Open Government Partnership

Independent Reporting Mechanism

New Zealand:
Comments received on the Design Report for the third OGP action plan (2018-2020)

The IRM received the following comments on the Design Report for the 2018-2020 action plan during the public comment period:

General comments

The following comments were received by Kay Jones on the overall review:

The commitments stated under Secondary Legislation, Service Design and Official Information exaggerate the plans for action and likely impact.
The Report does not comment on issues raised about lack of accessibility to services and democratic participation for disabled New Zealanders other than a reference to better accessibility testing of websites. All of Government standards for websites use accessibility measures but currently documentation and other modes of communication are not covered. The Report for this Review, like many discussion documents, is not fully accessible. Co-design with disability communities or with accessibility advisors would help.   Accessibility is also relevant for Public policy Participation Pages 32 to 34 also. Voting is low amongst the disability community in part because of barriers to participation and in part because of the lack of information in appropriate formats for them, including Easy Read Format for people with Learning issues. How does this oversight fit with the stated goal on Page 8 of "government's commitment in the action plan to developing "a just and inclusive society".

II. Open Government Context in New Zealand

The following comments were received by Andrew Ecclestone, independent consultant, on the "Open Government Context in New Zealand" section:

Page 6	Under the heading 'Access to Information', the references to NZ's score on the RTI Rating need to be updated. That site appears to have increased NZ's score from 91-94, while its position on the index has decreased from 51 to 52. Source: https://www.rti-rating.org/country-data/
Page 8	Under the heading 'Civic Participation' it is stated that the 'The Coalition Government's active public consultation on policy matters surpasses the standard for public participation and is in progress to meeting the ideal level sought by the International Association for Public Participation (IAP2) and OGP.' The footnote merely references the IAP2 Spectrum, and provides no evidence to support the

	claim that the Government's consultation activity 'surpasses the standard for public participation'. In my view this statement is over-generous to the NZ government, which typically only engages with the NZ public at the 'consult' level of the IAP2 Spectrum, and even then with short time frames (typically 4 weeks) which do not provide adequate time for civil society organisations to prepare high quality responses, let alone have them pass through their internal governance processes.
Page 9	In the sentence starting with 'The Government Security and Communications Bureau' it fails to note that this extension of the Bureau's powers by the Intelligence and Security Act 2017 was extremely significant, in that it legitimised, for the first time, the Bureau's ability to spy on New Zealanders in their own country. Furthermore, the text tries to play this down by suggesting that it will only cover circumstances where *'only signals intelligence will provide a proper understanding'* of an *'act'* by a New Zealand citizen or person thought to be a New Zealand citizen. The report refers readers to footnote 37 for these statements, which says *'State Service Commission advice to the IRM, 12 August 2019.'* This is not good enough. The statement made by the SSC asserts a limit to these expanded powers of spying on New Zealanders without referencing the statutory provision upon which the assertion is presumably based. Furthermore, section 53 of the Intelligence and Security Act 2017 does not limit this spying to New Zealand citizens, as asserted by the SSC, it also applies to people with 'permanent resident' status. In addition section 59 of the 2017 Act enables this spying on New Zealanders and permanent residents to take place for the purposes of 'economic well-being'. New Zealanders have good reason to be sceptical about the intelligence agencies respecting 'civic space' and democratic norms. On 10 October 2019 the New Zealand investigative journalist, Nicky Hager, published the report of the Inspector General of Intelligence and Security into his complaint that the NZ Security Intelligence Service had unlawfully used its powers to try and uncover his sources. The Inspector General upheld his complaint. Crucially, it was shown in the report that the NZSIS used their powers on the basis of an allegation that Mr Hager's journalism amounted to 'espionage'. The Inspector General concluded in paragraph 40 of her report" > "For the reasons given I have found that NZSIS unlawfully provided investigative assistance to NZDF in efforts to determine whether a specific NZDF officer had been a source for information published in Mr Hager's book *Other People's Wars*. Specifically, NZSIS provided that assistance despite a lack of grounds for reasonable suspicion that any activity had occurred that was a matter of national "security" as that was defined in the governing legislation of NZSIS at the time. I have been unable to find that the Service showed the kind of caution I consider proper, for an intelligence agency in a free and democratic society, about launching any investigation into a journalist's sources." You can read the press release here: http://www.scoop.co.nz/stories/PO1910/S00115/the-sis-unlawfully-targeted-nicky-hager-on-behalf-of-nzdf.htm and the report of the Inspector General here:

	http://img.scoop.co.nz/media/pdfs/1910/FINAL_Hager_Complaint_CO140_report_unclassified.pdf

