

**Submission**

**Draft NZ OGP National Action Plan  
2018-2020**

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## **Draft New Zealand Open Government Partnership National Action Plan 2018-2020**

### **About the submitter**

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## Introduction

1. This submission focuses on only three of the draft commitments: 5, 7 and 12. Together though they go to the heart of public participation in the shaping of, and accountability for, better quality services for the public.

## Commitment 7: Official Information

2. It is revealing that the draft NAP places the commitment relating to the OIA in the section on 'transparency and accountability' and not in the preceding section on 'public participation to develop policy and services'. This continues a longstanding problem with successive governments paying more attention to the second aspect of the OIA's purposes, rather than the first one, which says that the purpose of the legislation is

*to increase progressively the availability of official information to the people of New Zealand in order to enable their more effective participation in the making and administration of laws and policies<sup>1</sup>*

3. This is highly relevant in an OGP context, since the OGP is fundamentally about increasing and improving public participation in policy development and service design. When joining the OGP in October 2014, New Zealand endorsed the *Open Government Declaration*, which articulates these values at greater length:<sup>2</sup>

*We value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people's knowledge, ideas and ability to provide oversight. We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the*

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<sup>1</sup> Official Information Act, section 4(a)(i).

<sup>2</sup> *Open Government Declaration*, Open Government Partnership, September 2011. <https://www.opengovpartnership.org/open-government-declaration>

*ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion. We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.*

4. The draft commitment to ‘*Test the merits of undertaking a review*’ of the OIA, places the process entirely in the hands of officials and Ministers, and therefore does not live up to the spirit of the OGP’s requirements and New Zealand’s commitment to them. Judging from the commentary around the OIA emerging from Ministers,<sup>3</sup> this ‘*testing the merits*’ is likely to take the form of asking people who have been selected by the government to talk to. This is entirely the wrong approach, as the ‘regular and frequent’ users of the OIA mentioned by the Minister of Justice are not in the majority of the complainants to the Ombudsman about OIA decisions.<sup>4</sup> The OIA does not belong to these regular and frequent users, it belongs to all of us, so the government should ask all of us what we think about it.
5. It might have been understandable if the government’s timetable for taking action was short, with the intention to make a decision by the end of 2018 so as to get draft legislation consulted upon and then introduced to the House in 2019. But the draft commitment states that the intention is to make this decision by the end of June 2019. There is ample time therefore for the government to conduct more fully fledged listening exercise to inform the advice provided to Ministers by the intended end date.
6. The commitment should be amended, so that there is a fully open public consultation designed to identify the aspects of the OIA that are of concern to different requesters. This could build on, and be structured around, the messages about the OIA recorded at the NAP development workshops, but does not have to. As an exercise in listening to the public, the framing of the

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<sup>3</sup> *OIA Review Back On The Table*, Sam Sachdeva, *Newsroom*, 19/9/2018. Accessed from: <https://www.newsroom.co.nz/2018/09/18/242441/oia-review-back-on-table-for-govt>

<sup>4</sup> *Ombudsman releases latest OIA data*, Office of the Ombudsman, 5/9/2018. Accessed from: [http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/666/Media\\_release\\_OIA\\_Data\\_release\\_5\\_Sept\\_2018\\_PDF.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/666/Media_release_OIA_Data_release_5_Sept_2018_PDF.pdf)

issues should be loose, not tight. It should explicitly invite comment on how the OIA links to other relevant legislation such as the Public Records Act, provisions in other statutes which bar disclosure (see section 18(c)(i) of the OIA), the Ombudsmen Act 1975 and the Privacy Act 1993 (soon to be replaced): the point is to situate the OIA in a landscape of governance and integrity mechanisms, not isolate it or reduce to a subset of issues such as ‘how should agencies have qualified privilege for information they proactively release?’

7. I recommend that the commitment wording be amended to read:

*Consult the public on which aspects of the Official Information Act 1982 they believe need amending, and publish both the submissions received and the analysis of those submissions prior to submitting advice to Government.*

## **Commitment 12: Open Procurement**

8. This draft commitment completely ignores the work taking place internationally on open procurement, making no mention of the Open Contracting Partnership and its existing open standard for publication of information about contracts awarded by government.<sup>5</sup>
9. The commitment should be amended to explicitly refer to reviewing and taking into consideration the Open Contracting Partnership standards. The first part of the draft commitment should also explicitly refer to a public consultation exercise, not merely ‘design with the public’, which could easily be interpreted to mean ‘consult with our selected stakeholders’. If the Government means ‘consult with the public’ it should say so in the commitment.

## **Commitment 5: Public Participation in Policy Development**

10. It is ironic that the Government sees fit to have ‘standards’ on Digital Service Design (Commitment 6), but in Commitment 5 has again shied away from

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<sup>5</sup> <https://www.open-contracting.org/implement/global-principles/>

committing itself to development of an all-of-government standard on public participation, with concrete issues such as minimum consultation periods, publication of responses and analyses of responses.

11. Draft commitment 5 as it stands may assist policy makers, but it does nothing to embed standards of public participation in government policy making and service design. Given the participative purposes of the OIA (referred to in paragraph 2 above) have been in place for 36 years, it is long past time that the work on public participation results in delivery of a concrete set of standards relating to public consultation (and other types of public participation) against which Governments and agencies can be held to account. The UK had central government standards for public consultation in the 1990s, and it is frankly embarrassing that New Zealand has not yet caught up on this.

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