

# BRIDGES BOTH WAYS

Transforming the openness  
of New Zealand government

Max Rashbrooke

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## Max Rashbrooke



Max Rashbrooke is a research associate of the Institute for Governance and Policy Studies at Victoria University of Wellington. He is also the author of *Wealth and New Zealand*, published by Bridget Williams Books (BWB) in November 2015, and edited *Inequality: A New Zealand Crisis*, published in June 2013, also by BWB. As a journalist, he has twice been the recipient of the Bruce Jesson Senior Journalism Award, and was a 2015 Winston Churchill Fellow. His current main research project is a book on the renewal of government in the twenty-first century.

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# Why this report and why now?

One of New Zealand's great strengths is its easy-going, 'she'll be right' attitude; but every strength can become a weakness.

That is increasingly the case with the country's record on public transparency, political participation, and anti-corruption policies. A long-standing record of scoring well on international rankings for integrity and openness has lulled New Zealand into a complacent attitude. While there is much to be proud of, there are also serious problems, as repeatedly highlighted by international surveys. Political donations are badly regulated, official information laws are being circumvented, and opportunities for deep citizen engagement with politics are limited.

New Zealand is also passing up the chance to get on board the latest global push for greater openness, which is being impelled both by advances in technology and citizens' growing expectations of greater transparency in many parts of their lives.

New Zealand therefore faces an opportunity – to regain its leadership on openness, and to address some of the weaker parts of its record. With the 2017 general election just months away, now is the perfect time for a discussion on what kind of government New Zealanders want. This report therefore surveys a wide range of pro-openness policies as an aid, and stimulus, to that debate.

*Making government 'open' is about ensuring that ... the core decisions of politics are made in full view of the public.*

## Why does openness matter?

Making government 'open' is about ensuring that, where practical and appropriate, the core decisions of politics are made in full view of the public. That means key information is available, political decisions are free from corruption, the public can hold its leaders accountable, and ordinary people are directly involved in making decisions as often as possible. Ultimately this makes government more honest, more effective and more democratic.

It also builds trust between the governors and the governed, and gives political decisions more legitimacy. As the legal philosopher Jeremy Waldron has argued, "There is such a degree of substantive disagreement among us about the merits of particular proposals ... that any claim that law makes on our respect and our compliance is going to have to be rooted in the fairness and openness of the democratic process by which it was made."<sup>1</sup>

The current global demands for openness are in one sense simply a continuation of decades of reforms. But they also represent a growing expectation from citizens who, in the digital age, are used to transparency and responsiveness in most aspects of their lives, and increasingly demand it from government. The move to openness also seeks to combat growing concerns about corruption and the potential for economic inequality to be translated into unequal influence over politics.<sup>2</sup>

Not everything in government can or should be open, of course. Some of government's work needs to be carried out in confidence, especially when national security is at stake. Working in this way may also allow officials to take more (justified) risks in the earlier stages of developing policy. And as the scholars Amy Gutmann and Dennis Thompson

<sup>1</sup> Jeremy Waldron, *Parliamentary Recklessness*, Sir John Graham Lecture 2008, Maxim Institute, p.11.

<sup>2</sup> For a good outline of how economic and political inequality have become intertwined in the United States, see Jacob S. Hacker and Paul Pierson, *Winner-Take-All Politics*, Simon & Schuster, New York, 2011.

argue, politics in the wider sense is not always enhanced by complete openness: “In settings insulated from the glare of publicity, deliberators may be more likely to change their mind in response to compelling arguments.”<sup>3</sup> Openness can also have unintended consequences. The ‘paradox of transparency’ is that pro-openness reforms can, by exposing high levels of wrongdoing or misbehaviour, decrease the public’s trust in politics.<sup>4</sup>

## FIVE KEY IDEAS

This report sets out various options for making New Zealand’s government profoundly more open to public scrutiny, accountability and input. Here are five key ideas.

### Crowdsourced bills

Copying successful models overseas, the public could be allowed to submit proposals for bills via a secure online platform, giving detailed reasons and evidence to support their proposed law.

Those receiving enough signatures – over 35,000, say – would have to be debated and voted on by Parliament, having first gone through the Office of the Clerk to be drafted and improved. This would open up law-making to direct public involvement, while retaining vital checks and balances.

- This option is discussed on p.10 under **Parliamentary openness**

### Participatory budgeting

Local councils could set aside 10 per cent (or more) of their annual budget to be decided directly by citizens, again building on successful models overseas. Councils would work with residents throughout the year, holding multiple meetings at neighbourhood and ward level, as a build-up to a major end-of-year meeting in which residents would vote on how to allocate the funds. Such processes are increasingly used overseas, and have proved highly effective in engaging citizens.

- This option is discussed on p.18 under **Budgetary openness**

### A ‘Public Opinion’ Budget

At the start of each year a group of representatively chosen citizens, advised by experts, could draw up a rough Budget, indicating

areas of funding priority – such as whether they want to see more or less spending in broadly defined categories such as health, education and defence – and what tax increases or reductions would be needed in consequence. This would help inform official Budget decisions and allow public scrutiny of where the official Budget diverges from citizens’ expressed preferences.

- This option is discussed on p.19 under **Budgetary openness**

### A ‘Kōrero Politics’ Day

Around two to three months before every general election, there could be a public holiday dedicated to discussing politics and the upcoming vote. This ‘Kōrero Politics’ Day would be marked by community events, town hall meetings, festivals that combine music and politics, and other gatherings designed to foster discussion. This would underline the importance of politics, give people time and space to think about issues, and encourage a more reflective citizenship.

- This option is discussed on p.21 under **Participation**

### Democratising party funding

To improve the integrity of political party funding, donations could be capped at \$1,500 per person per year, as is done in Canada. The shortfall could then be made up with democratic public funding: a \$20 ‘electoral funding voucher’ giving every citizen a small amount of money to give to the political party of their choice, once every electoral cycle. This could create a strong incentive for parties to engage with the public, while spreading influence more widely.

- This option is discussed on p.14 under **Political Party openness**

<sup>3</sup> Amy Gutmann and Dennis Thompson, *Democracy and Disagreement*, Harvard University Press, Cambridge, Massachusetts, 1996, p.101.

<sup>4</sup> See, for instance, Tim O’Reilly, ‘The Paradox of Transparency’, *Radar*, 17 March 2009, available at: <http://radar.oreilly.com/2009/03/the-paradox-of-transparency.html> (accessed 14 May 2017).

Nonetheless the demands for, and benefits of, openness are too strong to be resisted. It is, increasingly, what citizens expect, it is likely to be one of the foundation stones of reforming government in the twenty-first century, and it is the best cure for the various democratic ills that New Zealand suffers. For all these reasons, and more, New Zealand needs to make its political systems profoundly more open.

## What is openness?

‘Openness’ can be defined in different ways, as can the related concepts of transparency, accountability, integrity, participation, accessibility and responsiveness. This report uses the term broadly to cover not just publishing more information but also giving citizens a greater say in politics, as well as exposing corruption and other unethical practices.

The title of this report, *Bridges Both Ways*, emphasises this need for flows in both directions: data, information and other kinds of transparency from government; proposals, demands and other kinds of participation from citizens. A lack of openness can thus be a bar to either kind of communication. In this sense, New Zealand’s current system resembles the one-way bridges in rural areas that can, and do, restrict flows in either direction. The report’s title serves as a reminder that more open systems are, metaphorically, built around a series of two-way bridges.

This line of argument invokes the idea of participatory democracy – the potential for ordinary citizens to make more key political decisions themselves rather than leave them to elected representatives. Participatory and representative democracy sit in balance with each other: both are needed to some extent in a modern political system. But this report argues for a shift in favour of more participation. The uptake of the ideas surveyed in this report thus relies on an acceptance among politicians and the public that such a shift is needed.

Internationally, the key push towards openness is the Open Government Partnership (OGP), an initiative that now encompasses 75 countries committed to making meaningful reforms.<sup>5</sup> As the OGP itself notes: “People all around the world are demanding more openness in government. They are calling for greater civic participation in public affairs, and seeking ways to make their governments more transparent, responsive, accountable, and effective.”<sup>6</sup> In this definition, openness is not just an anti-corruption tool but also a way to create better public policy.<sup>7</sup>

For true openness, just publishing information is not enough. As the British philosopher Onora O’Neill has pointed out, simple disclosure “may leave audiences unaware that there has been communication, unable to understand what was communicated, unable to see whether or how it was relevant to them, or (at worst) misinformed or disinformed”. For true openness, people must also be able “to follow, check or challenge” information, and engage fully in public debate.<sup>8</sup>

Therefore, while there are many definitions of the term, for the purposes of this report ‘openness’ is made up of the following elements:

‘Openness’ can be defined in different ways, as can the related concepts of transparency, accountability, integrity, participation, accessibility and responsiveness.

5 Open Government Partnership, ‘Participants’, available at: <https://www.opengovpartnership.org/countries> (accessed 12 April 2017).

6 Open Government Partnership, *OGP Brochure*, August 2016.

7 The term ‘transparency’ has undergone a similar evolution, underscoring the importance of this shift in focus. See, for instance, Carolyn Ball, ‘What is Transparency?’, *Public Integrity*, 2009, 11:4, pp.293-308.

8 Onora O’Neill, ‘Transparency and the Ethics of Communication’, in Christopher Hood and David Heald (eds), *Transparency: The Key to Better Governance?*, Oxford University Press, Oxford, 2006, p.89.