III. Leadership and Multi-Stakeholder Process

The following comments were received by Andrew Ecclestone, independent consultant, on the "Leadership and Multi-Stakeholder Process" section:

Page 11	In the light blue text under the heading 'Leadership and Multi-stakeholder Process', the text states that *'During the development of the action plan the then Associate State Services Minister (Open Government) and State Services Commission exhibited leadership.'* I think the idea that Ministers showed 'leadership' (as stated) is laughable. There was: - No ministerial media notice to inform the public that the NAP creation process had begun - The Minister only dropped into the Wellington workshop at lunchtime and seemed to have a poor grasp of the issues relating to reform of the Official Information Act when I spoke to her - Following her resignation on 7/9/18 nobody was appointed to succeed her as Minister for Open Government – the portfolio ceased to exist. - The Minister for State Services showed no publicly visible signs of leadership or engagement with the process at any time until the NAP was published.
Page 11	In addition to the above, the State Services Commission (SSC) also did not issue a press release to announce the launch of the NAP creation process. The Associate Minister may have met with Transparency International NZ (TINZ) but that's probably because the chair of TINZ serves on the government's handpicked Advisory Panel (which is far from being a true Multi-Stakeholder Forum). There is no evidence the Minister met with any civil society groups <u>not</u> represented on the EAP. Since the EAP members have not been chosen by civil society, they cannot be said to represent civil society.
Page 11	The Minister is quoted as saying that he wasn't going to take the plan *'as being the ultimate end state. I'm going to push hard to go even further and faster'*. There's no evidence cited in the report that any *'push[ing] hard to go even further and faster'* has occurred subsequently in any shape or form, and this should be noted, rather than leaving an unduly positive statement hanging in the air, as this could mislead the report's readers into thinking that there has been any visible Ministerial engagement in the OGP work to lift its ambition, scope or pace of delivery, when there has been no evidence of this, and presumably the SSC have not provided any evidence of this to the IRM.
Page 12	Under 'Multi-stakeholder forum' it states that it has six members. But there are still only 4, sixteen months after SSC agreed to increase it to six in March 2018. The appointments process initiated in March 2019 has still not concluded in any public announcements as of 13 October 2019.
Page 12	The report states that the EAP offers a channel for the public to contact it via an SSC email address, but as of 13 October 2019 this email address is <u>not</u> on the EAP page of the OGPNZ website, so it is hardly surprising that nobody uses it. Source: https://web.archive.org/web/20191013115906/https://www.ogp.org.nz/open-government-partnership/expert-advisory-panel/

	The report needs to ask why members of the public or CSOs would want to try and contact members of the EAP via an email address managed by the SSC. It is hardly an independent channel that would enable groups concerned with progress on a commitment to raise those concerns with an EAP member so they can be discussed at an EAP meeting.
Page 13	The report should note that until July 2019 the EAP web page only published the agendas and minutes <u>after the subsequent quarterly meeting</u>. This has recently been improved, but has meant that until August 2019 there was zero opportunity for the public or CSOs to understand what was being discussed at the EAP in time to feed in their views to the EAP for the subsequent meeting (even assuming they wanted to trust the SSC to pass on their views to the EAP via the email address that is not on the EAP web page). Again, we should be clear that members of the EAP are <u>not</u> representatives of civil society, because they don't have a mandate from civil society and do not report back to it.
Page 13	Launch of the NAP creation process: states that the Minister spoke to officials on 4 April 2018, but there was no media release to inform the public, so if you weren't already on SSC's mailing list, how were you supposed to learn of it? Osmosis? Two weeks elapsed between the Minister speaking to officials on 4 April and SSC announcing the workshop dates to the public on 18 April.
Page 14	I endorse this description of the process for creating the NAP. Even then, it generously avoids describing how civil society groups came close to walking out of the 'Synthesis Workshop' on 2 July 2018 because of their dissatisfaction with the process. It also does not mention that there was no Ministerial participation in this workshop, meaning that again, there was no visible Ministerial leadership or engagement, and no opportunity for the Minister to hear first-hand about the dissatisfaction of CSOs and other members of the public delegated to participate in the workshop. I also agree that the action plan development process improved on the previous two efforts, and it certainly achieved no higher than 'involve' on the IAP2 spectrum.
Page 15	IRM suggested actions: 1st and 2nd bullet point should be revised to make clear that for the EAP to include civil society 'representatives' there needs to be a process developed and administered by civil society to choose their representatives. Otherwise the people appointed to the EAP represent only the SSC's view of civil society. A clear action for the SSC to take would be to work with a variety of civil society umbrella groups, such as Hui E!, ECO (umbrella group for many environment and conservation groups in NZ), Social Service Providers Aotearoa, NZ Council of Trade Unions, Multicultural NZ and Business NZ (to name just a few) to develop a process where they administer elections to serve on a true multi-stakeholder forum.

