



Title: Meeting with Civil Society Organisations about the OGP National Action Plan (NAP4) Commitments

Date: 3 October 2022 **Security Level:** IN CONFIDENCE

Minister: Hon Chris Hipkins, Minister for the Public Service

Report No: 2022/0219

Purpose

To provide supporting information for your meeting with Civil Society Organisation (CSO) representatives involved in the development of the current Open Government Partnership (OGP) National Action Plan.

Date of meeting

5 October 2022

Background

CSO's play an important role in the development and co-design of commitments for New Zealand's Fourth National Action Plan (NAP 4). CSOs can provide a different lens, challenge agencies' assumptions and promote OGP commitments that align with OGP principles.

NAP4 is in the final stages of development and must be finalised by year end to fulfil OGP requirements.

The draft NAP4 has been developed by members of the public, CSO, agencies, and the Expert Advisory Panel (EAP) from some 1500 ideas.

In 2021 the ideas were synthesised into four themes you identified as having priority.

Much of 2022 has been spent with OGP participants, including CSOs, in developing potential commitments for NAP4. Four public workshops were held in April and May 2022, followed by 3 further public meetings between June and September 2022. Each workshop was led by an independent facilitator and ran for approx. 2.5 hrs. Large and small mixed groups discussed ideas under each of the themes. Potential commitments were developed in and after the workshops. Commitment templates were provided to all attendees for additional feedback.

The additional meetings were held to update CSOs on progress and provided a further opportunity for input.

At the meeting on 5 September CSO members asked to provide further feedback on the commitment templates that had been developed to draft stage. This feedback comprised further comments and additional commitments.

We have since provided this information to agencies for comment and given them an opportunity to update their commitments where possible. No substantial changes were made.

A table summarising CSO feedback and Agency response for each commitment is attached.

Overall, CSO feedback indicates a desire to do more on all commitments. Some seek to establish joint-working groups (including CSO) to oversee the co-design of solutions under each commitment.



Comment

Issues raised by CSO's during the meeting is likely to include:

No OGP budget and resources for development of the plan and delivery of commitments

This was raised by CSO's in a letter to you in March 2021. Your response was "Resourcing for OGP Commitments currently sits with implementing agencies and I expect that to continue, particularly given the financial constraints of continuing the Covid-19 response and recovery".

Agencies not supporting commitments due to their work programmes and priorities

CSO's consider this can be resolved by reprioritisation of agency baselines or commitments can be considered as new initiatives as part of 2023 budget bid.

The inclusion of all proposed commitments in the draft plan for consultation with your colleagues will provide an opportunity for any reprioritisation or future budget bids.

Agency response that commitments are inconsistent with existing policy

CSO's view is policy needs to be adapted if the partnership between agencies and CSO's is to be effective.

Lack of opportunity for co-creation, design, and delivery

The engagement process is outlined in the earlier background section. While there is always room for improvement, there have been a number of meetings, workshops, and opportunities to engage, co-design and provide feedback.

Coordination of all parties involved by the Commission, including collation of feedback and sharing information in a timely manner has at times been challenging.

CSO engagement has been very helpful lever when working with agencies to support commitments. This includes:

- Secrecy clauses in proposed legislation
- Beneficial ownership register
- Increased procurement transparency

The Commission's view is CSO involvement does not end once the plan is completed. Lead agencies will continue to work with CSO's in delivering commitments where appropriate.

Draft Commitments

Of the 12 draft commitments developed, in our view:

- Six have general agreement, and sufficient support to proceed. This includes *Greater scrutiny of secrecy* clauses which civil society members would like to include a review of existing clauses, in addition to greater scrutiny of proposed clauses.
- Two commitments: *Access to support services* and *Greater transparency of the use of algorithms and AI* are well-supported and sponsorship is still being discussed with potential lead agencies
- Three commitments are not supported by agencies.
- One is not supported by all parties



Two commitments still under discussion

There is strong CSO and Commission support for the two commitments that we are still working with agencies to get support for. These are:

- *Access to support services* (aligned with CABNZ's digital exclusion petition)
- *Greater transparency on the use of algorithms and artificial intelligence*

CSOs are very concerned that these are areas of increasing challenges which impact citizen wellbeing, trust and confidence and require intervention. However, we are yet to secure agency support for these commitments, due to prioritisation constraints.

