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28 November 2025

Kia ora Lydia

Draft commitments for 5th Open Government Partnership National Action Plan

Following the online workshop on 26 November 2025 to discuss the draft commitments proposed by the government, I am writing to provide the Council's written feedback on them.

Overall

To only have four commitments in the National Action Plan (NAP) may be realistic in terms of the government's failure to fund any additional work, but it is another depressing sign, not just of the lack of ambition on the part of ministers, but also of the failure to act on the scale of the issues facing New Zealand. The country is significantly falling behind those we would regard as our peers in terms of a regulated regime for proactive disclosure of information, citizen participation, and accountability. From the Council's perspective all three impact on people's liberties and rights at a time when our democracy and these rights are increasingly under attack.

Consultation on the draft NAP prior to submission to the OGP

In previous NAP development cycles, the government has abided by the OGP's expectation that there is a minimum two week public consultation period on the draft NAP before it is submitted to the OGP.

We understand the Public Service Commission is not proposing to do that this time. **This is unacceptable.** While the partial text of draft commitments has been shared publicly, these did not spell out the milestones for undertaking the work, nor identify which non-government organisations or individuals the lead agencies for each commitment would work with during delivery of the commitment. Furthermore, the

Commission has not shared any draft of the introductory text of the NAP, nor the Minister's foreword. The draft NAP has therefore not been publicly shared.

The government's decision to delegate sign-off of the NAP to the Minister for the Public Service, instead of it being a Cabinet decision, should mean that there is more time available for public consultation, not less. If less time before the OGP's formal submission date of 31 December 2025 remains in reality, this is because the Commission itself did not start public work on NAP development until 11 September 2025 (as notified in the 25 August 2025 newsletter).

It would be completely inappropriate for the department that administers the Public Service Act to fail to fulfil its statutory duty to 'foster a culture of open government' by not consulting the public on the draft NAP. Not meeting this standard will further undermine public confidence in the Commission and its Integrity, Ethics and Standards team. Such confidence clearly needs rebuilding after its secret efforts in 2024 to lobby ministers to withdraw from the Open Government Partnership.

The Council **recommends** that the Commission notify the OGP that it will be submitting the final text of the 5th NAP in January 2026, in order to run a two week public consultation on the draft text before the Christmas 2025 break.

Adding further commitments later in the NAP's lifespan

All four of the commitments proposed by the government are limited in scope and deliverables, and are capable of being completed within 6-9 months after work has started. Experience shows that work on them will begin in February, after the summer break. This means that they should be completed by September 2026.

The Council **recommends** that in the introductory text of the plan, it is clearly stated that the Open Government Partnership (OGP) is happy for countries to add further co-created commitments during the lifespan of a NAP. This would be a clear signal to the government that takes office after the 2026 general election that there is an opportunity for it to put its own stamp on work in this area.

Recommendations for the draft commitments

We understand our representative in the 26 November workshop provided verbal feedback as to how the draft commitments could be strengthened. So that these are formally on the record, we recap these below.

Commitment 1 – Review protected disclosure practice

The 'Problem Definition' section of this draft commitment states that *'The 2025 Public Service Census also indicated that public servants don't always feel safe to speak up about issues'*. Awareness of the law and its theoretical protections is high (90%), but almost a third (30%) do not feel safe to speak up about wrongdoing.

Despite this, the ‘What are the causes of the problem?’ section does not address this core issue of officials not feeling it is safe to make use of the law. As a result, the ‘Practice review’ proposed in the ‘What solution are you proposing?’ section does not include research or investigation of why officials do not feel safe in speaking up. This means it is unlikely the practice review will explore this, resulting in yet another missed opportunity to improve practice or make recommendations for legislative strengthening of the Protected Disclosures (Protection of Whistleblowers) Act. Similarly the section on ‘What results do we want to achieve by implementing this commitment?’ section does not include an outcome of ‘More than 90% of public servants are very confident that it is safe to raise a concern about wrongdoing’.

We **recommend** the text of these aspects of the commitment are revised to ensure it addresses a key barrier to the law achieving its purpose.