**Transparency:** Essential information and data about government activities are made available proactively, with genuine engagement, and in forms that the public finds easy to use.<sup>9</sup>

**Accountability:** The public has effective ways to oversee politicians and other decision-makers and to ensure that misbehaviour is punished.<sup>10</sup>

**Participation:** Where possible, political decisions are taken directly by the public rather than by their representatives, and governments are highly responsive to citizens.<sup>11</sup>

**Integrity:** Politics is conducted honestly, with controls on vested interests, and access to and influence over politicians is relatively equal. (In other definitions of openness, 'integrity' is also seen as a product of the above measures, or the 'glue' that holds them together.<sup>12</sup>)

## How open is New Zealand?

By international standards, New Zealand already has a relatively open government. It ranked first in the most recent Open Budget Index, which measures the transparency of central government budgeting, and is currently fourth on the Economist Intelligence Unit's Democracy Index.<sup>13</sup> As part of that, it has high levels of integrity: it regularly ranks first on Transparency International's Corruption Perceptions Index, and a 2013 review of New Zealand's systems for ensuring integrity found that there was "very little corruption".<sup>14</sup>

New Zealand has good policies against the most overt forms of corruption, and in a small society, wrongdoing is often obvious and quickly detected. There are few if any times when politicians receive large wads of cash in return for favours, as routinely happens in other jurisdictions. The country also has free and fair elections, and its democratic institutions – such as Parliament and the courts – are broadly supported by the public.<sup>15</sup>

In addition, information about many parts of government is freely available. The courts act as a check on the other parts of the State. The public has a chance to have its say on many proposed laws and regulations, and key oversight bodies such as the Electoral Commission largely function well. New Zealanders should be grateful for all these things.

But the country cannot be blind to serious – and growing – failings. There is evidence that it is not properly fostering a political culture where citizens can access the information they need and public participation is encouraged. It is widely accepted, for instance, that the Official Information Act is frequently circumvented and misused.

The Economist Intelligence Unit's 2016 Democracy Index, meanwhile, gave New Zealand a low ranking for its "political culture".<sup>16</sup> Although voter turnout has been high by

*The [New Zealand] public sector is generally free from overt corruption and is appointed based on merit and experience.*

9 Transparency International's definition denotes 'information' to include "rules, plans, processes and actions", and notes that the term involves acting "visibly, predictably and understandably to promote participation and accountability and allow third parties to easily perceive what actions are being performed". Transparency International, 'Anti-Corruption Glossary: Transparency', available at: <https://www.transparency.org/glossary/term/transparency> (accessed 15 May 2017).

10 "Accountability means that those in positions of authority have to account for their exercise of power ... they are also responsible in the sense that they can face sanctions for the misuse of power or resources." Quoted in Transparency International New Zealand, *Integrity Plus 2013 New Zealand National Integrity System Assessment*, Wellington, 2013, p.22.

11 Participation can also be defined as citizens having "greater involvement in collective decisions". See: <http://www.participedia.net/en/about> (accessed 12 May 2017).

12 See, for instance, the 'national integrity system' reports by Transparency International.

13 For Open Budget Survey rankings, see: <http://www.internationalbudget.org/opening-budgets/open-budget-initiative/open-budget-survey/publications-2/rankings-key-findings/rankings/>. For Democracy Index results, see: Economist Intelligence Unit, Democracy Index 2016, p.7.

14 For Corruption Perceptions Index results from previous years, see: <http://www.transparency.org/research/cpi/overview> (accessed 21 April 2017). See also: Transparency International New Zealand, *Integrity Plus 2013*, p.333.

15 *Ibid.*, pp.329-339.

16 Economist Intelligence Unit, Democracy Index 2016, p.7.

*New Zealand is being left behind in the latest big push towards more open, responsive and accountable government.*

world standards, it has also fallen sharply since the 1980s. At the 2011 election fewer than 70% of people eligible to vote did so, albeit that figure rose slightly in 2014.<sup>17</sup> In part that will reflect the country's drastic increase in income inequality – the developed world's largest in the period 1985-2005 – which reinforces a sense of exclusion among those at the poorer end.<sup>18</sup>

New Zealand also makes limited use of the democratic innovations that are encouraging direct citizen participation around the world. Public participation is not just a means to improve policy and outcomes – and there is good evidence that it does just that<sup>19</sup> – but is also increasingly recognised as a fundamental human right. But although new technologies have made it easier than ever before for politicians and citizens to interact, New Zealand has not put the same effort into creating spaces for democratic online engagement that it has for transactional government services.

In addition, while there may be little of the 'cash for favours' kind of corruption or rampant cronyism, New Zealand does suffer from what might be termed 'cosy-ism': a high degree of overly cosy relationships between members of a small society.<sup>20</sup> This can be seen in the way that board appointments often go to people with strong political connections, proper processes are not always followed (as in the Sky City deal), and conflicts of interest – which are especially common in a small society – are not dealt with well.<sup>21</sup>

These cosy relationships have serious consequences, mostly by locking out the poorly connected and by ensuring that key decisions are not being taken openly. They also reinforce the public's strong sense that influence over politics is not equal. In the 2005 New Zealand Survey of Values, 44% of people thought the country was being run "by a few big interests looking after themselves rather than for the benefit of all people".<sup>22</sup>

Recent years have also seen a growing number of even more severe political scandals. Many of these involve the influence of wealthy donors on political parties, and New Zealand's generally lax approach to political donations has been identified as a source of serious concern.<sup>23</sup> In 2014, the 'Dirty Politics' revelations showed the government using confidential information to embarrass political opponents, National party officials gaining unauthorised access to Labour's computer systems, and ministers and others colluding with attack bloggers to anonymously smear members of the public.<sup>24</sup> Descriptions of New Zealand as a 'tax haven', thanks to its lax approach to foreign trusts, have also dented its international reputation.<sup>25</sup>

New Zealand's generally relaxed approach to such issues means that even if parts of the political system have not yet been corrupted, they are certainly corruptible.

17 Electoral Commission, Report of the Electoral Commission on the 2014 General Election, March 2015, p.i.

18 OECD, Society at a Glance 2011 – OECD Social Indicators, 2011, available at: <http://www.oecd.org/social/soc/societyataglance2011.htm> (accessed 21 April 2017).

19 Murray Petrie, 'What is public participation in fiscal policy and why is it important?', Global Initiative for Fiscal Transparency, 7 June 2017, available at: <http://www.fiscaltransparency.net/blog/> (accessed 14 June 2017).

20 Another term is the 'mate-ocracy'. Grant McLachlan, 'NZ should raise the bar on corruption', New Zealand Herald, 9 March 2017, available at: [http://www.nzherald.co.nz/opinion/news/article.cfm?c\\_id=466&objectid=11814325](http://www.nzherald.co.nz/opinion/news/article.cfm?c_id=466&objectid=11814325) (accessed 23 May 2017).

21 Transparency International New Zealand, *Integrity Plus 2013*, pp.336-339

22 Ibid., p.336.

23 For examples of the concerns raised by the influence of wealthy donors, see: Jared Savage, 'Controversial citizen William Yan AKA Bill Liu admits money laundering of "significant sums"', *New Zealand Herald*, 10 May 2017, available at: [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11835412](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11835412) (accessed 16 May 2017); Jared Savage, 'Maurice Williamson resigns as a minister', *New Zealand Herald*, 1 May 2014, available at: [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11247424](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11247424) (accessed 16 May 2017). Party donations were highlighted as a major weakness in New Zealand's integrity system in Transparency International New Zealand, *Integrity Plus 2013*, p.244.

24 Nicky Hager, *Dirty Politics*, Craig Potton Publishing, Wellington, 2014.

25 Emily Cadman, 'This Haven for Billionaires Has a Murky Trust Issue', *Bloomberg*, 9 February 2017, available at: <https://www.bloomberg.com/news/articles/2017-02-08/jho-low-s-private-jet-shines-light-on-new-zealand-s-murky-trusts> (accessed 16 May 2017).



In 2013, Transparency International New Zealand warned about “continued passivity and complacency” in key areas where open government reforms are needed.<sup>26</sup> It also noted that two previously high-performing small countries, Iceland and Ireland, had recently “tumbled down” the corruption perception rankings, “after the surfacing of scandals arising from underlying governance problems”.

The combination of the above factors – an internationally strong reputation for openness, but complacency over real problems – means that New Zealand is currently failing to give the global leadership on openness that is expected of it. Its contributions to the OGP process, for instance, have been weak and vague compared to those of other countries. While Chile, for instance, is putting all its ministerial diaries online, New Zealand is pledging “to make government information more accessible by adopting a consistent set of agency practices in response to requests for official information”.<sup>27</sup>

The government is, of course, moving towards openness in various ways not covered in its OGP action plans, as the State Services Commission (SSC) has recently set out.<sup>28</sup> Nonetheless, New Zealand is being left behind in the latest big push towards more open, responsive and accountable government. But there is still time for it to show that its global reputation in this area is in fact deserved. It could build on recent moves to strengthen integrity at the highest levels of the public service.<sup>29</sup> And a country that was an early mover in areas such as establishing an official Ombudsman can be a country that leads on developing new forms of openness. That is the opportunity this report holds out.

## About this report

This report summarises and reshapes options for pro-openness reforms that have been mooted both in New Zealand and around the world, while tailoring its recommendations to suit local needs. Given the deep and rich nature of the global debate around policy options, the report’s approach has been to canvass a wide range of potential ideas relatively briefly, rather than exploring a few in depth. However, it is hoped that following the report’s launch there will be opportunities to publicly discuss some of the key ideas in greater detail.

Inevitably this report draws strongly on previous discussions of these issues, especially in New Zealand. This includes Transparency International New Zealand’s 2013 report on the country’s national integrity system, the Law Commission’s 2012 review of the Official Information Act, and international examples of best practice from the OGP, among others.

The report includes measures both moderate and far-reaching. While attempting to broaden discussion on these issues, it takes account of the current political climate, and focusses largely on policy options that, although at the far edge of what is being implemented or discussed internationally, could still be seen as a continuation of current trends towards openness in New Zealand. The report is not, however, a manifesto or a

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<sup>26</sup> Transparency International New Zealand, *Integrity Plus* 2013, p.333.

<sup>27</sup> Chile’s ministerial meetings register is available at [www.infolobby.cl](http://www.infolobby.cl). New Zealand’s action plan is available at: <http://ogp.org.nz/national-action-plan-2016-18/> (accessed 21 April 2017).

<sup>28</sup> State Services Commission, ‘Response to National Integrity Systems Report on New Zealand by Transparency International’, Wellington, September 2016.

<sup>29</sup> See, for instance, the job advertisement for a ‘Deputy Commissioner, Integrity, Ethics & Standards’ posted by the SSC in May: <https://centralagen-ciesjobs.cass.govt.nz/jobdetails/ajid/XpXs7/Deputy-Commissioner-Integrity-Ethics-Standards,12283.html> (accessed 19 May 2017).

plan: it does not prioritise measures, nor set out how they might be accomplished. It acts rather as a smorgasbord, or starter for debate.

