



## Open Government Partnership

### Independent Reporting Mechanism

#### New Zealand:

### Comments received on the Transitional Results Report for the third OGP action plan (2018-2021)

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#### Comments Received from Civil Society

The following comments were received from Andrew Ecclestone, Deputy Chair of the New Zealand Council for Civil Liberties (24 February 2022) on Sections 2.3 and 2.4 (Pages 6-24):

Commitment	Was it delivered?	Did it open government?	Other comments	Looking ahead
<b>I. Engagement with Parliament</b>	No comment	No comment	The Council finds it embarrassing that the New Zealand Parliament relies upon Facebook for livestreaming proceedings of its select committees. We recommend Parliament is resourced to extend its video and broadcasting capabilities so that it has its own tools that are used for livestreaming – and providing access to indexed and subtitled recordings – of	A future commitment should be to co-design with the public and CSOs extended video broadcasting and/or livestreaming capabilities, along with related improvements to Parliament’s website. The Parliamentary Service and Office of the Clerk should be brought within the scope of the Official Information Act, as recommended by the Law Commission in 2012.

<b>Commitment</b>	<b>Was it delivered?</b>	<b>Did it open government?</b>	<b>Other comments</b>	<b>Looking ahead</b>
			all public proceedings, including select committees.	
<b>2. Youth Parliament</b>	No comment	No comment	None	Since the Youth Parliament occurs regularly anyway, we would be puzzled by its inclusion in any future action plan, unless ambitious 'stretch goals' were added to make clear the value of its inclusion in the plan.
<b>3. School Leavers' Toolkit</b>	No comment	No comment	NZCCL notes the concerns in the IRM report that the civics and citizenship guidance is only optional, and endorses this concern. We would like to see this, and material on the rights in the NZ Bill of Rights Act, Human Rights Act, Official Information Act and Privacy Act being part of the compulsory curriculum.	Further development of 'civics education' material for the school curriculum will be valuable. NZCCL is interested in contributing to a commitment on this topic.
<b>4. Making New Zealand's secondary legislation readily accessible</b>	Yes	Yes	It is unfortunate that the commitment uses the word 'accessible' when it means 'available'. 'Accessible' would imply it can be	It would be helpful to know if there is a work plan to address the accessibility issues for pre-April 2015 legislation.

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			<p>comprehended, for example, by people using screen reader software because they have visual impairments. Large amounts of the content is accessible, but we note that the <a href="http://legislation.govt.nz">legislation.govt.nz</a> site says:</p> <p>“The final form and content of legislation is a matter for Parliament or, in the case of secondary legislation, the person or body responsible for making the secondary legislation. There are therefore some instances where the Parliamentary Counsel Office is unable to publish legislation (including Bills and Supplementary Order Papers) in a form that fully complies with the Standards. Alternative text (or alt text) for images, and table summaries, are added routinely to legislation when it is first</p>	

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			published or when it is consolidated. However, this information may not be provided for legislation that was published or most recently consolidated before 11 April 2015.”	
<b>5. Public participation in policy development</b>	Yes. Page 9, paragraph 4 – NZCCL endorses ECO’s concern that some agencies’ consultations continue to be with small groups - if at all. We particularly note the lack of public consultation on development of policy for Covid-19 vaccine passes.	NZCCL agrees that so far there has only been marginal impact. It appears that agencies that did well before continued to use a range of consultation and engagement tactics, and others continued not to.	It will be critical to get this guidance and good practice embedded in agencies via a top-down push from the Department of Prime Minister and Cabinet and the Public Service Commission/Te Kawa Mataaho. The latter should link implementation of the guidance and tools to its assessments of agency Chief Executives meeting their duty under s. 12 of the Public Service Act to ‘foster a culture of open government.’	A commitment in NAP4 on work to embed routine operationalisation of this guidance and good practice would be helpful – and could be part of a commitment on ensuring transparency for assessment of Chief Executives’ delivery of all their s. 12 Public Service Act duties.
<b>6. Service design</b>	No comment	No comment	(a) NZCCL endorses in particular Principle 7 of the	The Results Report states that ‘Agreement is now being reached on a