The following comments were received by Kay Jones on the "Leadership and Multi-Stakeholder Process" section:

Page 13	The Report notes on Page 13 "The SSC set out the rules of participation and background information about open government and OGP on the OGPNZ website

	and actively promoted engagement on Twitter, Facebook and LinkedIn. On 18 April 2018, it announced workshop dates and a timeline for developing the plan, subsequent timelines, channels to be used and roles for civil society. All New Zealanders were welcome to participate. On 23 April 2018 the SSC invited the public to attend regional workshops to be held from 21 to 29 May 2018"

It is ludicrous to suggest that "All New Zealanders were welcome to participate" on the basis of messaging using "the OGPNZ website and actively promoted engagement on Twitter, Facebook and LinkedIn". Very few of the 4.7M New Zealanders follow the OGPNZ on social media and there are still sections of the population who do not have access to digital media. Many more people than those who participated in the process may have offered their views if they were approached directly in a community engagement process that went to them, for example visits to marae with adequate advance warning and resourcing. Follow up with those participants to initial workshops was also missing. The release of the draft action plan for public comment from 20 September to 17 October 2018 only happened after repeated public requests for such engagement. This does not demonstrate good open government engagement. |
| Page 14 | There was no evidence of interactive social media conversation with followers" – possibly because OGPNZ account holders did not actively engage? They were tagged into discussions on Twitter but seldom replied. |
| Page 14-15 | Agree with comments for more Co-creation and Partnership activities as per 'Some areas where New Zealand can improve are: … but also ensure that diverse needs of potential participants are met for accessible content and formats, and support to participate. Open Government should include participants who are blind or low vision or deaf or hard of hearing etc. Co-designing the engagement process with civil society in advance would help. |

IV. Commitments

The following comments were received by Andrew Ecclestone, independent consultant, on the "Commitments" section:

Commitment 4: Making New Zealand's secondary legislation readily accessible	
Page 30	I disagree with the assessment that commitment 4 is potentially transformative. To be so, it would need to lift the functionality of the legislation.govt.nz site to that found on the UK's legislation.gov.uk website, where, for example you can search for legislation that affects another statute: https://www.legislation.gov.uk/changes

Page 51 of the IRM Procedures Manual defines 'transformative' commitments as *"A reform that could potentially transform 'business as usual' in the relevant policy area and contribute to improvements in the problem identified"*. In contrast, a 'moderate' commitment is one that makes *"A major step forward in the relevant policy area, to improve problem identified, but remains limited in scale or scope."*

Given the definitions of 'transformative' and 'moderate' found on page 51 of the IRM Manual (https://www.opengovpartnership.org/documents/irm-procedures-manual/), I suggest this commitment be ranked as 'moderate' – still *a major step forward…but remains limited in scale or scope'*. |

	While the Parliamentary Counsel Office (PCO) is seeking input from government agencies that make secondary legislation (http://www.pco.govt.nz/access-project-news/ and http://www.ogp.org.nz/assets/New-Zealand-Plan/Third-National-Action-Plan/Commitment-4-TNAP-progress-report-May-June-2019.pdf) there is no sign of it seeking public or non-governmental stakeholder input during the process of delivering this commitment. **Why not?** Do they think legal publishers, universities, the Law Society, law journals, academics, the Law Commission, or judges have nothing of value to add to this, even though they are key users/customers of the site? For the commitment to be 'transformative' it has to *'contribute to improvements in the problem identified'*. The NZ Action Plan states that the 'problem identified' is *"The result* [of the current heterogenous way in which secondary legislation is or may be published] *is that it is difficult for people to find secondary legislation and to know whether they have the current version if they do find it."* Axiomatically, therefore, if the commitment is to be transformative, it has to help 'people' who have an interest in finding and using secondary legislation. While government officials are likely to be a large group of these 'people', so too will be people outside government. How will PCO, SSC and the IRM know if the commitment has succeeded in 'transforming' access to secondary legislation unless the PCO develops and delivers the project according to the NZ government's Digital Service Design Standard (see commitment 6 in the Action Plan), Principle 1 of which is entitled *'Identify your users and understand their ongoing needs'* https://www.digital.govt.nz/standards-and-guidance/digital-service-design-standard/principles/identify-your-users-and-understand-their-ongoing-needs/
Commitment 5: Public participation in policy development