In terms of non-government participation in implementation of the commitment, the Council **recommends** that:

1. The Commission establishes a multistakeholder working group for the commitment so that it can provide input on people the officials conducting the review can speak to, as well as providing feedback on draft questions, and the draft report of the review.
2. The review should seek information from the Law Society (especially any committee on employment law. It should ask all government agencies’ legal teams to provide the names and contact details they hold for lawyers they have dealt with who are representing public servants who have tried to make use of the Protected Disclosures Act, and then speak to these lawyers. The review should also ask the Ombudsman, Auditor-General and other ‘appropriate authorities’ (including those listed in Schedule 2 of the 2022 Act to contact those who have approached them under the Act and provide them with details of the commitment and how and when they can provide input to it.
3. The review should also contact civil society organisations (either via a DIA database or using its own research) to ask what their experience is of people approaching them with potential whistleblowing issues. Suggestions include Community Law Centres, the Citizens Advice Bureau, ourselves, Amnesty International, Transparency International NZ, the PSA, and others that these organisations might in turn suggest to you. It should also contact the *Protect* charity in the United Kingdom that advises whistleblowers and employers,¹ as well as the *Government Accountability Project* in the United States,² and experts like Kieran Pender at the *Human Rights Law Centre* in Australia.³

¹ <https://protect-advice.org.uk/>

² <https://whistleblower.org/>

³ <https://www.hrlc.org.au/>

Commitment 2 – Develop a Corruption Assessment Tool

Based on the problem definition and proposed action to be taken as part of this commitment, the title of this commitment needs to be amended. The tool proposed will not assess actual corruption, merely the risk of it occurring in an organisation. We therefore **recommend** that a more accurate title for the commitment is ‘Develop a Corruption Risk Assessment Tool’. Similar language changes will need to be made to the rest of the commitment as well.

The Council also believes the ‘Commitment Analysis’ table could be strengthened. The box on ‘How will the commitment promote transparency?’ is currently marked as ‘N/A’. The ‘solution’ being proposed in the commitment description is that ‘*The Serious Fraud Office will design and make available a Corruption Assessment Tool*’. If ‘make available’ means ‘publish’ — as it undoubtedly should — then the commitment will in fact help to promote transparency. Not only by making the risk assessment tool available for public scrutiny, but since reading the assessment tool may well inform Parliamentary questions to the government, select committee inquiries, and Official Information Act (OIA) requests.

Similarly, the ‘How will the commitment help foster accountability?’ box could be amended to reflect the fact that publication of the tool will facilitate independent scrutiny as to whether agencies have made use of it.

Unfortunately, the box on ‘How will the commitment improve citizen participation in defining, implementing and monitoring solutions?’ is all backward looking, by suggesting that previous research will inform the work to identify risks. In reality, forms of corruption never stand still, and so the tool itself needs to build in advice for agencies to draw on non-government expertise on an ongoing basis.

We **recommend** the draft commitment is amended to reflect these issues.

As with commitment 1, we **recommend** that the Serious Fraud Office establishes a multistakeholder working group for the commitment so that it can provide input on creating the Risk Assessment Tool and review drafts.

Commitment 3 – Support ethical government – private sector career transitions

Although the existing text refers to people moving from the private sector to government, the dominant message from the text is that it is more concerned about movements from government to the private sector. For example, in the ‘Problem definition’ box, the phrase ‘(in either direction)’ should be moved up to the first sentence.

In the same box, there is a sub-heading ‘Public trust risk’. There is a public trust risk, but more importantly there is an actual corruption and integrity risk, and this must be detailed in the problem definition box; it is not that the public may

misunderstand what is going on and therefore lose trust, it is that there are clear examples of poor — and likely unlawful — practice already undermining the integrity of public policy making.

The Council **recommends** that the ‘Problem definition’ box of the draft commitment be amended to address these issues.

The weaknesses of the problem definition stage of the commitment are reflected in the ‘What solution are you proposing?’ section. This says that the document to be produced by the Commission and Ministry of Justice will ‘explore the public trust risks of, and disincentives to, government-private sector transitions’. The Council **recommends** that this wording be amended to say the document will explore the corruption risks of such transitions, based on inappropriate sharing of information, inappropriate influence which leads to the narrowing of policy options to be considered for an issue (or choice of frameworks for analysis), and inappropriate privileging of people and companies in both procurement and short-term contracting. The commitment should state that it will particularly need to look at the risks when people move from regulated industries to the regulator and vice-versa.

The Council also **recommends** that the commitment explicitly refer to studying regulatory regimes for this issue in other countries, and in particular mechanisms in place that regulate these transitions and report on them; for example the Advisory Committee on Business Appointments in the UK, and its successor.⁴

This section of the document does not explicitly say that the discussion document will be published, nor that there will be a published analysis of the feedback on the discussion document, nor even that the feedback will be published. The former is implied in the answer to question 8 in the ‘Commitment analysis’ section, but our experience is that things should never be left implicit, and need to be explicitly included in the commitment actions. We **recommend** that this be reflected in the proposed solutions section of the commitment as well as in the commitment milestones.