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			<p>Digital Service Design Standard's principles, <a href="#">'Work in the Open'</a> and would want to see this principle carried over to any future service design standard or guidance.</p> <p>(b) Page 20 of the Results Report, pointing to footnote 27, says "Stakeholders propose that this work include using New Zealand's 'Rules as Code' (i.e. digitising legislation) to improve service delivery."</p> <p>We need to be clear that while some stakeholders may have said this, not all stakeholders agree with this proposition. In particular the suggestion quoted in the article that is linked to in the footnote that "all legislation is coded".</p> <p>The last sentence of the assessment of commitment 6</p>	<p>two-stage approach to implementing the DSDS, including developing a minimum set of mandatory standards that will be monitored and enforced.' This must include the current Principle 7 (Work in the Open), as well as meeting accessibility standards so any digital services and 'products' are inclusive.</p> <p>This would be consistent with one of the purposes of the Official Information Act 1982, which is to enable people to 'participate in the making and administration of laws and policies'.</p>

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			should be amended to insert the word 'Some' at the beginning.	
<p><b>7. Official information</b></p>	<p>NZCCL endorses the assessment of the IRM reviewer and supports the comments provided by a third party in relation to milestone one, that a failure to proceed with the review of the Official Information Act diminished confidence in the value of the OGP work in New Zealand.</p> <p>Re: milestone 3, on page 11 paragraph 1 of the Results Report, NZCCL notes that during the Delta outbreak in Auckland (August-Nov 2021) the government suspended publication of Cabinet papers with no warning or announcement. See <a href="#">this article from Marc Daalder of Newsroom</a> and page 9 of <a href="#">this transcript</a> of a press conference with the Prime</p>	<p>There is a problem with assessment of this question for commitment 7. For some of the milestones the answer is 'marginal'. But for milestone 2, NZCCL does believe that publication of Cabinet papers has increased the openness of government. This highlights that there are broader assessment design issues that the OGP/IRM might want to guide members and reviewers on, when there are multiple outputs for a single commitment, and yet only a single outcome answer is sought.</p>	<p>Re: milestone 2, page 11 paragraph 3 of the Results Report, NZCCL notes that footnote 62 to points to an <a href="#">OIA response published in March 2020</a>. The Council notes that in that OIA response the PSC said (in response to part 6 of the request) that they held no information about engagement with people outside government agencies about the effectiveness of the proactive release work, because "no information was sought from people outside of government departments". The Council is disappointed that the government did not seek the views of any people outside government on whether a policy initiative to make</p>	<p>Work to be done in NAP4:</p> <p>(a) Co-design proactive publication policy for government so as to be more coherent, and ready for codifying in an amended OIA.</p> <p>(b) Co-design a review of secrecy clauses that override the OIA, and procedures to avoid creation of more in future, ready for codification in amended OIA</p> <p>(c) Undertake a review of the OIA that is not conducted by the Ministry of Justice (as proposed in the advice to the Minister) or any other government department, but by an independent review board (such as the one that led to the creation of the OIA in the first place).</p>

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	Minister on 19 October 2021.		more information available was effective.	
<b>8. Review of government use of algorithms</b>	<p>The IRM Results Report is correct in that the outcome is marginal at best, but is it correct in saying that progress toward the commitment is substantial? If the commitment is complete depends on our interpretation of this sentence: “Complete an initial review of existing operational algorithms and their use across a range of government agencies”. The government has interpreted “initial review of existing algorithms” to mean considering algorithms as a concept. A more reasonable interpretation of “initial review of existing operational algorithms” would be to publish review documents for a select group of algorithms. The <a href="#">Algorithm Assessment report</a>, the only</p>	No	Minor correction. Footnote 82 (page 17 mis-spells the name of Steven Ennslen).	<p>Publish Algorithm Impact Assessments for every algorithm. For NAP4 NZCCL would like to see a commitment that an algorithm impact assessment (AIA) will be published for every algorithm in use by our government. Those AIAs should be audited by independent auditors as recommended by the <a href="#">Toronto Declaration</a> and the EU’s <a href="#">PE624.262</a>, and the auditors reports also published. Furthermore, as advised by section 4.1 of PE624.262, the only people who have any hope of understanding the algorithms are civil servants who need to be enabled to blow the whistle. Evidence that an algorithm is acting illegally is more difficult to gather than similar evidence for the actions of people, and our whistleblowing protections need to be expanded in kind.</p>