Page 33	The report states that commitment 5 *'picks up'* the previous IRM recommendation in End of Term report 2016-18 that government should develop 'standards'. However, what is proposed in the commitment is not a 'standard' (against which people can be held accountable, and success evaluated), but evolution of a toolkit for officials – hence paragraph 4 talking about the absence of a mandate being inserted into the Cabinet Manual. This distinction needs to be made clearer – perhaps state that the commitment partially reflects a recommendation made by the IRM. In addition in the recommendations made at the foot of page 33, the IRM researcher could build on the reflections of the PEP interviewee by stating that DPMC could enhance the commitment by finally developing mandatory minimum standards for government consultation exercises. For example, in 2008, the UK government *Code of Practice on Consultation* stated that one of its seven consultation criteria was:
	
	    Duration of consultation exercises
	    Consultations should normally last for at least 12 weeks with consideration given to
	    longer timescales where feasible and sensible.
	
	Source: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf
	
	In New Zealand, we're lucky if a government agency even runs a consultation event lasting six weeks, let alone 12 weeks or more. As noted earlier, this has a significant impact on the quality of input CSOs and the public can provide.

Page 33	To date (12 months after the commitment was drawn up), it is unclear if DPMC has any involvement of the public or CSOs in delivering this commitment. The most recent progress report (http://www.ogp.org.nz/assets/New-Zealand-Plan/Third-National-Action-Plan/Commitment-5-TNAP-progress-report-May-June-2019.pdf) states that they have engaged with stakeholders, but there is no information on the Policy Project website (https://dpmc.govt.nz/our-programmes/policy-project/about-policy-project) about this, or about the OGP commitment or how people can get involved. Much more could be done to 'walk the talk'.
Commitment 6: Service Design	
Page 35	Footnote 1 points to page 15 of the NAP when it should point to page 26.
Commitment 7: Official Information	
Page 37	Bottom of the page: NZ is placed 52, with Ghana's new law scoring better, pushing NZ down from 51st place. See https://www.rti-rating.org/country-data/
Page 38	Statement that 'Officials would also invite public submissions' is curious, because this was never indicated in any document, including those obtained as a result of OIA requests – they only ever talked about 'targeted engagement'. Therefore the launch of a public consultation exercise on 8 March 2019 came as complete surprise to the public, media and CSOs.
Page 38	Why didn't they plan a campaign to alert the public?! A consultation on: (a) an OGP commitment and (b) to seek views on whether the public's right to access government information should be amended, and neither SSC nor the Ministry of Justice thought it was appropriate to issue even a media release? This is simply appalling, the public consultation equivalent of burying the process in a locked filing cabinet in the basement behind a door marked 'beware of the leopard'. The SSC didn't even announce the launch of the consultation on their Twitter account or add it to the ogp.org.nz website until after I prodded them to do so: https://twitter.com/openpolicynz/status/1105086939919716352 https://twitter.com/ogpnz/status/1105299332452868096 Following completion of the public consultation period on 18 April (not 3 May as claimed in the progress report – these were just overdue submissions the Ministry accepted) all the information about the consultation was removed from the Ministry of Justice's website without explanation. No explanation was provided even when this was sought in an OIA request: https://fyi.org.nz/request/10553-whether-to-conduct-a-review-of-the-official-information-act-oia
Page 38	Milestone 1 was scheduled to be completed by June 2019, but it was not, and has been postponed until later in the year. In spite of this SSC has published a misleading progress report on its website with a 'smiley face' symbol suggesting the work is *'underway'*, instead of the more honest 'frowning face' symbol to indicate 'some delays': http://www.ogp.org.nz/assets/New-Zealand-Plan/Third-National-Action-Plan/Commitment-7-TNAP-progress-report-May-to-June-2019.pdf - especially as the officials have told me directly that they cannot progress the work while the Privacy Bill is still being debated in Parliament. Furthermore, while this report pushes the date for completion of Milestone 1 (provide and publish advice to Government on the merits of a review of the OIA) back from June to September 2019, it is now mid-October 2019 and the 'publish'

