

**Title: Open Government Partnership (OGP) Fourth National Action Plan (NAP4) – response to concerns raised by civil society organisations****Date:** 22 November 2022 **Security Level:** IN CONFIDENCE**Minister:** Hon Chris Hipkins, Minister for the Public Service**Report No:** 2022/0295**Purpose** To respond to concerns raised by civil society organisations (CSOs) on the NAP4 and provide you with information to support the Cabinet meeting on the NAP4.**Date of meeting** 23 November 2022**Background** Representatives of CSOs have written to you with concerns about the NAP4. Issues raised relate to both the final content of the NAP4 and the process used to develop the NAP4.

The NAP4 must be finalised by the end of 2022 to fulfil OGP requirements. Failure to do so will result in the OGP issuing New Zealand a “contrary to process letter”, with two letters resulting in a procedural review. Following Cabinet agreement, the NAP4 must go out for a final two-week public consultation period. This Cabinet meeting is the last meeting that can consider the NAP4 while allowing enough time for the final two-week public consultation to occur.

Te Kawa Mataaho does not agree with the characterisation of the process to develop the NAP4 that CSOs have presented. The development of the NAP4 involved considerable engagement and co-design with CSOs and the general public.

CSOs key concerns were:

**Key points**

- Commitment to adopt a community engagement tool – CSOs wanted a standard for public consultation included
- Commitment to strengthen transparency and accountability of algorithm use and commitment to establish a multi-channel approach for public services - CSOs were disappointed these commitments were not included.
- Additionally, CSOs wanted stronger action on the OIA exemption clauses commitment and a commitment to undertake a National Interest Analysis of the Aarhus Convention.

Following consultation, further changes were made to the NAP4:

- Adding the requirement for a public service wide standard to be developed as part of the community engagement tool commitment.
- The addition of two further commitments (strengthen the transparency and accountability of government agencies’ use of algorithms, and to establish a multi-channel approach for public services).
- Having the Ministry of Justice, supported by Te Kawa Mataaho, write to all agencies asking them to review existing exemption clauses against new guidance whenever agencies are considering making any changes to relevant legislation



Following agency and ministerial consultation a number of changes were made to the NAP4.

**Addition of a commitment to strengthen the transparency and accountability of government agencies' use of algorithms**

CSOs consider this commitment is critical to government leadership and were concerned it was not included in the draft NAP4 due to not having an agency sponsor. Stats NZ have confirmed they will be the agency sponsor for this commitment, and it is now included in NAP4.

**Addition of a commitment to establish an integrated, multi-channel approach to public services**

CSOs were also concerned a commitment relating to multi-channel service delivery was not progressing in NAP4. It has now been determined that the Department of Internal Affairs will lead this commitment and it is included in NAP4.

**Changes to the NAP4**

**Amendment to commitment on a community engagement tool to include a minimum standard for public consultation**

CSOs were disappointed this commitment did not include the creation of a basic minimum standard for consultation. The Cabinet paper now notes Te Kawa Mataaho will develop a model standard for this, addressing the issue raised by CSOs.

**Amendment to commitment on OIA exemption clauses to include a process for agencies to review and assess existing OIA exemptions in legislation**

CSOs were concerned the commitment on OIA exemption clauses did not include consideration of OIA exemption clauses in existing legislation. Following feedback from the Minister of Justice's office it is now agreed that the Ministry of Justice, supported by Te Kawa Mataaho, will write to all agencies asking them to review existing exemption clauses against new guidance whenever agencies are considering making any changes to relevant legislation.

We consider these changes go some way to addressing concerns raised by CSOs.

**Commitments related to Crown finances**

CSOs noted disappointment that two commitments related to Crown finances were not progressing through NAP4:

**Publishing Crown financial data in open formats.** Treasury was supportive in principle of the commitment to publish data in open formats but noted there are more cost-effective measures for improving budget transparency, and that they already publish many key data sets as Excel files. It is expected the main users of additional resources would be academics, think tanks and financial institutions, not the general public. Treasury estimated the proposal would cost approximately \$1.5 million to establish in addition to ongoing annual costs of approximately \$300,000. For these reasons the proposal has not been progressed through NAP4.

**Other matters raised  
by CSOs**

**Create an independent fiscal institution (IFI).** In 2018-19, Treasury consulted on establishing an IFI and Cabinet agreed on what the functions of an IFI would be. In December 2021, the Finance and Expenditure Committee reported on the matter, indicating moderate support for including the concept of an IFI in any future legislation to strengthen fiscal responsibility. However, there was no urgency for the proposal to be progressed at that time. As this issue was recently considered by Cabinet it has not been included in NAP4.



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## Co-production of a National Interest Analysis of the Aarhus Convention

CSOs were disappointed the commitment related to the Aarhus Convention has not been included in NAP4. CSOs disagreed with the Ministry for the Environment's view that equivalent obligations are covered by other instruments New Zealand is already party to.

Cabinet could choose to add this commitment to the NAP4. We suggest you may wish to discuss this option with the Minister for the Environment.

As outlined earlier, additional commitments can be added to NAP4 during 2023.

## Dissatisfaction with the process of developing NAP4

CSOs noted general dissatisfaction with the process of developing NAP4 and the involvement of CSOs in this process. Te Kawa Mataaho does not agree with CSO's characterisation of the process for developing NAP4. We note that there has been extensive engagement with CSOs throughout the development of the NAP4 and the NAP4 reflects the output of a co-design process that involves many stakeholders. We have been unable to advise CSOs of recent changes stemming from consultation due to the principle of Cabinet confidentiality.

However we do have some thoughts on how to improve the co-design process for future plan development which we would like to discuss with you in the New Year.

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We recommend that you:

1. **Note** this is the last Cabinet meeting that can consider the NAP4 if it is to be finalised this year, as required by OGP rules.
2. **Note** that several changes have been made to the NAP4 since it was last provided to CSOs, including the addition of two further commitments.
3. **Note** that co-design of the NAP4 has been undertaken in good faith and reflects extensive engagement and collaboration between CSOs and government agencies.
4. **Note** you may wish to speak to your Ministerial colleagues about the inclusion of further commitments (for example, the Aarhus commitment).
5. **Agree** to support the NAP4 through Cabinet.

### Our advice

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