Consideration was given to open-sourcing this report's contents, in line with its overall spirit. But such a process has in fact already taken place, during the public consultation on New Zealand's most recent OGP Action Plan. That consultation generated 87 ideas, many of which were excellent but were not taken up in the plan itself.<sup>30</sup> This report revives the best of those ideas, as a tribute both to their inherent quality and to the integrity of that crowd-sourced process.

## The options for openness

Government can be made more open on many different levels and with varying emphases on, as above, the components of transparency, accountability, integrity and participation. This report concentrates on the areas where local and international experts have suggested that action is most needed. The sections are arranged as follows.

*Government can be made more open on many different levels and with varying emphases.*

**Parliamentary openness** looks at the conduct of MPs, ministers, public servants and others involved in the running of Parliament, covering issues such as access to politicians and disclosures by MPs. Parliament remains the locus of political power, so its level of openness is highly relevant. All four components of openness are important here.

**Political party openness** examines weaknesses in the controls on, and accountability of, the funding of New Zealand's political parties. The parties are key political institutions but have also been identified as a major weakness in terms of openness. The components integrity, accountability and transparency feature prominently in this section.

**Budgetary openness** looks at measures to enhance the public's access to, and influence over, the Budget and the information it contains. The Budget is perhaps the most important government publication, but remains opaque to many. This section covers both transparency and participation.

**Information openness** deals with the Official Information Act and the proactive release of government data. The free flow of information is of course a central concern, and affects the workings of the whole political system. The key component here is transparency.

**Participatory openness** looks at the options for enhancing the public's involvement in decision-making, including direct democracy, reforming consultation processes, and building a culture of political engagement. The key focus here is, of course, participation.

**Other measures** covers issues not dealt with elsewhere, and emphasises all four components.

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<sup>30</sup> The ideas are recorded on New Zealand's OGP site at: <https://www.opengovpartnership.nz/suggest-an-action> (accessed 4 May 2017).

Throughout the text, examples of policy options successfully implemented in other countries are marked out as ‘Shining Lights’, to underline the practical basis of the relevant measures and to encourage further reading. Where there is an opportunity for New Zealand to break new ground, or join a select group of leading countries, policies are marked with the phrase ‘Lighting a Beacon’.

## Parliamentary Openness

### Register of lobbyists

Lobbying needs to be transparent so that society knows who is exercising influence over public decision makers, and how.<sup>31</sup> New Zealand could create an online register of all the meetings that lobbyists have with key decision-makers – including ministers, MPs, senior public servants, and local councillors – so that access is transparently recorded. The register would show who was lobbying whom, and a brief outline of what they discussed. The term ‘lobbyist’ would cover staff of lobbying firms and paid staff or office holders of companies and organisations attempting to influence public decision-making, but would not include ordinary citizens discussing their issues with politicians.<sup>32</sup> (This relatively tight definition of lobbyists would help avoid the problems in the recent push for a lobbying register in New Zealand.) The register would be updated frequently so that other interest groups or the public at large could respond to lobbying efforts with lobbying of their own.<sup>33</sup> Consideration would have to be given to how disclosure of NGO meetings would affect current debates about their charitable status.

*Lobbying needs to be transparent so ... society knows who is exercising influence over public decision makers.*

**Shining Light:** *Ireland’s clear, searchable and effective Register of Lobbying, available at <https://www.lobbying.ie/>*

### Ministerial meeting disclosure

The government could publish an online database of all government ministers’ meetings, accompanied by a brief description of the subject discussed, so that the public knows who ministers are meeting and why. This is crucial for understanding who has access to ministers, and analysing potential imbalances of access. This is already standard practice in countries such as Chile. While there would be a minor overlap with the above measure, this disclosure would go further in showing the range of those bodies consulted by ministers and allowing imbalances in access to be detected, while conversely being limited in its scope to ministers, rather than all key decision-makers.

**Shining Light:** *Queensland’s publication of diaries for all ministers in its state government, available at: <https://www.cabinet.qld.gov.au/ministers/diaries.aspx>*

<sup>31</sup> “Lobbying, and the impact it has on legislation and policies, should be made transparent so that society at large can know who exercises influence and how. Indeed, transparency of lobbying permits any stakeholder in society to react to ongoing lobbying with their own efforts. Transparency also makes politicians aware that the public is watching, and allows citizens to evaluate the decision-making process with more precision and then to take this into account when voting in the next elections.” See: International Standards for Lobbying Regulation, ‘Guiding Principles’, n/d, available at <http://lobbyingtransparency.net/standards/guiding-principles/> (accessed 12 April 2017).

<sup>32</sup> Standards in Public Office Commission, ‘Take the Three Step Test’, n/d, available at: <https://www.lobbying.ie/help-resources/information-for-lobbyists/am-i-lobbying/> (accessed 16 May 2017).

<sup>33</sup> The frequency of reporting could be designed to allow other interest groups or the public at large to react to lobbying information before final decisions are taken. In Canada, for example, lobbyists are obliged to file monthly returns in which they must report the name of the designated public office holder who was the object of a communication, the date of these communications, and the subject-matter of the communication. See: International Standards for Lobbying Regulation, ‘Transparency’, n/d, available at <http://lobbyingtransparency.net/standards/guiding-principles/> (accessed 12 April 2017).

## LIGHTING A BEACON

# Crowdsourced Bills

Some of the most exciting democratic innovations around the world involve the public in directly crafting and proposing legislation. One such is Finland's creation of an online platform where citizens can propose laws that its parliament must vote on if they attract more than 50,000 signatures.<sup>34</sup> New Zealand could follow this lead by designing a secure platform with forms requiring citizens to give reasons for their bill, cite evidence and carefully explain how it would achieve the desired outcome. This would help deter trivial or poorly considered proposals. A small number of the proposed bills would be selected each year to go before Parliament, via some kind of democratic process: all those with the support of more than, say, 35,000 people (1% of eligible voters) could go forward, or Parliament could reserve a certain number of places for the top-voted crowdsourced bills each year, as it does for the Members' Bills put up by opposition and backbench MPs. Such a measure has been suggested in recent reports by the Clerk of the

House.<sup>35</sup> As with Members' Bills, the selected bills would be passed onto the Office of the Clerk to be drafted and improved. While there is no guarantee the bills would become law, the process would force politicians to give them a fair hearing, and would raise the stakes for going against popular sentiment. Official drafting and Parliamentary sovereignty would check poorly considered or illiberal measures. In addition, overseas evidence suggests these processes work well and are used to generate sensible proposals.<sup>36</sup> If implemented, this process could provide another avenue for those petitioning Parliament. It could also largely obviate the need for citizens-initiated referenda, except where individuals wanted to show overwhelming public support for their proposal. Successful referenda could likewise generate a draft bill to go before Parliament. This process could also work in tandem with methods where government departments create radically open places to debate or 'crowdsource' legislation, while retaining control of the progress of laws.

## Independent public appointments

One of the biggest weaknesses of New Zealand's 'cosy' political system is that appointments to government boards and organisations often go to those with strong political connections to the governing party. Research has found that two-thirds of state-owned enterprise board directors believe the appointment process is "too politically influenced", and in one recent suite of appointments nearly half of those appointed had close political ties to the governing party.<sup>37</sup>

Practices like these are not 'open' to less well-connected but potentially more deserving candidates, and raise questions about whether appointees will act independently. New Zealand could follow other countries and create an independent body to monitor and advise on such appointments.

**Shining Light:** *Britain's Commissioner of Public Appointments, whose work is set out here: <https://publicappointmentscommissioner.independent.gov.uk/>*

<sup>34</sup> Population of Finland, 'Finnish citizens' initiative', n/d, available at: <http://vrk.fi/en/finnish-citizens-initiative> (accessed 18 May 2017). As of 2015, six initiatives had reached Parliament. European Commission, 'Online democracy – services in Finland', 4 August 2015, available at: <https://joinup.ec.europa.eu/community/opengov/case/online-democracy-services-finland> (accessed 23 May 2017).

<sup>35</sup> Mary Harris, 'Review of standing orders – 50th parliament', Submission of the Clerk of the House of Representatives, November 2013, pp.203.

<sup>36</sup> Pietari Pikkuaho, 'The Finnish Citizen's Initiative', *Participedia*, 4 March 2017, available at: <http://participedia.net/en/cases/finnish-citizens-initiative> (accessed 11 June 2017).

<sup>37</sup> Transparency International New Zealand, *Integrity Plus 2013*, p141.

## Strengthening MPs' disclosures

MPs currently disclose their business interests and personal assets in the Register of Pecuniary Interests. This positive initiative could be strengthened by requiring MPs to also disclose non-Parliamentary income and tax paid, to further guard against conflicts of interest and increase transparency about MPs' closeness to particular industries or organisations.<sup>38</sup> Requiring them to disclose how much tax they pay would also help maintain confidence in the tax system and show that those who make tax laws are not above them. An international campaign, the Tax Disclosure Project, is currently underway to encourage politicians to make such records public.

*Shining Light: The four countries – Pakistan, Norway, Finland and Sweden – where elected representatives all publicly disclose their tax records<sup>39</sup>*

### LIGHTING A BEACON

## Publish all Cabinet Papers

All Cabinet papers could be made publicly available soon after they are approved, with just standard redactions for national security and other generally accepted reasons. New Zealand already releases these papers on an ad hoc basis, so this would just standardise – and improve –

existing practice. This would also build on one of the aims of the current OGP Action Plan and suggestions made during the plan's consultation period.<sup>40</sup> It would also make New Zealand a world leader in this field.

## Increasing protections for whistle-blowers

New Zealand could review the existing legislation designed to encourage whistle-blowing, the Protected Disclosures Act 2000, to strengthen protections for whistle-blowers and allow disclosures directly to MPs or media. Transparency International has noted that awareness of the act is low, and that many whistle-blowers "encounter inaction, and believe they are at risk of retaliation".<sup>41</sup> Other commentators have argued that the requirements to enjoy protection under the act "are extremely difficult to meet", and that other countries "have much greater protection and a wider list of possible means of disclosure".<sup>42</sup> Reform in this area would build on one of the public's suggested measures for the most recent OGP Action Plan.<sup>43</sup> It would also draw on the 'Whistling While They Work 2' review, which will conclude in 2018. Ultimately, it is likely to involve culture change work led by the SSC, and potentially measures such as actively rewarding whistle-blowers.