Partial agreement – re Greater scrutiny over secrecy clauses

We have partial agreement in relation to '*greater scrutiny over the inclusion of secrecy clauses in legislation*'. After further discussion, the Ministry of Justice (MoJ) has now agreed to commit to actions that strengthen the vetting processes and transparency in relation to future secrecy proposals (but not retrospectively).

CSOs are seeking agreement to extend this commitment to:

- A review of all existing secrecy clauses; and
- the enactment of legislation amending or repealing existing clauses, by Dec 2024.

In our view such timeframes are not feasible for the enactment of legislation, nor would they enable the desired co-design. Furthermore, MoJ does not support this proposal as it is not part of their agreed work programme, nor do they have resourcing currently allocated.

Three additional commitments proposed - not supported by agencies

National interest analysis of the Aarhus Convention

This proposal had the least support in the initial workshop ranking these commitments by priority. The Ministry for the Environment have indicated domestic programmes and legislation already achieve much of the intent of the Aarhus Convention. Further, the Aarhus Convention is not well suited to our context, for example, the Treaty of Waitangi / Te Tiriti.

Public crown financial spending data in open data formats

Treasury does not support this proposal. In their view the relative benefits would be significantly outweighed by the costs. It would be resource intensive, have high upfront and ongoing costs with a small number of users. Treasury do not have budget for this work, consider the timeframes unrealistic and note it is not an agreed work programme priority.

Create an independent fiscal institution

Treasury feedback is that any such proposal should be dealt with at a Ministerial level and not through OGP.

Our advice

We recommend that you

1. **Acknowledge** the important role CSO's play in development NAP4, in particular their role to support co-design and challenge agencies to do more.
2. **Note** the issues likely to be raised by CSO's in the meeting covered under the "Comment" section on page two.



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3. **Note** the feedback from CSO’s and agencies on the twelve draft commitments in the attached table.







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Consolidated Civil Society Organisations suggested feedback and TKM/Agency response