	aspect of the milestone still has not been met, with no public statement as to why this is the case. The public are left to assume that this is because the Minister and/or Cabinet has not made a decision on the advice provided by the Ministry (assuming that was provided in September 2019)
Page 38	The second bullet point has the word *'continued'* before *'comprehensive engagement with civil society'*. It is unclear how an unadvertised consultation exercise, with no voluntary publication of the submissions received nor the Ministry's analysis of them, constitutes *'comprehensive engagement with civil society'* in any meaningful sense of the word 'comprehensive'. In which case the word 'continued' is inaccurate and lends a veneer of credibility to the Ministry of Justice's consultation methods and activity that they simply do not deserve. If the word *'continued'* is retained by the OGP in the final version of this report, it will diminish the credibility of the IRM.
Commitment 9: Increase the visibility of government's data stewardship practices	
Page 43	No evidence supplied in the progress report on this commitment – or in the commitment itself about where and when the public will be involved. Unless agencies are specific, how are the public supposed to find where these opportunities to engage are, and when? Again, SSC has not been proactive in using its OGPNZ twitter account to publicise these opportunities to participate.
Page 43	In the bullet points for 'next steps', the IRM suggestion/recommendation for 'consideration of how to measure changes in data stewardship practice across government agencies as a result of this commitment' needs to be beefed up. The government should commit to a new milestone under this commitment to actually conduct the measurement – and consult on the measurement framework beforehand. If it does this, then it might have some chance of delivering some of what the Minister promised in relation to going *'even further and faster'* (see page 11, para 5).
Commitment 10: Monitoring the effectiveness of public body information management practices	
Page 45	The report states that Archives' commitment *'engages the public to consider framework options'*, but the progress report from Archives explicitly says that it is *'not directly engaging with those communities'*. Source: http://www.ogp.org.nz/assets/New-Zealand-Plan/Third-National-Action-Plan/Commitment-10-TNAP-progress-report-May-June-2019.pdf (Under the heading 'How we are including diverse voices') The IRM needs to correct this inaccuracy relating to Archives' engagement with the public.
Commitment 11: Authoritative dataset of government organisations as open data for greater transparency	
Page [47]	This commitment has the potential to be 'transformative', but only if it is adopted for use by core government agencies for their tasks. For example, the dataset would have to become the backbone of Treasury's database for producing the budget and tracking public expenditure. It would have to be integrated into the Parliamentary Counsel Office's work on legislation.govt.nz, the Ministry of Justice's work on the *Directory of Official Information*, the National Library's, Archives NZ's and Te Papa's tools for managing acquisitions and collections of government agency material, and so on. In other words, its 'transformative' potential rests heavily on it truly being the 'authoritative' dataset, and the proof of it being 'authoritative' rests in its adoption and use by agencies like these. The IRM report needs to be amended to reflect that the 'authoritative' quality of the dataset is what will drive its transformational status. An open dataset of government organisations may well be

	useful for those outside government, but it will not be authoritative unless it is also used – and maintained – by those inside government.
	This relates to a second key aspect of this commitment: for it to be transformative, there needs to be very substantial commitment to its maintenance and future governance. Ideally, we would see something like a legislative mandate for both the use and maintenance of this dataset, integrating it into the backbone of government information management. At present, there's no guarantee this dataset won't be neglected if a future government shifts policy priorities.
Commitment 12: Open procurement	
Page 50	The report refers to the contractmapping.govt.nz website. Unfortunately this has been down 'for maintenance' for months now, and I have – via an OIA request – received confirmation that the government department that hosts it (Ministry for Social Development) is going to keep it permanently offline. The Ministry told me on 28 August 2019:
	The Ministry does not intend to restore the previous Contract Mapping website and will instead replace it with a new publicly available online data set. This is currently in development and should be available to the public by 1 October 2019.
	The new data set will continue to provide information to the public on the Providers funded by the Ministry of Social Development and will include contract amounts and a brief description of the funding. Each government agency will be responsible for determining how they make their own information available to the public.
Page 50	Under 'Next steps' the following action could be added:
	'Having decided on a data format for publication of contract award notices, MBIE should publish the historical contract award data from GETS, not just that which occurs after 1 July 2019.'
	This is because without this historical data, the utility of the dataset- for example to those seeking to analyse patterns of procurement - will be limited.
	In addition, a further action MBIE could take is to stop removing tender documentation from GETS once a contract has been awarded. It is impossible for people to judge whether the outcomes sought by the tendering agency have been met if this documentation has been removed.
Page 50	In terms of future work in this area, the reference to adopting the 'Open Contracting Data Standard and apply it to all government tender award notices over an agreed fee' should be amended to delete all the words after 'Standard'. The reason for this is that many contracts are no longer awarded following tenders, but are given to companies on panels of approved suppliers.