## Blocking the 'revolving door'

If key decision-makers – including senior public servants and ministers – are able to leave government and immediately take private sector jobs, they may use their inside

38 Sunlight Foundation et al, 'Declaration on Parliamentary Openness', n/d, available at: <https://www.openingparliament.org/declaration/> (accessed 16 May 2017).

39 Tax Justice Network, 'Politicians and their tax returns: a new project from Finance Uncovered', 2 March 2017, available at: <http://www.taxjustice.net/2017/03/02/politicians-tax-returns-new-project-finance-uncovered/> (accessed 30 May 2017).

40 Commitment 2 of the Action Plan includes: "Develop a clear statement of government policy on proactive release of Cabinet papers and related material." See: <http://ogp.org.nz/commitment-2/>

41 Transparency International New Zealand, *Integrity Plus* 2013, p.157.

42 Idiot Savant, 'Increase whistleblower protections', Open Government Partnership New Zealand – Suggested Actions, 12 August 2016, available at: <https://www.opengovpartnership.nz/suggest-an-action/increase-whistleblower-protections> (accessed 16 May 2017).

43 Ibid.

knowledge to influence processes on behalf of their new employers. And the expectation of taking up such jobs may lead decision-makers to favour corporate interests across the board, in order to curry favour with prospective employers. For that reason, key decision-makers could be prevented from lobbying their past organisations for five years after leaving office, as is done in other countries.<sup>44</sup>

**Shining Light:** Canada's five-year 'cooling off' period for key decision-makers, as detailed here: [https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h\\_00008.html](https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00008.html)

## A Code of Conduct for MPs

Parliament could adopt the Code of Conduct for MPs proposed and signed by four minor parties in 2007. The Code would commit MPs to show respect for other Members, answer questions without making personal attacks, and avoid conflicts of interests, among other things.<sup>45</sup> As Transparency International has noted, most professional bodies in other spheres of work have such codes, "and there is a general trend for ethical matters to be part of decision making". Adopting such a code would be "a voluntary action by parliamentarians to show the public they apply the same standards to themselves as do other important institutions".<sup>46</sup>

**Shining Light:** Scotland's thorough Code of Conduct for MPs, available here: <http://www.parliament.scot/msps/code-of-conduct-for-msps.aspx>

## Declaration on Parliamentary Openness

New Zealand could sign this declaration, agreed in 2012 by a global alliance of transparency non-governmental organisations.<sup>47</sup> While New Zealand already meets many of the declaration's demands, it still has work to do, and signing would enhance the declaration's international status and encourage others to follow suit.

# Political Party Openness

## Reforming party funding

The funding of political parties has been identified by Transparency International as one of the biggest weaknesses in New Zealand's political system – both the government funding and the private donations. While the amounts donated are small compared to, say, those in the United States, they are big in the New Zealand context. Donations from predominantly wealthy individuals and companies totalled over \$12 million in 2012-14, compared to the parties' combined 2014 election advertising spending of \$9 million.<sup>48</sup> And there have been, as above, numerous recent scandals involving access and influence gained by wealthy donors. This raises the prospect of highly unequal influence in politics for the wealthy. Unlike other countries, New Zealand has no cap on the amount that people can donate, and the level at which donors have to be named (\$30,000) is high

44 International Standards for Lobbying Regulation, 'Integrity', n/d, paragraph 2, available at: <http://lobbyingtransparency.net/standards/integrity/> (accessed 16 May 2017).

45 Speaker of the House of Representatives, 'A Code of Conduct for Members of Parliament – is the time ever right?', speech to 38th Presiding Officers and Clerks Conference, Rarotonga, Cook Islands, 12 July 2007, available at: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/speeches-pre-2013/document/48Speakspeech130720071/a-code-of-conduct-for-members-of-parliament-is-the-time> (accessed 16 May 2017).

46 Transparency International New Zealand, *Integrity Plus* 2013, pp.76-7.

47 Sunlight Foundation et al, 'Declaration on Parliamentary Openness'

48 Max Rashbrooke, *Wealth and New Zealand*, Bridget Williams Books, Wellington, 2015.

*Parliament could adopt the Code of Conduct for MPs proposed and signed by four minor parties in 2007.*

by international standards. In addition, the government funding that parties get through the Parliamentary Service – for research and other purposes – is significant but highly opaque, especially as the Parliamentary Service is not subject to the Official Information Act (though it could be, as outlined below). It seems likely that few people understand that their taxes help fund political parties. A major reform of party funding therefore seems desirable. (Signing the Declaration on Political Finance Openness could also help underscore New Zealand’s commitment on this issue.<sup>49</sup>) The most moderate reform in this area would be to increase transparency of donations, as below. For a more far-reaching reform option, see the ‘Lighting a Beacon’ box-out on page 14.

## Greater transparency

The government could introduce greater transparency as to who is giving money to political parties, so that it is easier to see who may be gaining access or influence. Currently only donors giving more than \$15,000 have to be publicly named, but that threshold could be lowered to \$1,500, balancing the need for greater transparency with the need for individuals (especially in politically sensitive occupations) to be able to donate without being identified. All such donations could be disclosed in real-time, to allow scrutiny immediately rather than at year’s end, when declarations of donations are otherwise made. In addition, the names could be published of all members of fundraising clubs that allow privileged access to ministers or MPs, including the National Party’s ‘Cabinet Club’ and Labour’s ‘President’s Club’.<sup>50</sup> Donations from members of such clubs will already be declared if they are over current spending thresholds, but since such clubs so clearly provide access in return for cash, their members could be disclosed regardless of how much they give.

*Shining Light: The UK Conservative Party’s disclosure of attendees at its ‘Leader’s Group’ events<sup>51</sup>*

*The funding of political parties has been identified by Transparency International as one of the biggest weaknesses in New Zealand’s political system.*

49 Lindsay Ferris, ‘New draft of Declaration on Political Finance Openness released’, Sunlight Foundation, 27 October 2015, available at: <https://sunlightfoundation.com/2015/10/27/new-draft-of-declaration-on-political-finance-openness-released/> (accessed 20 April 2017).

50 On the former, see: Newshub, ‘Paying “club” gets access to National MPs’, 6 May 2014, available at: <http://www.newshub.co.nz/politics/paying-club-gets-access-to-national-mps-2014050616> (accessed 16 May 2017). On the latter, see Lloyd Burr, ‘Labour launches exclusive “President’s Club”’, *Newshub*, available at: <http://www.newshub.co.nz/home/politics/2017/04/labour-launches-exclusive-president-s-club.html> (accessed 16 May 2017).

51 See: <https://www.conservatives.com/donate/Donor-Clubs>

## LIGHTING A BEACON

# A donations cap and an ‘electoral funding voucher’

Far-reaching reform of political donations would have two elements: a very strong cap on private donations, and either democratising or matching public funding of parties.

**Limiting private donations:** Individuals could be limited to giving only small amounts, say, \$1,500 a year to any political party and \$1,500 to any candidate, to minimise inequality of influence. This would put New Zealand in line with Canada’s cap on annual donations, currently set at C\$1,550.<sup>52</sup> Such caps are common in other countries, including Japan, France, Spain and Ireland.

**Democratising funding:** Limiting donations in this way would cut party funding by around \$20 million over three years. The most obvious way to address this shortfall would be to increase government funding, which is currently around \$49 million over three years. And indeed many other countries provide extensive public subsidies, including Australia, Canada, Germany, Ireland, France and Sweden – sometimes as much as 80% of party revenues.<sup>53</sup> However, this can be unpopular, and creates few incentives for parties to engage with the public. An alternative would be to increase government funding but also democratise it. This could be done through the government’s giving every citizen a small amount of money (an ‘electoral funding voucher’) to give to the political party of their choice, once every electoral cycle. This could create a strong incentive for parties to engage with the public, while spreading influence equally. The funding thus handed out would be the \$49 million in existing government funding combined with an extra \$20 million to make up the donation

shortfall: a total of \$69 million per three-year electoral cycle, which would work out as an electoral voucher of around \$20 per adult.<sup>54</sup> People on the electoral roll could be sent an email, once every three years, with links to simple online donation forms for each registered party, and a unique random number to identify their donation/voucher and prevent fraud. Non-online options would also be needed, especially for disadvantaged communities. Unused vouchers would be allocated to parties based on their number of MPs and other criteria, and parties could be allocated minimal amounts at the start of each Parliament, to ensure some security of income. Spending another \$7 million a year might be publicly unpopular, but it would be a small amount compared to the government’s \$93 billion annual spending, and certainly less than the (three-year) \$35 million cost of running an election.<sup>55</sup>

**Matching + transparency:** If the voucher system is thought to be too complex, another way to partially democratise funding would be for the government to match amounts given by members of the public, up to the above limit of \$1,500. Because parties do not disclose amounts received in donations under \$1,500, it is impossible to estimate the funds this would generate for parties, but traditional Parliamentary Service funding would probably still be needed to make up the shortfall from banning larger donations. In that case, the amounts parties receive from the Parliamentary Service, and the purposes to which they are put, could be clearly stated and itemised. This would increase transparency and help the public understand the extent of government funding of parties.

52 Committee on Standards in Public Life, *Political party finance: Ending the big donor culture*, London, November 2011, p.43. For details of the Canadian donation cap, see: Elections Canada, ‘Limits on Contributions’, n/d, available at: <http://www.elections.ca/content.aspx?section=pol&document=index&dir=lim&lang=e> (accessed 16 May 2017).

53 “The amount of subsidy varies considerably. It amounts to between 30 and 40 per cent of party revenues in Germany (equivalent to around £2 a registered voter) and 67 to 88 per cent of party revenues in Norway (almost £10 a registered voter). The median subsidy in a recent assessment of member states of the Council of Europe was £3.25 a year. The equivalent figure in the UK is currently 36p. The subsidy tends to be highest in those countries with relatively low limits on donations.” Ibid., p.44.