Name of commitment	Current commitment	CSO suggested proposals	TKM/Agency response
General agreement on commitment			
Improve the level and quality of community engagement	Improve the quality of planning and advice to decision makers on the best methods of engagement by adopting the Policy Community Engagement Tool (PCET) for significant engagements undertaken by all public service agencies and reporting on its use to Te Kawa Mataaho.	Agree with the direction but propose to go further with: 1. Co-create the tool 2. Co-design of the guidance/standards on use of tool 3. Independently funded report by relevant civil society on agency use of tool 4. Joint working group to oversee commitment (by March 2023) 5. Involved in DPMC review/enhancement of tool (by April 2023) 6. Co-design of mandatory standards and publication (by Oct 2023)	1. Tool already exists and is based on IAP2. Being piloted as part of RCOI 2. There is a current commitment to review the policy tool by DPMC based on RCOI engagement. We agree with the need to review and enhance the tool. However, this should be done with the relevant external groups involved in the pilot 3. TKM does not have funding to support an independent review. We consider there are other ways to ensure transparent and proportionate reporting. This will be considered as part of the work under the commitment. 4. This is raised across all commitments. We consider tailored arrangements are needed proportionate to the commitment involved. Joint working groups for all commitments would not be feasible without additional resourcing and add a high administrative burden. This view applies to all commitments and is therefore not repeated under each. 5. Refer to item 2 6. Agree with co-design approach to future standards, but we think it is too early as the Commission’s LTIB shows we need to start taking steps through initial requirements. Future development of any further standard could be co-designed
Innovative public participation in policy design and decision making	Identify and support at least two innovative deliberative engagement processes being used. Review and share lessons learned.	Strong alignment with CSO views, have asked for: 1. At least two deliberative processes 2. A joint working group to oversee the work	1. Agree 2. This is not something that can be determined by TKM. Appropriate tailored arrangements would need the agreement of any organisation piloting an innovative process – this applies to TKM involvement and CSO
Creation of a counter-fraud and corruption strategy	Development of a national counter fraud and corruption strategy along with initiatives to increase government and public resilience.	1. Wanted to ensure any strategy honours Te Tiriti 2. Joint working group with SFO, civil society and Māori be established to co-design future work 3. Prefer strategy included non-government organisations	1. Responsibility of the lead agency (SFO) to ensure any strategy appropriately considers Te Tiriti implications and consider the appropriate co-design approach in the context 2. Refer to item 1 3. SFO acknowledge the initial focus will be on government agencies, however, this does not preclude future expansion to non-government organisations.
Greater transparency of government procurement	Development of digital data platform to capture procurement information in alignment with open contracting data standards.	1. Establish a joint working group to oversee and co-design work 2. Cabinet to agree to: a. remove exemptions to mandatory publication of contract award notices and b. to adopt the open contracting principles and open contracting data standards 3. Work with CSOs to design and implement an education programme and roll this out to all government agencies 4. Design and implement system changes to support increased transparency 5. Facilitate public participation in accessing publication of procurement data.	1. Lead agency (MBIE) has agreed to make changes to the GETS process and develop a digital data platform to capture procurement information in alignment with open contracting data standard. Joint working group/co-design to be discussed with MBIE 2. Current commitment does not include a cabinet paper to remove exemptions and adopt open contracting principles and open contracting data standards 3. Not in MBIE’s commitment 4. Potentially covered by MBIE agreed commitment 5. Discuss with MBIE
Greater transparency of the beneficial	Enhance transparency of beneficial ownership of companies and limited	1. Commitment incorporates adoption of the Open Ownership Principles and data standards	1. Ask MBIE to consider developing a digital data platform to capture beneficial ownership data information in alignment with open contracting data standards.

ownership of companies	partnerships by introducing legislation that requires beneficial owners’ identifying information to be accessible on a transparent public register	<div>2. Establish a working group with civil society and iwi groups</div> <div>3. Establish feedback channels to enable the public to raise concerns with regulators about the veracity of the beneficial ownership information published</div>	<div>2. & 3. Discuss with MBIE</div>
Partial agreement on commitment			
Greater scrutiny over the inclusion of secrecy clauses in legislation	Greater scrutiny over inclusion of secrecy clauses in legislation Strengthened forward-looking process led by MoJ, with a view of ensuring quality and appropriateness of any such clauses in future legislation	<div>1. The proposed commitment is too narrow and should include a process for amendment or repeal of existing secrecy clauses</div> <div>2. Complete review of all existing clauses, and introduction of new co-designed guidance by Feb 2024</div> <div>3. Legislation repealing or amending of existing secrecy clauses enacted by 2024</div> <div>4. Regular reporting and publication on the creation and removal or amendment of secrecy clauses</div>	<div>1, 2 and 3. Lead agency advice is that this is not currently on current work programme which is aligned to their Minister’s priorities. They are not currently resourced to undertake such work.</div> <div>4. Rather than public reports, MoJ would support improved transparency over the process it undertakes when reviewing such clauses in legislation.</div>
Still working with agencies to support commitment			
Access to support services	Establish a community of knowledge and practice led by practitioners in partnership with agencies to focus on developing accessible (inclusive and equitable) multi service channels that meet the needs of the people. The commitment was co-designed with CAB as the CSO partner.	<div>1. The current digital-first or digital-only trajectory of the public service is creating an imbalance where perceived efficiencies and cost savings within the public sector are being prioritised over the choice and needs of many New Zealanders.</div> <div>2. This proposal is an opportunity for a purposeful change in approach which will more closely align service delivery with public service values and a spirit of service to the community.</div> <div>3. Look at where there is existing good practice, learn and adapt from ‘the bright spots.’ No requirement to start a new process per se.</div> <div>4. Also consider the potential for a pilot and implementing some quick wins.</div>	<div><div>• PSC is still working to identify a lead for this commitment.</div><div>• Potential lead is IR as they are the system lead for transformation.</div><div>• A potential commitment could include<ul style="list-style-type: none">Lead to work with CABNZ and civil society to understand the issuesCo-design high level guidance for transformation projects to ensure customer lens and customer access to support is available to all</div></div>
Greater transparency on the use of algorithms and artificial intelligence	Improve the transparency of the use of algorithms and artificial intelligence by government	<div>1. Establish a community of practice (CoP) on algorithm use across the public sector</div> <div>2. Use that CoP to support implementing the findings from the review of the charter as published in December 2021</div> <div>3. Require government agencies to adopt the charter in their management of data</div> <div>4. Require government agencies to publish an annual report on their use of algorithms, which is subject to regular audit</div>	<div>Agency Feedback (NZ Stats)</div> <div><div>• Stats not currently in a position to make a commitment in the OGP</div><div>• Stats are committed to progressing the findings from the algorithm charter review and are doing this as part of a wider look at data ethics</div><div>• Stats are considering what role the Government Chief Data Steward could play and tie together their work in relation to the Algorithm Charter, the Data Ethics Advisory Group with some of our other existing tools.</div></div>