The following comments were received by Kay Jones on the "Commitments" section:

| **Commitment 3: School Leavers' Toolkit** | |
| Page 26 | Development of A SchoolLeavers' Toolkit will make no difference to young people unless it is relevant and is used. Without resourcing and mandatory attachment to a national criteria before students are 15, this will not have any impact on those students most likely to be disengaged already. Students in better resourced schools |

	may take an interest in such a Kit. Students where teachers are under resourced are also likely to be the ones who leave school early. Verification of use of a ToolKit should be required not just development of a Toolkit. As well as a Professional Development Hub for teachers, an effective strategy would include opportunities for student led initiatives. Many students will engage more actively in student led initiatives so training and resources should include them too.
Commitment 4: Making New Zealand's secondary legislation readily accessible	
Page 30	Without actionable steps to use legislation, improving access to Secondary Legislation may not deliver described gains. I previously spoke more favourably about this step but that was when there was an internal co-partner within Department of Internal Affairs (DIA) to translate legislation into machine code for use. The closing down of the DIA Service Innovation Lab in October 2019 sees the end to some of the work delivering this transformation.
Commitment 5: Public participation in policy development	
Page 32-34	it is unclear from the report if there will be better clarity and guidance for Government agencies on shared Consultation websites. Currently many separate agencies use their own "Have Your Say" Consultation pages and in some cases have Consultation links on other webpages instead. It would aid the public if there was a centralised system for Consultation on Legislation and on Government consultations.
Commitment 6: Service Design	
Page 35-36	Previously I strongly supported the steps on Service Design in the OGPNZ Action Plan. That is no longer the case and I do not believe the steps outlined will have any positive impacts. The closure of the DIA Service Innovation Lab will also make Service Design delivery more difficult by removing the development and testing environment for cross agency work. The so-called Digital Service Design Standard is not a standard. It contains no measurable content and cannot ensure validation. It is under developed for use even as a Guideline and will not help government agencies standardise and co-ordinate their work. Without a team further developing the material and training agencies in expectations, there will not be an improvement in this area across Government. The description of these goals in the Plan is disappointing. Where is the progress on reviewing the Official Information Act legislation and the Local Government Official Information and Meetings Act? Neither Act has been reviewed for modern communications nor the use of social media by agencies and council. The current legislation is falling behind developments in technology. Both Acts need to be reviewed and updated.
Commitment 7: Official Information	
Page 37-39	Stronly agree with comments made to the reviewer there is a need for a full review of the OIA and LGOIMA legisation. Reference to key OIA issues of excluding some Officers from scrutiny understates the other issues with practical noncompliance with the spirit of the Act, and in some cases with deliberate flouting of the law by officials. There is little scrutiny of their actions nor recourse to an effective complaints procedure. Without penalties or sanctions there is little prospect of improvement in areas of deliberate noncompliance. These Milestones? Pebbles? are meaningless: 1. "Test the merits of undertaking a review of the Official Information Act 1982 and

	provide and publish advice to Government"; What sort of Test? Would it include Civil Society and Community and Media questioners currently frustrated by non or partial compliance? 2. "Achieve a measurable increase in the proactive publication of official information request responses"; What "measurable increase" – 2%? 5%? What of measurement of public satisfaction with responses? What of complaints on noncompliance? Why not measure them? 3. "Implement a policy to publish Cabinet papers proactively within 30 days of final decisions, unless there are good reasons to withhold specific papers". That's Business As Usual and has already been signalled.
Page 38-39	Next steps look fair
Commitment 8: Review of government use of algorithms	
Page 40-41	It is troubling that the Review of Algorithms has been downgraded and no resourcing dedicated to this purpose. The use of algorithms has potential impacts on many service areas involving people going beyond a statistical analysis. It is unclear why Stats NZ would in future lead work in this area. It is also unclear how current work on algorithms and data analysis will be handled by individual agencies such as the Social Investment Unit in Treasury and possibly the Corrections Department if there is no over aching co-ordination throughout central government. Next Steps suggested on Page 41 are fair but there is no indication they will happen. The impression is that work on algorithms will continue behind closed doors in individual agencies without sharing or transparency.