54 Author’s calculations, based on party donations return summaries for 2011-14, available at: <http://www.elections.org.nz/parties-candidates/registered-political-parties/party-donations-and-loans/party-donations-year> and figures from Vote - Parliamentary Services (M78 – Party and Member Support) for the 2011-12, 2012-13 and 2013-14 Budgets.

55 See: <https://fyi.org.nz/request/5336/response/17085/attach/4/OIA%20Request%20Tom%20Andrews.pdf>



## Transparency of party accounts

New Zealand political parties could be obliged to provide a public overview of their income and expenditure, and a balance sheet. While parties are private entities, they play a core role in the democratic system and there is a strong public interest in knowing their overall financial position. Information published could cover categories such as totals earned through membership fees, contributions from affiliates, donations, and public funding. Sanctions for non-compliance could encourage accurate filings.

*Shining Light: The UK's requirements for all political parties to publish annual accounts, which are made publicly available on its Electoral Commission website*<sup>56</sup>

## Tighten enforcement of spending

Transparency International has noted that the Electoral Commission has limited ability to check the veracity of reports or investigate potential violations of spending rules, and has no prosecutorial powers.<sup>57</sup> The fact that party officials have not been punished for previous breaches shows the system is “lax”, it argues. The Commission could therefore be given the power to initiate investigations where it suspects party finance laws have been broken, and to prosecute cases. In addition, a wider review of election spending could cover issues such as broadcasting allocations, whether the period where spending restrictions apply needs to be extended to capture new elements of campaigning (such as the building of large databases to target voters well ahead of standard election periods), and other newly emerging issues.<sup>58</sup>

*The Official Information Act (OIA) has powerfully opened up government, but in some cases is being circumvented.*

# Information openness

## Fulfilling the Official Information Act's intent

The Official Information Act (OIA) has powerfully opened up government, but in some cases is being circumvented, in particular by delays in answering requests and inappropriate attempts to charge for material.<sup>59</sup> A number of changes could improve the act and the work of the body that handles complaints about its operation, the Office of the Ombudsman (see below). Work is already underway, led by the SSC, to encourage a culture change among public agencies, in particular to encourage compliance with the act, to release more information proactively, and to build agencies' competence.<sup>60</sup> These moves are very welcome, especially since compliance with the act depends heavily on the attitudes of public sector leaders. However, action could go further still, for instance by writing open government measures into government CEO performance targets. A general review of the act may also be needed. Specifically, the act could be recast to give more prominence to

<sup>56</sup> Electoral Commission, 'Financial accounts of political parties published', 5 August 2016, available at: <https://www.electoralcommission.org.uk/1-am-a/journalist/electoral-commission-media-centre/news-releases-donations/financial-accounts-of-political-parties-published5> (accessed 13 June 2017).

<sup>57</sup> Transparency International New Zealand, *Integrity Plus* 2013, p.255.

<sup>58</sup> Transparency International New Zealand's *Integrity Plus* review outlines concerns with the broadcasting allocation system, though it also has its defenders. Concerns that voter databases and other developments are undermining spending laws have recently been articulated in Britain, and may apply in New Zealand. Carole Cadwalladr, "'Dark money' is threat to integrity of UK elections, say leading academics", *Guardian*, 1 April 2017, available at: <https://www.theguardian.com/politics/2017/apr/01/dark-money-threat-to-uk-elections-integrity> (accessed 16 May 2017).

<sup>59</sup> For the former problem, see: Craig McCulloch, 'PM admits Govt uses delaying tactics', *Radio New Zealand*, 16 October 2014, available at: <http://www.radionz.co.nz/news/political/257009/pm-admits-govt-uses-delaying-tactics> (accessed 30 May 2017). For the latter, see: Eileen Goodwin, 'OIA request charges worrying sign', *Otago Daily Times*, 15 January 2016, available at: <https://www.odt.co.nz/news/dunedin/oia-request-charges-worrying-sign> (accessed 30 May 2017).

<sup>60</sup> State Services Commission, 'Joint work to improve OIA responsiveness', 20 October 2016, available at: <http://www.ssc.govt.nz/media-statement-joint-work-improve-oia-responsiveness> (accessed 15 May 2017).

the public interest requirement for disclosure, as recommended by the Law Commission.<sup>61</sup> Regulations on charging could be introduced to make it clear that this is appropriate only for exceptionally large requests and to ensure charges are the same across agencies. The act could also impose a duty on agencies to take reasonable steps to proactively release material. (See below for further details.) Delays to requests are difficult to address, but it is hoped that the publication of agency performance data by the SSC will exert pressure on poorly performing agencies.<sup>62</sup> In addition, government agencies could fully implement the recommendations of the former Ombudsman, Beverley Wakem, regarding improved training for staff, better resourcing for OIA teams, more complete record keeping of requests and responses, and, in particular, the need for agencies to make clear that ministers and ministerial advisers are not supposed to give “clearance or approval” on OIA responses.<sup>63</sup>

*The Ombudsman performs an importance service in handling OIA-related complaints, but its role could be expanded to include thorough oversight of the act.*

## Extending the Official Information Act

The act could be extended to cover all the Officers of Parliament (with exemptions regarding their investigatory functions), including the Office of the Ombudsman and the Office of the Controller and Auditor-General. In addition, the act could cover certain information held by the Office of the Clerk, the Parliamentary Service, and the Speaker in his or her role as the responsible minister for the parliamentary agencies. This would open up to scrutiny the public funding given to political parties (as discussed above). As the Law Commission has noted, the act would then have to itemise “the types of information which could be disclosable, and to specifically exclude some types which could not, particularly information which could affect the proceedings of Parliament”.<sup>64</sup> There is also inconsistency in terms of which wider government agencies are covered by the act. This needs a full review. One possibility would be to include all ‘public authorities’ as defined in the Aarhus Convention, as suggested during the OGP Action Plan consultations.<sup>65</sup> In addition, the act could thoroughly cover all taxpayer-funded services, including those contracted out to private companies and not-for-profit organisations, as the Public Service Association (PSA) has argued.<sup>66</sup> On similar lines, Britain’s Campaign for Freedom of Information has put forward a widely supported proposal that “all information about the provision of [UK] public services under contract” should be available, subject to standard exemptions.<sup>67</sup>

## Strengthening the Office of the Ombudsman

The Ombudsman performs an importance service in handling OIA-related complaints, but its role could be expanded to include thorough oversight of the act, including the following statutory functions: policy advice, review, promotion of best practice, statistical oversight, oversight of training for officials, oversight of guidance for requesters, and preparation of an annual report.<sup>68</sup> In order to ensure that the Ombudsman’s recommendations are enforced,

61 Law Commission, *The Public’s Right to Know: Review of the Official Information Legislation*, Wellington, June 2012, p.9.

62 State Services Commission, ‘Official Information Act statistics’, 30 January 2017, available at: <http://www.ssc.govt.nz/official-information-act-statistics> (accessed 25 May 2017).

63 Office of the Ombudsman, *Not a game of hide and seek*, Report of Chief Ombudsman Dame Beverley Wakem, December 2015.

64 Law Commission, *The Public’s Right to Know*, p.17.

65 Wallacca, ‘To strengthen the implementation, and widen the scope of the application of, the OIA and local government information and Meetings Act’, Open Government Partnership New Zealand – Suggested Actions, 24 August 2016, available at: <https://www.opengovpartnership.nz/suggest-an-action/to-strengthen-the-implementation-and-widen-the-scope-of-the-application-of-the-oia-and-local-government-information-and-meetings-act> (accessed 16 May 2017).

66 Dairne Grant, ‘Transparency and contracting out’, Open Government Partnership New Zealand – Suggested Actions, 24 August 2016, available at <https://www.opengovpartnership.nz/suggest-an-action/transparency-and-contracting-out> (accessed 16 May 2017).

67 Campaign for Freedom of Information, ‘Extending FOI to contractors’, n/d, available at: <https://www.cfoi.org.uk/campaigns/extending-foi-to-contractors/> (accessed 25 May 2017).

68 Law Commission, *The Public’s Right to Know*, p.15.

the public could be allowed to bring proceedings against agencies, as the Law Commission has recommended. As suggested during the OGP Action Plan consultation, the Ombudsman could also impose escalating penalties on agencies for not complying with the act.<sup>69</sup>

## A whole-of-government OIA page

The government could ensure that that one single webpage has everything people need to know about the OIA and official information, including details on how to make requests, past responses to requests, and the statistics now published by the SSC (such as how many requests departments have received, the time they have taken to respond, and so on). This could make life easier both for citizens and for public servants, as it could reduce the incidence of duplicated, overlapping or repeat requests. All OIA responses would be published on this page, potentially with a month's delay to allow requests from journalists to be turned into exclusive stories, and with exemptions for those who did not want their request published (for personal or other reasons). This webpage would logically be integrated into an existing site such as [www.data.govt.nz](http://www.data.govt.nz). Moves towards a whole-of-government OIA page would also build on the OGP Action Plan commitment 2.<sup>70</sup> There are, of course, difficulties in maintaining whole-of-government sites, and the public might more naturally go to individual agency or department sites, so another option would be for each agency to have its own OIA page. Opportunities to build on [fyi.org.nz](http://fyi.org.nz), a site for facilitating and publishing OIA requests, should also be considered. Either way, the core point is to make the OIA process clearer and simpler.

## Proactive gathering, reporting and release of information

Some government departments, notably the Treasury, are moving to proactively publish more information, and the SSC is encouraging a whole-of-government culture shift in this direction. These welcome developments could be strengthened by creating a duty on government to proactively gather, report on and release certain classes of information, to reduce the pressure on OIA processes. These classes could include: staff directories; internal guidance and policies; government contracts (as above); ministerial briefings; publicly funded research; and evaluations of New Zealand policies by international bodies.<sup>71</sup> In addition, Transparency International has noted “a lack of transparency” on environmental indicators (though the government is attempting to address that issue); and important documents such as the Social Report appear sporadically, and may not appear in future.<sup>72</sup> Comprehensive social and environmental reporting could be mandatory, perhaps as part of the Treasury's push to broaden government reporting and target-setting through the Living Standards framework. Finally, New Zealand currently does little monitoring and reporting on the impact of government policies. This evaluation could take place far more frequently and be disclosed publicly. All of the above information could be published on a dedicated webpage, potentially (as with the OIA page proposed above) linked to the existing [data.govt.nz](http://data.govt.nz) site.