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	<p>tangible output of commitment 8, is a great disappointment. The Algorithm Assessment Report contains some initial notes after examining a tiny subset of existing algorithms. We also note that the now four-year-old Algorithm Assessment Report makes 5 recommendations. There is no evidence that any progress has been made toward any of the recommendations. While three of the recommendations could proceed in secret, two of them could not, and in any case there is no motivation for progress to be hidden. The Council has to conclude that the report is sitting unused. During the NAP3 period <a href="#">the Algorithm Charter</a> was published. It also makes a number of recommendations. Again, there is no evidence that any</p>			



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	<p>progress has been made toward any of its recommendations nor motivation for that progress to be hidden, so we have to conclude that the charter is also sitting unused.</p> <p>Commitment 8, recommendation 3 of the Algorithm Assessment Report, and the transparency commitment of the Algorithm Charter call for the publication of documentation for every algorithm. The IRM is correct in noting that not a single algorithm has been documented. If we agree that this was commitment 8, then work toward the commitment has not started.</p>			
<p><b>9. Increase the visibility of government’s data stewardship practices</b></p>	<p>NZCCL has a different view on delivery of this commitment from the Results Report. In the experience of one of our Executive Committee members, parts of this commitment were delivered.</p>	<p>No. NZCCL is not clear on how this commitment could have ‘opened government’. Is it even helpful for people to be able to read documents which are</p>	<p>We note that the Public Service Commission did not publish the ‘end of term’ reports on delivery of the commitments until months after they were provided to the Commission by the agencies</p>	<p>In NAP4 NZCCL would like to see the following related commitments: (i) To publish and keep updated the outputs of the data stewardship process, and develop quality measures what ‘stewardship’ is.</p>

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	<p>In particular, page 20 of the Results Report, in the sentence leading up to footnote 33 says “In November 2021, it published the Data Stewardship Framework, which provides the structure and language for collating stewardship guidance, resources, and tools.”</p> <p>However, the footnote - and Stats NZ’s web page – make clear the Framework was published in November 2020, not 2021. This appears to potentially be completion of milestone 1? If so, the workshops the Committee member has been to may have been part of milestones 2 and 4? If not, why did Stats not undertake work on milestones 2-4 during the extended lifespan of NAP3?</p>	<p>aspirations rather than policies? There is no mechanism to implement the data toolkit. Statistics New Zealand, the lead agency, lacks the policy setting, investigative, and enforcement powers which would be required to implement these data stewardship practices.</p>	<p>leading commitments. This made the job of the IRM reviewer unnecessarily difficult, including potentially the disparity between the IRM assessment of this commitment and the Council’s experience.</p>	<p>(ii) To publish a data catalogue describing every field in every table of every government database. The data catalogue would also include quantitative metadata like how many records there are of each type. Finally, the catalogue should describe the data quality checks and indicate how many records fail each check.</p> <p>Accompanying this should be the user manuals, support manuals, and design documents for every database and its accompanying applications.</p>
<p><b>10. Monitoring the effectiveness of public body information</b></p>	<p>No comment</p>	<p>The commitment ‘ambition’ states that people will be</p>		<p>NZCCL would like to see a piece of work to involve the public and civil society</p>

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management practices		able to see “the rates of progress central and local government agencies are making towards meeting those standards.” (NAP3, page 36). The Results Report (page 20-21) does not comment on meeting this ambition: how will the public be able see ‘rates of progress’?		organisations in assessment of Archives NZ’s enforcement policies and practices in relation to the duties and offences in the Public Records Act 2005. We see media reports that information has not been provided in response to a request because information has not been recorded in circumstances that lead us to believe that the section 17 duty to ‘create and maintain’ records has not been complied with. But we never see reports of enforcement activity resulting from this.
<b>II. Authoritative dataset of government organisations as open data for greater transparency</b>	NZCCL agrees with the Results Report assessment and comments on delivery of this commitment.	No, because it was not delivered.	The Results Report says the Public Service Commission Te Kawa Mataaho told them that a new plan for delivering this has been drawn up to start in early 2022. However, if this has started, the NZCCL committee member who was involved in delivery of this commitment has not been	The failure to deliver this commitment demonstrates the importance of government adequately funding the work. A future NAP could contain a commitment to work with civil society to identify priorities for the datasets/information to connect to the linked open dataset that (eventual) delivery of NAP3

