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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)

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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.

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 IAP2 spectrum.

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	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.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

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	Commitment 1 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 energated and resourced a collective commitment to community engagement.</p> <p>The commitment should include:</p> <ul style="list-style-type: none"> • publishing the report from the review of the use of the policy community engagement tool • mandatory expectations that government entities will adopt the tool • information on how the public will be involved in delivery of the commitment. • provisions on co-designing enforceable minimum standards for public consultations (information gathering, co-design, publication) • specification that the community of practice will be open to private sector public engagement consultants, CSOs, academics and interested members of the public
15	Commitment 2 Research deliberative processes for community engagement	<p>The commitment should include</p> <ul style="list-style-type: none"> • 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 • publication of the evaluation of the deliberative processes pilot
16	Commitment 3 Establish an integrated, multi-channel approach to public services and support	<ul style="list-style-type: none"> • 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. • Reference to the Plain Language Act 2022 is relevant in relation to written printed and online material
20	Commitment 4 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"> • a milestone to create a CSO, Māori and government working group to oversee the development of the strategy. • explicit reference to how the strategy will be co-designed • a milestone for co-design of 'Phase 2' work to extend the strategy to the private sector, by the end of 2024
21	Commitment 5	The commitment should

22	Increase transparency of beneficial ownership of companies and limited partnerships	<ul style="list-style-type: none"> • be explicit that the register will be public and sufficient detail provided to enable public identification of beneficial owners • include the requirement for a risk assessment of the use of trusts and how to improve the transparency of their use and ownership • include milestones for public consultation on the development of the legislation in addition to the standard select committee process
23 24	Commitment 6: 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"> • a milestone to involve CSOs in the co-design of the GETS application • a milestone for a policy to adopt the Open Contracting Principles, which covers the full spectrum of procurement documentation • an explicit statement that all procurement data gathered will be published as open data, rather than simply providing access to 'dashboards'
26	Commitment 7: Strengthen Scrutiny of Exemption Clauses in legislation	<p>This commitment should include</p> <ul style="list-style-type: none"> • 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
28	Commitment 8 Improve transparency and accountability of algorithm use across government	<p>The commitment should include</p> <ul style="list-style-type: none"> • specification that the community of practice will be open to private sector algorithm experts, CSOs, academics and interested members of the public • a milestone to require government agencies to adopt the Charter in their management of data • a milestone to require government agencies to report on their use of algorithms in their Annual Report, and be subject to regular audit.
29	Implementation plan	The implementation plan should explicitly describe the value of co-creation and the role of civil society
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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