V. General Recommendations

The following comments were received by Andrew Ecclestone, independent consultant, on the "General Recommendations" section:

Page 53	Under 'Enhance civil society/government engagement and civic participation': Commitment 10 simply does <u>not</u> 'seek to engage with the breadth of New Zealand's society'. Archives NZ only sought the views of the profession on revision of public body information management practices, and Milestone 2 (page 37 of the NAP) explicitly says they will consult with 'regulated parties and other potential users', <u>not</u> the public. See comments on page 45 paragraphs 1 & 2 above. On this topic it is worth noting that the Point of Contact agency, SSC, has not been providing training to agencies leading the delivery of commitments on what the OGP is, let alone what leading a commitment means in terms of public and stakeholder expectations around involvement/participation in delivery of the commitment. This could be a useful initial activity for any Hub or Community of Practice. It is also worth noting that the good practice regarding co-design and engagement of the Service Innovation Lab referred to in this paragraph will sadly be no more, as the Department of Internal Affairs decided in early October 2019 to shut down the lab and make its staff redundant.
Page 53	This section on improving public access to information needs to be strengthened substantially to reflect the breadth and depth of concern (outside government and

	amongst officials) regarding inaction on the key issue: reform of the Official Information Act.
	Much of this concern was surfaced in responses to the consultation undertaken with regard to Milestone 1 of Commitment 7, and reported in the *Dominion Post* here: https://www.stuff.co.nz/national/114669954/ministry-to-analyse-public-oia-submissions-and-report-back-to-justice-minister-andrew-little
	Previous IRM reports have noted that the then Government all but ignored the 2012 report of the Law Commission, and we have similarly seen incoherent and unambitious activity in response to the 2015 report of the previous Chief Ombudsman *Not a game of hide and seek*: there was no SSC, Ministry of Justice or all-of-government response to the report, and consequently there is no sense that the activities commenced by those agencies and the Ombudsman are part of a coherent plan to address the problems that report and the Law Commission review documented.
	In particular, this report should reiterate the previous IRM report call for action to:
	Initiate work to amend the OIA legislation to encompass Parliamentary Services, the Office of the Clerk, the Ombudsman and the Controller and Auditor General, whilst retaining parliamentary privilege, in line with the recommendations by the Law Commission report in 2012 and others and building on administrative and legislative developments since then such as the Parliamentary Privilege Act 2014.
	This revamped paragraph should then be reflected in Table 5.1 'Key recommendations', to state simply 'Strengthen and modernise official information laws' – the responses to the consultation clearly indicate that without this, improved practices will not be delivered in a sustained manner.
Page 55	Under 'Recommendation Two', this mis-states Commitment 7 and <u>needs correcting</u>. Commitment 7 does **not** *'include a milestone to initiate a formal review of the Official Information Act 1982'.* The commitment specifically only commits the Ministry of Justice to *"Test the merits of undertaking a review of the Official Information Act 1982 and provide and publish advice to the Government".* This is how Milestone 1 is defined on page 31 of the Action Plan. There is a world of difference between 'testing the merits' of a review and 'initiate a formal review'.
Page 55-56	I note with sadness that there is no section listing the other recommendations made in 2016-18 IRM reports. Without continuing to mention these in each IRM report, the OGP is effectively consigning the reviewer's hard work to the dustbin of history. If IRM reports are to be useful to the public, civil society and the media as well as government, we need them to maintain visibility of previous recommendations made by the IRM.

Annex 1

The following comments were received by Andrew Ecclestone, independent consultant, on the "Annex" section:

Page 59	Factor 1c – I have seen no evidence that the EAP has a role in developing its remit and governance structure. This should be scored Red, not Yellow. This means overall, factor 1 should be Yellow.