*Transparency International has noted “a lack of transparency” on environmental indicators ... and important documents ... appear sporadically, and may not appear in future.*

<sup>69</sup> Wallaca1, 'To strengthen the implementation, and widen the scope of the application of, the OIA and local government information and Meetings Act', Open Government Partnership New Zealand – Suggested Actions, 24 August 2016, available at: <https://www.opengovpartnership.nz/suggest-an-action/to-strengthen-the-implementation-and-widen-the-scope-of-the-application-of-the-oia-and-local-government-information-and-meetings-act> (accessed 17 May 2017).

<sup>70</sup> See: <http://ogp.org.nz/commitment-2/>.

<sup>71</sup> Arguments in favour of mandatory release for many of these categories were made across various submissions to the OGP Action Plan.

<sup>72</sup> Transparency International New Zealand, *Integrity Plus 2013*, p.337.

**Shining Light:** Mexico's 'Transparency Portal', which contains information in 17 mandatory-release categories from all the country's relevant departments and agencies. It is available at: <http://portaltransparencia.gob.mx/pot/home.do>

## Open data and standards

The government has made strong steps towards releasing more government data in formats that can be easily used and re-used. It could continue to build on this progress by adopting further measures, including those suggested during the review of the government's first OGP Action Plan. These could include: standardising collected data so that it is sensibly coded and comparable; using data experts from the outset to ensure that data collected is useful; ring-fencing funding for open data work; and preparing a national inventory of all government data collected and released.<sup>73</sup> The government could also implement the recommendations of the 2017 Tech Manifesto, including its call for open standard software formats to store and exchange files and data.<sup>74</sup>

**Shining Light:** Britain's 2014 decision to mandate open standards for software procurement<sup>75</sup>

## Budgetary Openness

### Participatory budgeting

Local councils could set aside 10 per cent (or more) of their annual budget to be decided directly by citizens, building on hugely successful models overseas. Councils would work with residents throughout the year, holding multiple meetings at neighbourhood and ward level, in a process that culminates in a major end-of-year meeting where residents vote on how to allocate the funds. Such processes are increasingly used overseas, and have proved highly effective in engaging citizens. While face-to-face methods are most effective, they could also be supplemented by online voting processes – for instance, allowing citizens to choose between a range of possible large-scale building projects – that allow greater engagement with lower transaction costs. Participatory budgeting would, however, face the issue that New Zealand's local councils often perform few functions beyond 'core', difficult-to-adjust tasks such as delivering wastewater. It might therefore work better for some councils than others, or might operate more as a devolution of specific project budgets to localities. Alternatively, a push towards participatory budgeting could form part of a greater devolution of powers to local councils.

**Shining Light:** the Brazilian city of Porto Alegre's long-running participatory budgeting process, which has involved as many as 40,000 of its residents each year<sup>76</sup>

### A Citizens' Budget

The international Open Budget Survey (OBS) has found that New Zealand makes a large amount of financial information available, but not in forms that the public can easily engage

<sup>73</sup> Steven Price, 'Independent Reporting Mechanism (IRM) Progress Report: New Zealand 2014-2015', draft, p.52.

<sup>74</sup> Various authors, *New Zealand's Digital Future*, Wellington, 2017, p.16.

<sup>75</sup> Ibid.

<sup>76</sup> World Bank, 'Participatory Budgeting in Brazil', n/d, available at: [http://siteresources.worldbank.org/INTEMPowerment/Resources/14657\\_Participatory-Budgeting-Brazil-web.pdf](http://siteresources.worldbank.org/INTEMPowerment/Resources/14657_Participatory-Budgeting-Brazil-web.pdf) (accessed 11 June 2017).

The government has made strong steps towards releasing more government data in formats that can be easily used and re-used.

with, such as machine-readable data, plain English material, and visual presentations.<sup>77</sup> One key initiative could be a proper Citizens' Budget, the international term for a publication that sets out Budget information simply and clearly, and allows the public "to understand what government is doing with their money and ... to participate in governmental affairs".<sup>78</sup> This is in line with the OGP Action Plan's first commitment.<sup>79</sup> While the government has taken steps in this direction, such as its interactive graphics and 'Budget at a Glance' publications, it still lacks a genuinely engaging version – potentially in cartoon format – that would reach those with less political knowledge. The government could also publish more financial information in open data formats, so as to encourage external analysis.

## Parliamentary oversight

Parliament's oversight of budgetary matters is relatively weak, rating just 45 out of 100 on the OBS.<sup>80</sup> In particular, New Zealand lacks a source of in-house advice to Parliament on fiscal policy. While the Finance and Expenditure Committee oversees fiscal management, it is chaired by a member of the governing party, limiting its ability to independently scrutinise the Budget. And as Murray Petrie and Toby Moore note, the committee "has not sought independent advice on fiscal policy in recent years, despite funding being available for it to do so".<sup>81</sup> Options for creating an independent fiscal council and strengthening the role and resources of the Finance and Expenditure Committee could be explored.

### LIGHTING A BEACON

## A 'Public Opinion' Budget

New Zealand allows limited public participation in shaping the Budget, rating 65 out of 100 on the OBS.<sup>82</sup> To address this, the government could consider copying the extensive public engagement on the 2013 Long Term Fiscal Statement. Going further, the government could coordinate a process in which a group of representatively chosen citizens – along the lines of a citizens' assembly (see below) – draws up a rough annual Budget, indicating areas of funding priority (such as whether they want to see more or less spending in broadly defined categories such as health, education and defence) and what tax increases or reductions (again, at a broad level) would be needed in consequence. Expert

advice from political scientists, economists and financial modellers would be needed to assist citizens in making these trade-offs. The 'Public Opinion' Budget would be published at the start of each year, to inform official Budget decisions and to force the government to justify itself when its Budget diverges from the Public Opinion version. This initiative would have to be funded and conducted outside of government, in order to maintain its independence. This idea would emulate and build on the work of the 43 Melbourne residents and business owners who in 2015 drew up a clear and rigorous 10-year financial plan for the city's council.<sup>83</sup>

77 Toby Moore and Murray Petrie, 'Let's make the Budget more scrutible', Victoria University of Wellington, 25 May 2017, available at: <http://www.victoria.ac.nz/news/2017/05/lets-make-the-budget-more-scrutable> (accessed 30 May 2017).

78 Open Government Guide, 'Publish a Citizens' Budget', n/d, available at: <http://www.opengovguide.com/commitments/citizens-budget/> (accessed 17 May 2017).

79 See: <http://ogp.org.nz/commitment-1/>.

80 Stacey Kirk, 'Government's books top transparency list', *Stuff*, 29 September 2015, available at: <http://www.stuff.co.nz/national/politics/72537680/governments-books-top-transparency> (accessed 30 May 2017).

81 Moore and Petrie, 'Let's make the Budget more scrutible'

82 Kirk, 'Government's books top transparency list'

83 Nicholas Reece, 'Melbourne People's Panel makes bold decisions where politicians fear to tread', *Sydney Morning Herald*, 1 April 2015, available at: <http://www.smh.com.au/comment/melbourne-peoples-panel-makes-bold-decisions-where-politicians-fear-to-tread-20150331-1mchjp.html> (accessed 19 May 2017).

# Participatory Openness

## Citizens' assemblies

Citizens' assemblies, also known as citizens' juries, work by bringing together a representative sample of ordinary people who, over several days and assisted by experts, debate policy and make recommendations on a given issue. Participants are usually paid, in order to allow them to take time off work or to cover costs incurred. Global experience shows that, in well-designed forums like these, ordinary people are more than capable of weighing evidence, listening to others, and making good policy on major issues.<sup>84</sup> These forums also help reduce political polarisation and make people more likely to engage in other forms of politics. Citizens' assemblies could be widely used on key specific issues. However, even well-regarded assemblies overseas have been undermined by governments' ignoring their findings – so local and central government here would have to commit to implementing recommendations that emerged from such processes.

**Shining Light:** *Victoria's 2015 citizens' jury on tackling obesity, which delivered a radical but feasible set of recommendations on a key issue of public concern*<sup>85</sup>

## Multi-stakeholder forums – with teeth

One of the most inspiring local democratic processes in recent years has been the Land and Water Forum, which brought together a seemingly opposed group of interests, including environmental groups and farmers, and arrived at a powerful consensus on measures needed to protect the New Zealand environment. However, the government's failure to implement many of the forum's recommendations has vitiated its potential and led to multiple withdrawals, effectively sidelining the process and making it less likely that groups would participate in future such attempts.<sup>86</sup> Governments would need to commit to implementing the recommendations of future such forums (whether they like them or not), if they are to be effective.

## Civics education

To prepare citizens to participate in public life, New Zealand schools could provide better civics education. While 'citizenship' is referred to in the curriculum, there are few coherent resources for teachers, no consistency as to what civics means, and little clarity as to how and when it should be taught. As a result, there is a large 'civic empowerment gap', with New Zealand pupils having some of the lowest (as well as some of the highest) international civic knowledge scores.<sup>87</sup> Proper teaching of civics would explain to young New Zealanders how institutions such as Parliament work, but also equip them with core skills such as learning to act democratically with others, for instance through campaigns and protests.<sup>88</sup> This would build on the excellent work already being done by initiatives such as the Civics and Media Project and the McGuinness Institute's CivicsNZ workshops.<sup>89</sup>

84 See, for instance, Matthew Flinders et al, *Lessons from the 2015 Citizens' Assemblies on English Devolution Democracy*, Democracy Matters Project, March 2016.

85 David Halpern, 'Victoria's Citizens' Jury on Obesity', Behavioural Insights Team, 27 October 2015, available at: <http://www.behaviouralinsights.co.uk/australia/citizens-jury/> (accessed 13 June 2017).

86 Charlie Mitchell, 'Forest & Bird leaves Land and Water Forum after "deeply disappointing" policy', *Stuff*, 7 March 2017, available at: <http://www.stuff.co.nz/environment/90122041/forest--bird-leaves-land-and-water-forum-after-deeply-disappointing-policy> (accessed 17 May 2017).

87 Danijela Tavich and Todd Kriebel, 'Civics and citizenship education in New Zealand: A case for change?', draft paper for the McGuinness Institute, May 2017, p.2.