No agency support for commitment			
National Interest Analysis of the Aarhus Convention	Establishment of a joint civil society and government working group to scrutinise the implications for New Zealand of accession to the UN’s Aarhus Convention; co-production of a National Interest Analysis of the Convention and provision of advice to Ministers on accession.	<ol style="list-style-type: none"> Setting up joint working group National interest analysis and advice to Ministers Publication of the analysis and advice to interested parties Evaluation of lessons learned of co-produced analyses of international instruments NZ is signing up to. 	<ul style="list-style-type: none"> In NAP 4 participatory workshops to develop and rank commitments, this proposal was ranked as a least preferred option by a joint group consisting of agencies, EAP, and civil society organisations Agency feedback (MfE). They support the outcomes the Aarhus Convention aspires towards. They note there are current domestic work programmes underway which support better access to environmental data. NZ have similar obligations to the Convention including: <ul style="list-style-type: none"> Principle 10, Rio Earth Summit Declaration in 1992 Sections 11 and 12 of the Public Service Act 2020 Goal 16.7 of UN’s Sustainable Development Goals Participation in the OGP <p>These commitments hold NZ government to account for failures to comply with the principles of access to information, public awareness, and access to Justice</p> <ul style="list-style-type: none"> Not considered a priority
Publish Crown financial spending data in open data formats	Publication of Crown financial spending data as open data, training people on use of the data, and governance to sustain the delivery of these.	<ol style="list-style-type: none"> Establish project team and production of commitment project plan (published) Agree on initial choices for publication methods, file formats, APIs, static datasets, and frequency of updates Co-design governance structure Training needs analysis Co-design workshop for training programme Deliver first round of training Annual reports on the use of CFISnet data published 	<p>Agency feedback (Treasury)</p> <ul style="list-style-type: none"> The commitment is not resourced and unlikely to be a (ministerial) priority for Treasury. They acknowledge: <ul style="list-style-type: none"> Treasury publishes the Crown financial expenditure data in formats that are not open data formats and machine readable. Treasury experience to date with data published in open format, is it will be resource intensive with high upfront costs (likely \$millions) and will require ongoing funding to maintain. The main users would be academics, analytical institutions and think tanks. <ul style="list-style-type: none"> This commitment is unlikely to achieve greater civic society access to information. The timeframes proposed are not realistic and it is unlikely that, even with resourcing, the release in open data format would be before Budget 2025.
Create an independent fiscal institution	Complete the detailed policy work required to create an independent fiscal institution	<p>To improve New Zealand’s fiscal policy framework through establishing an Independent Fiscal Institution. This commitment would build on publication of fiscal data in linked open data format (proposed commitment 11, above) as well as building on Commitment 1 (Open Budget) in NAP2 when Treasury disclosed a very small set of Crown expenditure data in an open format</p> <ul style="list-style-type: none"> Would provide for independent evaluation and commentary on New Zealand’s fiscal policy performance. Will improve parliamentary scrutiny of public finances and fiscal policy provide for independent costings of political party policies to better inform public debate. <p>However, work is needed to finalise the proposals.</p>	<p>Agency feedback (Treasury)</p> <ul style="list-style-type: none"> This is most appropriately dealt with and raised at Ministerial level, not as a commitment. The IFI currently is a very low ministerial priority
Agreement from all parties not to proceed			
Media content harm reduction	Create a two-pronged, system-wide, government response to address and prevent media content harm which in turn increases public trust and confidence in our media and public institutions responsible for regulation.	<ol style="list-style-type: none"> CSO feedback indicates this does not meet OGP requirements and is work already underway 	<ol style="list-style-type: none"> We agree and propose to not progress the commitment. MBIE unable to support commitment

