption from Section 105C of the Crimes Act
- Introduce clear and specific legislative protection for auditors (and others) who report suspicions of bribery to the relevant authorities
- Introduce a positive requirement for commercial organisations to prevent foreign bribery by introduction of an offence of failure to prevent bribery (see The UK Bribery Act 2010, s7)
- Give greater priority and resources to the proactive investigation of foreign bribery to assess its extent in New Zealand
- Consider creating an independent anti-corruption agency, whose remit includes managing foreign bribery investigations
- Remove the requirement that the Attorney-General consent to foreign bribery prosecutions

34. Transparency International New Zealand recommends that the National Action Plan NAP4 contains a commitment to

- **Implement** the recommendations in the OECD report

Whistleblowing legislation and practice

35. Protection of whistleblowers is fundamental to combat corruption. While the proper processes are well-known, they are not well implemented, and New Zealand is behind internationally in implementing effective disclosure processes.

36. Whistle blowing exists in the dynamic of the work place with the manager playing a key role. High trust promotes a speak-up culture. This is the opposite of a command-and-control culture which is a very tough environment for speaking up when something is going wrong.

37. An independent oversight body could make the Protected Disclosures Act work more effectively. This would be a one stop shop for oversight, advice, guidance, with the power to investigate, sanction and provide for personal protection.

38. There is also a relationship between the Protected Disclosures Act, Privacy Act and Official Information Act, and these relationships could usefully be studied as officials review the Protected Disclosures Act. TINZ is available to provide input to this study.
39. Transparency International New Zealand recommends that the National Action Plan NAP4 contains a commitment to
- **Study** the relationship between the Protected Disclosures Act, Privacy Act and Official Information Act
 - **Update** the Protected Disclosures Act to include the establishment of an independent oversight body

Official Information Act

40. The National Action Plan NAP3 contained a commitment to *Test the merits of undertaking a review of the Official Information Act 1982 and provide and publish advice to Government* by June 2019. While the review was completed in 2019, the results were only published in March 2021.
41. The review found that an effective official information law was vital to a functioning democracy and reviewing the 39-year-old law would provide an opportunity to consider improving the openness, transparency and accessibility of government information. The review's suggested scope also included:
- rewriting the OIA to make it clearer and reinforce the starting principle that information should be made available;
 - clarifying who is subject to the OIA, including state-owned enterprises and parliamentary agencies
 - re-examining withholding grounds, especially the free and frank advice ground which protects officials' advice to government, and rejections based on privacy or commercial sensitivity.
 - management of vexatious requests
 - Māori access to information
 - the relationship between the OIA and other laws, such as the Privacy and Public Records Acts
 - whether agencies should have to proactively release information.
42. The first principle in the Official Information Act 1982 is to *increase progressively the availability of official information to the people of New Zealand*. It is clear that this principle is not being met, and that the operational practices by government are increasingly interfering with this intent.
43. The Minister of Justice has announced that further work on the recommendation to conduct a review has been deferred without a timetable for implementation.
44. Transparency International New Zealand recommends that the National Action Plan NAP4 contains commitments to
- **Review** the Official Information Act
 - **Implement** the findings from the review

The role of elected officials in the civics process

45. TINZ supports the submission of the New Zealand Chapter of GOPAC (Global Organisation of Parliamentarians Against Corruption) in its request that, as part of the development of New Zealand's Fourth OGP Action Plan, consideration be given to an OGP action covering Parliamentary and local body elected representatives. Questions to prompt discussion on an action could include:

- What is the role and responsibility of elected representatives in enabling open government dialogue and participation?
- How do politicians act responsibly to make sure that citizens/voters have the right information that lets them ask questions of those in power?
- How can government work with media to enhance adult civic literacy?

Sustainable Development Goals (SDGs)

46. New Zealand has signed the Sustainable Development Goal (SDG) Agenda 2030 card, but is not yet on the dance floor. Two of the SDGs are directly relevant to the National Action Plan:
- SDG 16: *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*
 - SDG 17: *Strengthen the means of implementation and revitalize the global partnership for sustainable development.*
47. The Open Government Partnership is a strategic tool that could help with implementation of SDGs, and there is also good convergence with the Wellbeing Framework. All can support each other.
48. Transparency International New Zealand promotes SDG 16, because we believe that peaceful and inclusive societies and effective, accountable institutions provide foundations for achieving the other SDGs.
49. SDG 17 recognises that achievement of all the SDGs requires cross sector and cross country collaboration, to deliver a revitalised vision of the SDGs. This includes inclusive, ethical partnerships- at the global, regional, national and local levels, and depends upon a shared vision and shared goals, placing people and the planet at the centre.
50. TINZ is a member of an international organisation, committed to international development specifically focussing on enhancing integrity systems to reduce corruption and increasing citizen participation, access to information and freedom to speak up. TINZ commitment is reflected in its work with Pacific partners, recognising partnership is essential to supporting the people of the Pacific. It also contributes to achieving ethical development across New Zealand communities, recognising that partnership is essential for the realisation of all the SDGs, including partnerships between government, the public and private sectors and civil society. To be successful this partnership needs to be supported by a shared framework, including transparent data. This is essential to the aims and spirit of the OGP, and shared roles in achieving a successful post Covid rebuild globally, regionally, nationally and locally.
51. Our recommendations are supportive of SDGs 16 and 17 as shown below

Recommendation	SGD16	SDG17
TINZ recommends that the Government allocate funding in Budget 2022 to implement the commitments in the NAP4.	✓	
TINZ recommends that the government adopts a genuine co-creation process for NAP4, in line with the Participation and Co-creation Standards published by the OGP	✓	
TINZ recommends that NAP4 contains procurement commitments to <ul style="list-style-type: none"> • Publish details of all COVID-19 procurements with details of the supplier and contract value. • Publish the supplier and contract value for all contract award data • Update the mandatory rules to remove all exemptions • Engage in the Open Contracting Partnership (https://www.open-contracting.org/worldwide) 	✓	✓

TINZ recommends that NAP4 contains algorithmic transparency commitments to <ul style="list-style-type: none"> Update the Algorithm Charter drawing on the findings of the review Introduce requirements on government entities to comply with the Algorithm Charter Suspend the use of Facial Recognition Technology by government until a Legal and Ethical Framework is in place. 	✓	
TINZ recommends that NAP4 contains a Beneficial ownership commitment to <ul style="list-style-type: none"> Legislate to implement a publicly available beneficial ownership register for companies and a beneficial ownership register for all NZ Trusts 	✓	✓
TINZ recommends that NAP4 contains an anti-corruption commitment to <ul style="list-style-type: none"> Include anti-corruption clauses in all Free Trade Deals 	✓	✓
TINZ recommends that NAP4 contains a foreign bribery commitment to <ul style="list-style-type: none"> Implement the recommendations in the OECD report Exporting Corruption 2020 	✓	✓
TINZ recommends that NAP4 contains a whistleblowing commitment to <ul style="list-style-type: none"> Study the relationship between the Protected Disclosures Act, Privacy Act and Official Information Act Update the Protected Disclosures Act to include the establishment of an independent oversight body 	✓	
TINZ recommends that NAP4 contains Official Information Act commitments to <ul style="list-style-type: none"> Review the Official Information Act Implement the findings from the review 	✓	
TINZ supports the recommendation from GOPAC (Global Organisation of Parliamentarians Against Corruption) that NAP4 considers including a commitment covering Parliamentary and local body elected representatives.	✓	✓

Submission ends

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