88 In formal terms, the objective is to increase young people's sense of agency, as set out in Bronwyn Hayward, *Children, Citizenship and Environment*, Routledge, Oxford, 2012.

89 See <http://civicsandmediaprojectnz.org/> and <http://www.mcguinnessinstitute.org/civicsnzproject/civicsnz-workshop-to-explore-a-civics-strategy-in-new-zealand/> for details.

*One of the most inspiring local democratic processes in recent years has been the Land and Water Forum.*

## LIGHTING A BEACON

# A 'Kōrero Politics' Day

Around two to three months before every general election (and on the same date in non-election years), there could be a public holiday dedicated to discussing politics and the upcoming vote. This 'Kōrero Politics' Day would be marked by community events and working bees, town hall meetings, festivals that combine music and politics, and other gatherings designed to foster discussion. This would underline the importance of politics, give people time and space to think about issues, and encourage a more reflective citizenship – and therefore better political campaigning. While political participation on the day could not, of course, be enforced, it is likely that a well-designed set of events, strong institutional support and public pressure would help create a culture of engagement. As American

scholars Bruce Ackerman and James Fishkin have argued, evidence from deliberation-based events shows that “the public has the capacity to deal with complex public issues; the difficulty is that it normally lacks an institutional context that will effectively motivate it to do so”.<sup>90</sup> While an extra holiday would increase costs for business, it would only bring New Zealand up to the G20 average of 12 statutory holidays a year, well below countries such as Finland on 15.<sup>91</sup> And New Zealanders already work long hours: the main cause of the country's relatively poor economic performance is not time away from work but a failure to be efficient and productive while people are at work. However, an alternative with lower business costs would be to designate a Saturday or Sunday as the 'Kōrero Politics' day.

## Creating spaces for engagement

Many of the measures advocated in this report would be ineffective unless citizens are encouraged to be active democrats and there are good spaces where they can engage each other. New Zealand scores relatively poorly on measures of political culture, highlighting the need for action in this area.<sup>92</sup> Civics education and a 'Kōrero Politics' Day (as above) could help, but further measures could include advocacy of deep participation by politicians and other leaders; and new spaces (both online and offline) for more reflective, reciprocal debate than current media and social media allow. Since political participation is especially weak among poorer families and those who feel excluded from society, New Zealand could also tackle exclusion via the following measures: creating an Inclusivity Strategy that builds on pre-existing government initiatives; tying its OGP plans more explicitly to the UNDP Social Development Goals; establishing a social 'G20' with leaders, government, business and community; and continuing work such as the Living Standards framework that encourages politicians to prioritise social well-being.<sup>93</sup> (Ultimately, encouraging participation would also require concrete steps to reduce poverty and inequality, but those issues are beyond the scope of this report.)

<sup>90</sup> Bruce Ackerman and James S. Fishkin, 'Deliberation Day', Center for American Progress, 10 March 2004, available at: <https://www.american-progress.org/issues/general/news/2004/03/10/586/deliberation-day/> (accessed 25 April 2017).

<sup>91</sup> OnRec, 'UK has lowest number of public holidays within G20', 3 March 2014, available at: <http://www.onrec.com/news/statistics-and-trends/uk-has-lowest-number-of-public-holidays-within-g20> (accessed 18 May 2017). New Zealand's 10 national holidays and one regional holiday are set out in the Holidays Act (2003), Section 44.

<sup>92</sup> Economist Intelligence Unit, *Democracy Index 2016*, p.7.

<sup>93</sup> Existing work on social inclusion includes the 'More Inclusive NZ' forum, held in 2015. See the speech by the Secretary of the Treasury, Gabriel Mahklof, for further details: <http://www.treasury.govt.nz/publications/media-speeches/speeches/moreinclusivenz>. Details on the Living Standards framework are available here: <http://www.treasury.govt.nz/abouttreasury/higherlivingstandards>.

## Public service broadcasting

Funding for public interest journalism could be significantly increased, in order to diffuse and scrutinise the material released by more open government, and to build the educated public needed for a healthy and open democracy. This funding could be available to journalists working in all kinds of media, including online. Consideration could be given to merging the operations of Radio New Zealand and TVNZ, creating one multi-platform public broadcaster, while strengthening its independence via statute. The government could also consider funding additional public service broadcasting through a levy on telecommunications carriers, internet service providers and other organisations that benefit from publicly funded content. This is a funding method used overseas and advocated by local media commentators.<sup>94</sup>

*While public servants must remain neutral in their work, they should retain the right to express themselves as private citizens.*

*Shining Light: France's 0.9% levy on "electronic communication service provider revenues"<sup>95</sup>*

## Political activities of public servants

While public servants must remain neutral in their work, they should retain the right to express themselves as private citizens, for instance by talking at public events, going on marches, or joining a political party. But although the official SSC guidelines accept this point in theory, in practice there has been a "chilling effect" on public servants, according to groups such as the PSA. 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".<sup>96</sup> In response, the SSC could develop a Charter of Political Rights for all State servants so as to establish – and promote – their right to take part in public debates and political activity without facing retaliation. A parallel charter could also be useful for local council staff.

## Ensuring people speak out

The government could run programmes that encourage all publicly funded employees – including teachers, academics, medical staff and scientists – to be politically active. This would recognise the expertise they have to contribute to democratic issues and their rights to free speech, consistent with carrying out their jobs in a neutral and impartial manner.<sup>97</sup> In addition, a stop could be put to increasingly frequent 'suppression clauses' in government contracts that prevent researchers discussing their findings in public.<sup>98</sup> In contrast, there could be a requirement on government that all publicly funded research be proactively published. The government could also clearly affirm that NGOs receiving public funding will not be punished for speaking out – an issue that surveys show is an increasing problem.<sup>99</sup>

94 Tom Pullar-Strecker, 'Broadcasting coalition backs content levy', *Stuff*, 6 March 2014, available at: <http://www.stuff.co.nz/technology/digital-living/30021028/broadcasting-coalition-backs-content-levy> (accessed 17 May 2017). See also: Peter Thompson, 'Show me the Money: Funding Possibilities for Public Television in New Zealand', paper presented at the 2011 SPADA Conference, Auckland, 10-11 November 2011.

95 Thompson, 'Show me the Money', p.15.

96 Dairne Grant, 'Right of state servants as private citizens to participate in political activities', Open Government Partnership New Zealand – Suggested Actions, 24 August 2016, available at: <https://www.opengovpartnership.nz/suggest-an-action/right-of-state-servants-as-private-citizens-to-participate-in-political-activities> (accessed 17 May 2017).

97 Nicky Hager, personal conversation with the author, 2 May 2017.

98 Bruce Munro, 'Critical Clauses', *Otago Daily Times*, 8 March 2016, available at: <https://www.odt.co.nz/lifestyle/magazine/critical-clauses> (accessed 17 May 2017).

99 Sandra Grey and Charles Sedgwick, 'The Contract State and Constrained Democracy: the community and voluntary sector under threat', *Policy Quarterly*, Volume 9, Issue 3, August 2013, pp.3-10.



## Strengthening consultation

While many consultations (on draft legislation and other matters) are thorough, lengthy and well-run, this is not always the case.<sup>100</sup> Public input into key proposed measures could be guaranteed through various means. Consideration could be given to mandating aspects such as periods for public notification, adequate information and due process for public input, as suggested during the latest OGP Action Plan consultation.<sup>101</sup> For instance, there could be a mandatory 12-week window for submissions to select committees considering draft legislation, as in other countries. The government could also adopt the International Association of Public Participation (IAP2) core values to guide all such activities, following another Action Plan suggestion.<sup>102</sup> And, as the drafters of the International Standards for Lobbying Regulation have argued, public officials could be required “to ensure that they are consulting with a balanced set of interests and they could make efforts to gather input from sectors that are traditionally under-represented”.<sup>103</sup> This could all be brought together in a new, government-wide policy framework on direct public engagement, led by one of the central agencies. In addition, early publication of draft bills, alongside supporting material such as cost-benefit assessments, would increase transparency and allow greater scrutiny to improve the quality of law. This would build on the fact that the Cabinet Manual now encourages extensive early consultation. The government could also consider Jennifer Lees-Marshment’s proposal for a Ministry for Public Input.<sup>104</sup>

**Shining Light:** *The European Commission’s minimum 12-week window for public consultations*<sup>105</sup>

## New forms of consultation

The government has already made a welcome push to take transactional services online, but could also make greater use of new online methods of consultation such as pol.is, a tool that groups citizens according to their support for particular statements and then allows those groups to work together online to refine proposals. Another such tool is a New Zealand-developed platform called Loomio, a simple, clear and intuitive forum for people to discuss issues and put up proposals, which has already been used successfully by a few departments and local councils, and could be much more widely used. The government could also livestream key meetings with organisations on issues of major interest. Action on this issue would build on measures such as the government’s Online Engagement guidelines (available at <https://webtoolkit.govt.nz/guidance/online-engagement/>).

**Shining Light:** *Taiwan used many of the above tools to quickly assess how the public wanted controversial transport app Uber to be regulated – and then brought public pressure to bear*<sup>106</sup>

*Public officials could be required “to ensure ... they could make efforts to gather input from sectors that are traditionally under-represented”.*

<sup>100</sup> Mei Heron, ‘New TPP timeframe an “attack on democracy”’, RNZ, 8 April 2016, available at: <http://www.radionz.co.nz/news/political/300943/tpp-timeframe-attack-on-democracy> (accessed 17 May 2017).

<sup>101</sup> Wallaccat, ‘Rules to ensure due process and rights and provision for public input’, Open Government Partnership New Zealand – Suggested Actions, 24 August 2016, available at: <https://www.opengovpartnership.nz/suggest-an-action/rules-to-ensure-due-process-and-rights-and-provision-for-public-input> (accessed 16 April 2017).

<sup>102</sup> Tyeray, ‘To adopt the IAP2 core values for public participation’, Open Government Partnership New Zealand – Suggested Actions, 24 August 2016, available at: <https://www.opengovpartnership.nz/suggest-an-action/to-adopt-the-iap2-core-values-for-public-participation> (accessed 16 April 2017).

