

## PSA Suggested Actions for the OGP National Action Plan 2

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### **Build on existing work which provides opportunities for new actions**

The PSA supports the findings and recommendations of the 2013 New Zealand National Integrity System Assessment, the Independent Reporting Mechanism Progress Report: New Zealand 2014-2015, and the work done with the State Services Commission in 2014 on an Integrity Strategy and Roadmap. These substantial pieces of work provide a solid basis on which to build New Zealand's second OGP Action Plan for the next two year and provide the greatest opportunities for new actions.

The PSA will provide separate suggested actions and rationale, drawing from this previous work, on each of the following issues:

- Official Information
- Official Information – Budget
- State servants and free and frank advice
- Right of state servants as private citizens to participate in political activities
- Speaking out and contracting out
- Transparency and contracting out.

### **Official Information**

#### *What is your idea?*

Reform official information laws by extending them to Parliamentary bodies and adopting the Law Commission's recommendation to create an official information authority responsible for training, culture, advice, best practice guidance, and identifying necessary reforms. This includes the provision of guidance to staff in ministerial offices on the Official Information Act 1982 (OIA) and a code of conduct on official information for Ministerial staff and the provision of guidance to those staff.

Ultimately, the PSA would like to see a shift to a culture of proactive disclosure of official information to help ensure New Zealand's democracy remains strong.

#### *Why is your idea important?*

The OIA was reviewed by the Chief Ombudsman in 2015, and the PSA was pleased to see the recommendations to improve resourcing, staffing and guidance for departments to help to lessen perceived and real delays in responses to OIA requests.

We also look forward to the implementation of the recommendation to provide guidance to staff in ministerial offices, and would like to see a code of conduct for ministerial staff to help both them and other public servants to ensure that lines of responsibility in respect of the OIA are clear.

Resourcing is also a significant issue for the Office of the Ombudsman itself, and this must be addressed for the Office to fulfil its important monitoring role.

## **Official Information – Budget**

### *What is your idea?*

Publish a Citizen's Budget, which uses language and formatting to make it easier for the public to understand, and which also makes visible the movement of funding between and within Votes from year to year.

### *Why is your idea important?*

To improve fiscal transparency and accountability, and deepen public understanding and debate about government spending and policy priorities.

## **State servants and free and frank advice**

### *What is your idea?*

Develop a standalone Code of Conduct or Guidance for Relationships between Ministers and public servants to complement the Cabinet Manual. It should be simple and principles based, and developed in consultation with public servants and their unions. It should be interpreted jointly by the State Services Commissioner (acting statutorily independently) and by the Prime Minister. Such a document could be the basis for training and for new public servants and new Ministers to understand the nature of the responsibilities when they take up office.

Ultimately though, the provision of free and frank advice requires a cultural change in the leadership of the public service, led by both chief executives and Ministers. This type of leadership requires a formal and explicit acknowledgement that our system of government values free and frank advice as an objective.

### *Why is your idea important?*

New Zealand's constitutional framework includes two conventions relating to the public service which underpin open and accountable government - the provision of free and frank advice to government Ministers and political neutrality. State servants must be apolitical when carrying out their duties, functions and powers. It is a principle that underpins the continuing employment status of state servants and enables state servants to provide consistent services, including policy advice, for the government of the day.

However, there must be a proper balance between respect for State servants' freedoms of expression and association, and the public interest in having a politically neutral and effective state services. As a consequence of the statutory right of state servants to join and be active in organisations, including trade unions, it is likely that there will sometimes be, within defined limits, an expression of political views inside the workplace. State servants have the same rights of association as other members of the public; political expression and participation may be undertaken in the individual's own time.

There is now reasonable evidence that since the 1980s, there has been an appreciable diminution in the willingness of public servants to provide free and frank advice to Ministers and an increasing sensitivity to pleasing Ministers. For example, blunt advice is offered less easily, softer language is preferred, written advice tends to be less controversial or innovative, more innovative thinking or sensitive issues are tested verbally, and draft advice can be tested with Ministers before being finalised.

The health of our system of government will suffer if the public service becomes politicised - if the public service advises ministers only what they want to hear, or if advice is absent from the written record making it more difficult for the public to access and scrutinise.

### **Right of state servants as private citizens to participate in political activities**

#### *What is your idea?*

Develop an express and public cross-government policy formally permitting public servants to speak out on significant public issues without facing any form of retaliation.

Develop a Charter of Political Rights for all public servants that clearly defines and promotes their right to contribute their expertise to public policy debate and political activity, balanced with their constitutional responsibilities to be politically neutral and provide free and frank advice to the government of the day.

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A concerning trend is the "chilling effect" on public servants as citizens, observed since the 1980s. The "chilling effect" discourages public servants, including scientists, academics and other professionals, from political participation as a private citizen in their own time. For example, speaking at a public meeting, attending a public march, writing a letter to the editor, or joining a political party, trade union or civil society group.

This has come about as a result of a conservative interpretation and application of the Public Service Code of Conduct by state service employers, and recent concerted attacks on individual public servants through social media.

The risk is that New Zealand loses the plurality of knowledgeable and informed voices of public servants, critical to open and well-informed decision-making by government.

### **Speaking out and contracting out**

#### *What is your idea?*

Develop an express and public cross-government policy formally permitting those receiving public funding to speak out on significant public issues without facing any form of retaliation.

### *Why is your idea important?*

Contracting out has not prevented the state trying to control the right of workers in those organisations to speak out. Research by Grey and Sedgwick, Victoria University of Wellington in 2013, found that 15% of survey respondents agreed that their funding agreement with the government restricted their organisation's capacity to make public comment on government policy and research.

A 2014 survey of its members by the New Zealand Scientists Association on the proposed Code of Public Engagement, found that nearly 40% of the survey respondents agreed that they had been prevented from making a public comment on a controversial issue by management policy or by fear of losing research funding.

The risk is that New Zealand loses the plurality of knowledgeable and informed voices of experts and citizens who are the voices of their communities, which are critical to open and well-informed decision-making by government.

### **Transparency and contracting out**

#### *What is your idea?*

Extend the statutory transparency and accountability of the State as far as taxpayer funding of services, including where those services are contracted out to private companies and not-for-profit organisations.

The commercial and confidence provisions of the Official Information Act 1982 should not restrict access to information about what services are provided, by whom, at what cost, and the effectiveness of those services in meeting the needs of communities.

Extend the good employer provisions of the State Sector Act 1988 to social service providers, including not-for-profit organisations and private companies.

#### *Why is your idea important?*

The delivery of public services by the state is the clearest way to ensure accountability (through its democratic institutions) for the use of public funds (taxes) that have been raised through the powers of the state. The delivery of public services has increasingly been contracted out to private companies. The PSA also recognises that the community and voluntary sector has a proud history in delivering public good services in the days before comprehensive state provision, and will continue to provide services that complement those delivered by the state, whether or not they are funded by the state. Their role has grown in social service delivery over recent decades and, through the links with their communities many are well placed to address poor outcomes for vulnerable groups where the state is not well placed to do so.

The transparency and accountability of the State in delivering and funding services, must extend as far as taxpayer funding of services delivered by third parties. In this way, decisions about what services are delivered, by whom, at what cost and the effectiveness of those services are transparent to the taxpayers funding them and to the communities those services are serving.