In section 3 — ‘What results do we want to achieve by implementing this commitment? — the proposed achievements also reflect the focus on risk of public confidence, rather than actual improper transitions. This again pretends that the problem is with the public perceiving things that aren’t actually an issue, pre-judging the function of this commitment and suggesting that everything is rosy. The Council **recommends** that this section clearly state that an object is to reduce actual improper transitions, misuse of information, inappropriate privileging of people and companies in procurement and contracting activities. The commitment needs to say explicitly that the overall objective is to ensure the integrity of policy making processes.

⁴ <https://www.gov.uk/government/organisations/advisory-committee-on-business-appointments>

We strongly **recommend** that one of the commitment milestones is that the analysis of feedback on the discussion document is completed before October 2026, so that it can be cited in briefings to the incoming Ministers of Justice and Public Service, along with options for how to proceed.

As with commitments 1 and 2, we **recommend** that the Commission and Ministry establish a multistakeholder working group for the commitment so that it can provide input on creating the Risk Assessment Tool and review drafts. Key expertise in this field exists in civil society organisations and academia, and it will undermine the quality of analysis and recommended proposals if these experts are not involved in development of the discussion document.

Commitment 4 – Explore options to improve transparency of senior leaders’ conflicts of interest

This commitment focuses on ‘senior leaders’ in the public service. This traditionally means Chief Executives and their Deputies, and possibly down to the third tier of agency management. But in the Public Service Amendment Bill, the Government seeks to give the Public Service Commissioner veto rights over the appointment of people to ‘key positions’ across all public service agencies, as well as rights to object to any restructuring in a government agency that might affect a ‘key position’.

Almost by definition, if a position is important enough for the Commissioner to have rights in relation to the post and its holder, it is important for accountability and integrity purposes that we know what all of these roles are **and** how any conflicts of interest the post-holder may have are being managed.

The Council **recommends** that the scope of this commitment be redrafted to make clear that ‘senior leaders’ also includes all ‘key positions’.

The draft commitment is muddled because although it says it wants to achieve more ‘transparency about senior public servants’ conflicts of interest’ and ‘greater public access to information’ about them, the ‘Commitment analysis’ section make clear that these outcomes are dependent on the options scoped: publication of senior public servants’ interests and conflicts of interests is not guaranteed by any means.

The Council **recommends** that in the stages described in the ‘What solution are you proposing?’ section, stage one should also research conflict of interest management in countries besides those listed. It should explicitly list Sweden, Norway, Finland and Denmark, but should also state that it will research countries that OECD evidence on this topic indicates have high integrity systems for conflict of interest management, such as perhaps Singapore.

We also **recommend** that stage two should explicitly state that the consultation on options to enhance transparency will be a public consultation, not just with agencies’ preferred and handpicked consultees. As with other commitments, this

one must commit to publication of the submissions received on the consultation document, and the Commission's analysis of the submissions.

As with commitments 1, 2 and 3, we **recommend** that the Commission establish a multistakeholder working group for the commitment so that it can provide input on the research, option scoping and implementation. Key expertise in this field exists in civil society organisations and academia, and it will undermine the quality of analysis and recommended proposals if these experts are not involved in development of the discussion document.

Multistakeholder Forum

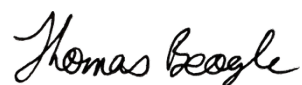
The Council fundamentally disagrees with the Commission's position that the input of a few non-government organisations and individuals during development of the NAP is a valid substitute for a genuine multi-stakeholder forum. A genuine multi-stakeholder forum to oversee delivery of this NAP and development of future NAPs must be established.

We have pointed out to the Commission that we consider Statistics NZ's quarterly hui with organisations to be valuable. We presume the department finds it valuable too. We again encourage the Commission to speak to senior Statistics NZ officials that have participated in the hui. We also note that nobody receives any fees or attendance allowance for participating in the hui, so the cost to the agency is extremely limited.

We strongly believe that the section 12(1)(d) of the Public Service Act requirement to 'foster a culture of open government' means that the Commission should be leading by example in relation to creating formal structures for non-government participation. The fact that the Commission has now added to its own website an acknowledgement that 'open government' means "*high standards of governance and citizen participation in government that characterise a strong democracy*" strengthens our belief that the Commission should be modelling good practice. The fact that ministers in this government are not keen on citizen participation does not absolve the Commissioner of his statutory duty.

We would be happy to clarify anything set out above if needed, and expect to be invited to participate in oversight of and research for at least commitment one, as this fundamentally concerns the right to freedom of expression and constraints on and enablers for exercise of this right.

Ngā mihi,



Thomas Beagle
Chair