	Factor 2c – given that the SSC have not yet announced who has been appointed to the EAP following its extremely prolonged recruitment process this year, it is difficult to see how this can be scored as Green rather than Yellow. Until we know who has been appointed, we cannot judge whether the people appointed actually meet the criteria sought in the call for nominations. Given it is not a true Multi-stakeholder forum, with civil society choosing its own representatives, this is even more important. Factor 4c should be red in my opinion. In terms of 4c, I have seen no evidence that 'The forum conducts outreach and awareness raising activities with relevant stakeholders to inform them of the OGP process'. Factor 3d – Openness – the score of Green is risible. Since SSC don't even provide the email address for contacting the EAP on the EAP page of its website, and in any event rely on the public trusting them to pass on messages to EAP members, it is impossible to see how *'the forum accepts inputs and representation on the action plan process from any civil society or other stakeholders outside the forum.'* How are the public supposed to intuit the means of would expect SSC to publish evidence of the 'inputs and representations' that the EAP has actually received. Otherwise this is a very theoretical openness, not substantiated in practice. In relation to 3e 'remote participation' – if this simply means EAP members can participate remotely, it may be justified. If it is supposed to connote non-members of the EAP being able to participate, it absolutely is not: I have never seen anything that remotely suggests that non-members can listen in, let alone speak, via videoconference software or conference calling. In relation to 3f, we are setting the bar exceedingly low if publication of minutes on a website is considered to be 'proactive communication' and reporting back to civil society stakeholders. Take a look at https://twitter.com/ogpnz - can you see any use of it to publicise even the publication of EAP minutes, for example?
Page 60	In relation to factor 4b, again I fail to see how this can be scored as 'Green', unless it simply means providing EAP members with an agenda in advance of a meeting. In particular, as noted on page 13 of this IRM report, no documentation regarding the draft NAP commitments were provided to non-government and non-EAP participants in the 'Synthesis Workshop' in advance. Participants were therefore <u>not</u> 'informed and prepared to participate in all stages of the process' and any attempt to claim that this 'guarantee' was met is incorrect. If the IRM does not alter this score to at least yellow, if not red, its credibility as independent evaluators of a country's compliance with OGP standards will be severely dented and (yet more) people in New Zealand will feel like the OGP will have willingly dissolved the only component of the OGP that gives the huge amount of overhead it generates any value whatsoever. Without proper accountability for country performance – the stick – all the carrots in the world will not restore trust in the OGP as an institution and vehicle for change. For factor 4c, again there is no evidence of this. Please provide evidence of 'The forum [EAP] conducts outreach and awareness raising activities with relevant stakeholders', because none can be found on http://www.ogp.org.nz/open-government-partnership/expert-advisory-panel/ nor even on the 'News' page:

http://www.ogp.org.nz/latest-news/ (which doesn't have an RSS feed, and the items on which are not tweeted by the SSC, so it's the online equivalent of a tree falling in the woods with nobody there to hear it). Again, this should be scored Yellow or Red, unless evidence – cited and linked in this IRM report – can be produced.

In terms of 4d, the Government has been appalling in terms of facilitating 'direct communication with stakeholders to respond to action plan process questions'. I encourage the IRM to look at how infrequently SSC tweets on the OGPNZ account, how it does not alert people to engagement activities being undertaken by commitment-lead agencies: https://twitter.com/ogpnz/ It hasn't posted anything to its Facebook page since 7 April, in spite of officials travelling to attend the OGP summit in Ottawa https://www.facebook.com/OpenGovNZ/

It certainly doesn't use its Facebook page to encourage interaction between the public and members of the EAP.

It is even lackadaisical at maintaining the ogp.org.nz website with things like minutes of EAP meetings: until I reminded them of it in a meeting recently, the last minutes of the EAP published on the site were from August 2018, in spite of there being 2 meetings after that. SSC seem to simply be completely under-resourced, or not be interested in facilitating communication with the public, either about their work, that of the agencies leading NAP commitments or the work of the EAP.

In terms of 4e, I encourage the IRM to look at the minutes of EAP meetings for evidence of 'reasoning behind decisions' and 'responds to major categories of public comment' (whatever that is supposed to mean): http://www.ogp.org.nz/open-government-partnership/expert-advisory-panel/ - again, the onus should be on those asserting they're entitled to a good score to show proof to the rest of us as to why that score is justified. I think this should be scored 'Yellow'.