Name	Organisation and Bio
<p>Andrew Ecclestone</p> 	<p>New Zealand Council for Civil Liberties</p> <ul style="list-style-type: none"> ○ NZ Council for Civil Liberties works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties by government or any other parties. ○ Andrew has worked in the field of freedom of information and open government for 30 years, as a campaigner, a civil servant, an investigator for the Ombudsman's office, and as a consultant. ○ His specialities include freedom of information, open government, policy analysis, advocacy, and stakeholder management.
<p>Julie Haggie Chief executive</p> 	<p>Transparency International NZ</p> <ul style="list-style-type: none"> ○ Transparency International's main goals are centred around stronger integrity systems, authoritative voice in preventing corruption, raising awareness, expanding civic participation, and being true to the Treaty of Waitangi. ○ Julie has 20 years of experience as a Chief Executive Officer and senior manager in regulatory, professional and NGO organisations. Julie is a strong advocate for civil society participation.
<p>Laurence Millar</p> 	<p>Transparency International NZ</p> <ul style="list-style-type: none"> ○ Laurence provides independent advice to governments on the use of technology to transform organisational performance. He has 45 years' experience in the innovative use of technology to support organisational change. ○ His specialities include how emergent technologies affect the relationships between governments and citizens, how everyone can be digitally included, and how government investments in technology can best deliver value.
<p>Sacha Green National Advisor Legal and Strategic</p> 	<p>Citizens Advice Bureau NZ</p> <ul style="list-style-type: none"> ○ The Citizens Advice Bureau help people to know and understand their rights and obligations, and how to use this information to get the best outcomes. They provide people with the confidence and support they need to take action. ○ Sacha is an advocate for justice and plain language law.
<p>Katherine Peet</p> 	<p>Network Waitangi Ōtautahi</p> <ul style="list-style-type: none"> ○ Network Waitangi Ōtautahi supports the development of a Treaty-based, multicultural future through education to enhance understanding of the indigenous status of Tangata Whenua and the role of everyone else as Tangata Tiriti. ○ For 40 years, Katherine has been an advocate for social justice, bringing to bear her educational, analytical and administrative skills to a wide range of agencies in the non-governmental organisation, not-for-profit and voluntary sectors.
<p>Cath Wallace Vice-Chair</p> 	<p>ECO</p> <ul style="list-style-type: none"> ○ ECO is New Zealand's national network working to protect our environment. ○ Cath has combined an academic career in public economics and policy specialising in environmental policy and economics, with extensive environment campaigning on a wide range of issues.