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cc: Hon Grant Robertson
Chair, GOV Committee

15 November 2022

Tēnā koe Minister Hipkins,

Open Government Partnership – 4th National Action Plan

We write regarding the Cabinet paper that will be considered at GOV on 17 November. We represent six civil society organisations (CSOs) that have been working with officials over the last two years to co-create the commitments in the next Open Government National Action Plan (NAP 4).

We met with you on 5 October to discuss drafts of 11 ambitious, potentially transformative commitments to be included in NAP 4. We followed this with a letter on 7 October outlining our support for you to promote the commitments with your Cabinet colleagues.

Since that meeting we have been in regular contact with officials in Te Kawa Mataaho (TKM) to understand how CSOs could continue to be involved in the co-production of the draft National Action Plan. We are sorry to report that there was no further involvement, and not even an opportunity to discuss the points that we made in our meeting.

We finally received, on 8 November, a copy of the draft commitments that had been circulated for ministerial and agency feedback. This draft was a significant change from the version created through the co-production process described in the paper. We are bitterly disappointed that so much input and engagement from CSOs over the last two years has resulted in so little of substance.

Draft Action Plan commitments

The six commitments proposed for NAP4 have been seriously watered down from what emerged from the workshops during 2022, and now read as being close to the minimum effort that officials think they can get away with. Most are pre-existing work programmes with no consideration as to how delivery will be shaped by public or CSO participation.

Draft commitment 6 is risible. As we briefed you last December, there are more than 80 secrecy clauses on the statute book, with more than 20 added since October 2017. Simply reviewing guidance is not good enough: the government must commit to a programme of repeal or amendment.

Ministers have been reported as being frustrated with the quality of government procurement. We urge Ministers to strengthen commitment 5 by including adoption of the international Open Contracting Principles as many other countries have done. Adopting the Principles would be genuinely transformative. MBIE has not explained why this suggestion has been rejected.

On beneficial ownership (commitment 4) MBIE has not explained why our suggestion to sign up to the international Open Ownership Principles and data standard has been rejected. If the object is to share data to fight crime, why not use the international standard? We also suggest a ‘stretch goal’ to include an analysis of trusts, to determine the best means to enable more transparency of their purpose and control.

Commitment 1 on community engagement omits our request that basic minimum standards for public consultations be developed and issued. We set out what these could be in our letter to you of 7 October. We are mystified as to why TKM thinks it is “too early” to do this.

Commitments excluded by officials

Five commitments (in Appendix B) have been dropped because of the lack of agency support. The lack of support from agencies to change is not unusual, but this level of resistance is close to actively working against government’s stated intentions.¹ Did you intend to give agencies veto powers?

We are particularly concerned about three of these commitments.

First, the commitment to co-create a National Interest Analysis assessing the potential benefits and challenges of acceding to the UN’s Aarhus Convention on access to information, public participation and access to justice on environmental matters. As we wrote to you on 7 October, MfE officials – who have failed to meet with us over the two year co-creation process – have suggested there is no need to explore this issue. Their claimed equivalent obligations are entirely specious, for the reasons we explained in our letter. We also want to be clear that all the signatories to this letter support the inclusion of this commitment in NAP4 – it has broad support and would be genuinely innovative. It is a proposal for a joint assessment, it is not a proposal to accede to the Convention.

The other two (reported as “yet to gain a sponsor”) we see as critical to government leadership. After two years of work on developing the plan, and nearly three years since the initial public workshops, the inability to find a sponsor across government for these two areas illustrates a serious lack of commitment from the Public Service to Open Government.

Commitment 7 - Algorithmic Transparency - is fundamental to strengthening trust in government, and also provides the opportunity to build understanding and awareness of the topic as an adjunct to regulation of the private sector use of algorithms.

Commitment 8 - Multi-channel service delivery - is a commitment to ensure that public services remain accessible through inclusive and equitable, multi- service channels. It is difficult to think of a more critical role for government leadership than ensuring all are able to access services. This is not about overcoming digital exclusion: it is about choice and equity.

We note that CSOs consider the other two dropped commitments (open spending data and the independent fiscal institution) important and officials disagree; Ministers need to make a clear statement as to which they support.

We are also puzzled by TKM’s failure to use the OGP mandated commitment template for the Action Plan when we provided draft commitments using it.

¹ Support for Open Government is both in legislation (Chief Executives are required to uphold the principle of fostering Open Government when carrying out their responsibilities under section 12(2) of the Public Service Act 2020), and your stated wish for a National Action Plan that is bold and ambitious.

It's time to demonstrate leadership and ambition

When we started on this journey with officials in 2020, we were optimistic that government and CSOs could work together to co-create a Tiriti-based plan for open government in Aotearoa that would meet your expectations for a bold, ambitious and transformative National Action Plan 4.

In our letter to you in March 2021, we wrote:

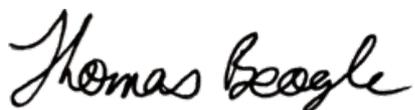
However, without a change to the process for developing NAP4, we have serious concerns about the value of engaging with the work to develop the plan, and believe that – counter to its intentions – OGP work in New Zealand will continue to feed cynicism about ‘co-creation’.

We appreciate your support and direction in our interactions with you, which has helped to maintain our optimism during an extended and uninspiring series of engagements with officials. In the end, we have to assess the value of our involvement based on the final product – the draft NAP4.

It gives us no pleasure to report that our concerns have been vindicated by the experience of working on NAP4, and at this stage it is unlikely that we will be able to endorse NAP4. Any decision on whether to engage in activities to support its implementation will be a matter for individual CSOs to weigh the opportunity costs for their other work.

Finally, we need to seriously learn from a process that hasn't delivered and commit to reviewing and rethinking NAP creation from the ground up.

Ngā mihi,



Thomas Beagle

Chairperson

NZ Council for Civil Liberties



Julie Haggie

Chief Executive Officer

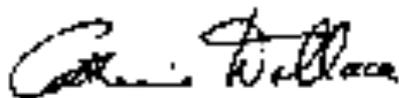
Transparency International



Sacha Green

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Citizens Advice Bureau



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Maureen Gillon

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Trust Democracy



Katherine Peet

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