<sup>103</sup> International Standards for Lobbying Regulation, ‘Participation & Access’, n/d, available at: <http://lobbyingtransparency.net/standards/participation-access/> (accessed 19 April 2017).

<sup>104</sup> Jennifer Lees-Marshment, ‘Improving public input in government: Ministers’ Perspectives and Recommendations for Future Practice’, presentation for Institute for Governance and Policy Studies, 21 August 2014.

<sup>105</sup> European Commission, ‘Guidelines on Stakeholder Consultation’, n/d, available at: [http://ec.europa.eu/smart-regulation/guidelines/ug\\_chap7\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/ug_chap7_en.htm) (accessed 11 June 2017).

<sup>106</sup> Max Rashbrooke, ‘How Taiwan is inoculating itself against the Uber “virus”’, *City Metric*, 8 February 2017, available at: <http://www.citymetric.com/business/how-taiwan-inoculating-itself-against-uber-virus-2786> (accessed 11 June 2017).

# Other Measures

## A national anti-corruption strategy

To ensure coherence in its drive for integrity and openness, the government could implement a comprehensive National Anti-Corruption Strategy, as recommended by Transparency International. The strategy “could aim to strengthen and protect our relatively high integrity society as a taonga and as a national asset”, and would include specific policies such as “extending requirements for public office holders in all branches of government to register pecuniary interests, declare assets, face restrictions on post-public office employment, and declare acceptance of gifts and hospitality”, as well as many other measures outlined in this report.<sup>107</sup> This would build on the government’s ratification in 2015 of the United Nations Convention against Corruption, following the passage of the Organised Crime and Anti-corruption Legislation Act (albeit, worryingly, bribes remain legal in some circumstances).<sup>108</sup> The regular public sector integrity survey, discontinued since 2013, could be reinstated as part of this strategy.

**Shining Light:** Britain’s anti-corruption plan, available at: <https://www.gov.uk/government/publications/uk-anti-corruption-plan-progress-update>

## Register of beneficial interest

The Panama Papers exposed New Zealand’s part in international tax evasion and money laundering.<sup>109</sup> While this is strictly a matter of commercial not government openness, such illicit financial flows often involve public sector corruption, and there is a strong public interest in tackling these issues. One important way to counter these practices would be a register of beneficial interest that records the ultimate owners or controllers of every company in a given territory. Following the lead of other countries, New Zealand could implement a register that records details such as the beneficial owners’ full name, date of birth, nationality, country of usual residence, residential address, date on which they acquired the beneficial interest in the company, and details of that beneficial interest and how it is held. Most of this information (though not the owner’s date of birth or residential address) would be made public, to increase scrutiny, to allow officials in other countries to scan for potential offenders (rather than having to request details from officials in every potential case), and to enable journalists and others to investigate potential wrongdoing. In 2016 the government agreed to consider introducing such a register.<sup>110</sup>

**Shining Light:** Britain’s recently introduced register of beneficial ownership, which covers all those who ultimately own or control more than 25% of a company’s shares or voting rights<sup>111</sup>

One important way to counter [public sector corruption] ... would be [having] a register of beneficial interest that records the ultimate owners or controllers of every company in a given territory.

<sup>107</sup> Transparency International New Zealand, *Integrity Plus 2013*, pp.339-40.

<sup>108</sup> Michael Macaulay, ‘Why is bribery still legal in New Zealand?’, *Stuff*, 9 October 2015, available at: <http://www.stuff.co.nz/national/crime/72769980/html?src=ilaw> (accessed 13 June 2017).

<sup>109</sup> Gyles Beckford et al, ‘NZ at heart of Panama money-go-round’, *RNZ*, 9 May 2016, available at: <http://www.radionz.co.nz/news/panama-papers/303356/nz-at-heart-of-panama-money-go-round> (accessed 17 May 2017).

<sup>110</sup> State Services Commission, ‘Response to National Integrity Systems Report’, p.4.

<sup>111</sup> See: <https://companieshouse.blog.gov.uk/2016/04/13/the-new-people-with-significant-control-register/>.

## Judicial transparency

New Zealand's judiciary is generally seen as fair and non-corrupt. However, questions have been raised about its transparency, especially following controversy over Justice Bill Wilson's failure to adequately disclose his financial relationship with a lawyer appearing before him.<sup>112</sup> The government could implement, as Transparency International has argued, a "clear process for recusal of judges". Reforms to make the appointment of judges more transparent and to disclose judges' assets (on the same pattern as MPs' assets) could be considered.<sup>113</sup> There is also a case for making court documents much more readily available. Currently, documents have to be requested, and access can be refused without good reason, legal experts argue.<sup>114</sup> The courts could be subject to the same regime as increasingly operates in government: a presumption of automatic publication of documents, in an easy-to-access form, unless a judge orders otherwise; a clear process for requesting information (and criteria for refusing requests); and the compilation and publication of statistics on issues such as the severity of sentences handed out by different judges.

## Procurement transparency

Reviews of New Zealand's procurement processes have highlighted shortcomings in information and transparency. Systems have a focus on passive oversight with reliance on the OIA, rather than active patrolling of problems. Transparency International has argued that potential conflicts of interest are not well addressed, and that growing trade with highly corrupt countries will raise further risks.<sup>115</sup> The group's recommendations include more proactive disclosure of project information; incorporating explicit anti-corruption provisions into procurement procedures and documents; improving requirements for record-keeping; and periodic reviews of the integrity of spending and procurement in the Christchurch re-build. In particular, there is no central data on the number of directly awarded contracts versus those put out to tender, making it hard to assess how open the system truly is. While the government has made improvements to procurement, for instance by establishing a procurement academy and publishing more information on contracts, further work is required.

## Improving future OGP engagement

New Zealand's OGP Action Plans to date have been rushed and lacked ambition. Future plans could be given more time and be made significantly more ambitious, in line with the recommendations in this report. New Zealand could also take a much more active role in the OGP more generally, and in particular could make firm commitments to Pacific Island countries to provide meaningful help and leadership on OGP matters. Some of these measures would build on the government's existing plans to create a "flexible and enduring" OGP engagement platform.<sup>116</sup> In addition, while OGP action plans have so far focused on central government, there is a huge amount that local councils could contribute to openness. Ideally, the OGP would be embraced at the local level, with

*Transparency International has argued that potential conflicts of interest are not well addressed, and that growing trade with highly corrupt countries will raise further risks.*

<sup>112</sup> Andrea Vance, 'Controversial Supreme Court judge resigns', *Stuff*, 21 October 2010, available at: <http://www.stuff.co.nz/national/politics/4259627/Controversial-Supreme-Court-judge-resigns> (accessed 17 May 2017).

<sup>113</sup> Transparency International New Zealand, *Integrity Plus* 2013, pp.118-19.

<sup>114</sup> Graeme Edgeler, email to the author, 17 May 2017.

<sup>115</sup> Transparency International New Zealand, *Integrity Plus* 2013, p.127.

<sup>116</sup> See: <http://ogp.org.nz/commitment-5/>.

councils developing their own initiatives. That would require, among other things, central government to include councils in generating the next Action Plan.

**Shining Light:** *The Philippines government, which during the last OGP Action Plan round managed to speak directly with over 500 local councils*

## Improving local council openness

Many of the above recommendations apply to local councils as well as central government. In addition, a range of measures could target specific areas of local concern, including: making registers of interests compulsory for councillors (many councils have them, but they are not compulsory); reviewing the Local Authorities Members Interests Act 1968, which governs local councillors' interests; restoring the requirement on councils to consult about their annual plans; reviewing councils' use of workshops to make sure they are not circumventing public scrutiny by effectively taking decisions in private; remaining vigilant on councils' use of 'in-committee' sessions that exclude the public; and addressing concerns that councils are inappropriately charging for official information requests and are not putting enough resources into answering them. Councils could also look at introducing internal ombudsmen as a first port of call for citizens' complaints, on the model used in Australian councils and elsewhere.

## Publishing draft trade treaties

Trade treaties can make significant changes to New Zealand public policy, especially in an era of 'behind the border' agreements, such as the Trans-Pacific Partnership, that seek to regulate large areas of domestic policy. For that reason it is argued that the drafts of such treaties could be published, to allow the same public scrutiny afforded even relatively minor legislation. The Council of Trade Unions has argued that drafts could be published after they have been tabled in negotiations "unless there is a specific justifiable reason for withholding them".<sup>117</sup> This would build on a trend towards openness-as-default in other trade deals. There could also be "pauses in negotiations at regular intervals (e.g. annually)" when the text to date is made available for public debate. This would, however, have to be done in conjunction with other countries.

**Shining Light:** *The European Commission's decision to publish negotiating texts for the Transatlantic Trade and Investment Partnership*<sup>118</sup>

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<sup>117</sup> Bill Rosenberg, *CTU Monthly Economic Bulletin*, no 186, February 2017, p.6.

<sup>118</sup> European Ombudsman, 'Decision of the European Ombudsman closing her own-initiative inquiry OI/10/2014/RA concerning the European Commission', 6 January 2015, available at: [https://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark#\\_ftnref5](https://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark#_ftnref5) (accessed 11 June 2017).

# In conclusion

The main message of the above survey is that there is a wealth of options for New Zealand to profoundly improve its level of openness. At one end of the spectrum, there are well-cavassed, straightforward, technical amendments to legislation, such as reforms to the Official Information Act, which could be implemented with relative ease. At the other end, there are far-reaching, innovative ideas that would open up entire new channels for citizen participation.

Regardless of precisely which policies are taken up, inaction is not an option. While New Zealand's long-standing reputation as an open and transparent country should be a source of pride, it should not be a source of complacency. The problems with openness that already exist are only likely to get worse, given that, as Transparency International has pointed out, many of the country's arrangements are, if not actually corrupt, then certainly corruptible. Deepening trade ties with countries that lack strong traditions of openness will only exacerbate those issues.

In addition, younger generations, more connected and less deferential than their predecessors, are increasingly demanding openness by default, and a government that ignores that call is one that risks falling drastically out of line with citizens' expectations. But that need not happen. There are signs of a resurgent interest in openness; and in a small, flexibly governed country such as New Zealand, there are many opportunities for innovation and democratic experimentation. This report provides the basis for precisely that innovation.







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Victoria University of Wellington.

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