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			contacted about further participation. Does this mean no civil society involvement going forward?	Commitment 11 will result in.
<b>12. Open procurement</b>	NZCCL agrees with the Results Report assessment and comments on delivery of this commitment.	NZCCL agrees with the IRM assessment that this had a marginal effect given the very limited data that is now published as open data rather than in PDFs.		New Zealand needs a much bolder procurement commitment in NAP4, which results in the publication of contracts, contract values, and information about suppliers. This should not be restricted to contracts awarded via tendering on the GETS platform, but also those awarded via panels of pre-approved suppliers and for contracts awarded when no public tendering took place and a contract was directly awarded.

The following comment was received from Jonathan (23 February 2022) on Section 2.2 (Page 4):

<b>Comment</b>
I guess CSO=Civil Society Organisation, but AFAIK that's only spelled out in a footnote.

## Comments Received from Government

The following comments were received from Hugo Vitalis, Deputy Commissioner, Integrity Ethics and Standards, Te Kawa Mataaho Public Service Commission (24 February 2022) on Section 2.3 (Pages 9-11):

Comments
<p><b>Statement</b></p> <p>The improved OIA process outputs from 65 government agencies, including from the 10 agencies that between them handle the bulk (67%) of all OIA requests, are commendable. Nevertheless, these statistics only report on 55% of the total 118 NZ government agencies, and stakeholders refer to regular difficulties with OIA compliance by key ministries.</p>
<p><b>Comment</b></p> <p>Te Kawa Mataaho Public Service Commission (the Commission) seeks clarity on several aspects of this paragraph. The author has either performed their own analysis and/or conflated several pieces of data. Without contextual information and/or the methodology used the above statements, and resulting conclusion, are open to misinterpretation. We would welcome the opportunity to discuss this with the author.</p> <p>Contextual information publicly available and/or provided to the reviewer:</p> <ul style="list-style-type: none"><li>- each reporting period the Commission publishes data on all Public Service departments, departmental agencies, Crown agents (including district health boards), independent Crown entities and autonomous Crown entities (totalling 118 agencies in September 2021). All agencies from which information is requested have reported to the Commission and had data published for every collection since the first 2015/16 dataset.</li><li>- during 2021, the Commission looked at the length of time agencies were taking to respond to OIA requests using publicly available information, namely responses to 2019/20 Annual Review questionnaires provided to Parliamentary Select Committees. The data showed that agencies are responding to requests in a timely way. The 10 agencies that between them handle the bulk (67%) of all OIA requests responded to 93% within 20 days.</li><li>- During the most recent published reporting period, 65 agencies published OIA responses. If this is the “improved process output” being referred to, this should be stated.</li><li>- Publishing of OIA responses is not related to OIA compliance, so should be separated from the last point, which is anecdotal.</li></ul> <p>We suggest the following points be clarified:</p> <ul style="list-style-type: none"><li>- which 65 agencies the author is referring to, and what is meant by “improved process outputs”. If this is related the 65 agencies that published responses this should be stated</li><li>- removal of reference the 10 agencies that handle 67% of all requests, which was information from a different reporting period (2019/20), not from the Commission’s OIA statistics collection, and which was provided to comment on an unrelated point, regarding the use of extensions.</li><li>- the context of percentage referred to in the statement “these statistics only report on 55% of the total 118 NZ government agencies”. It can be read that the Commission’s OIA statistics only cover 55% of government agencies, and/or that 55% improved OIA performance.</li></ul>
<p><b>Suggested change</b></p>

The publication of OIA responses by 65 government agencies in the most recent reporting period demonstrates improved processes in those agencies, which is commendable. Nevertheless, this only represents 55% of the total 118 NZ government agencies reporting. In interviews, some stakeholders referred to difficulties with OIA compliance by key ministries.

**Statement**

The media investigation concluded that 54 (64%) of 84 agencies surveyed counted extensions beyond the limit of 20 business days as “on-time” responses, and that some agencies’ statistics also included quick turnaround media requests which have a different OIA response process.

**Comment**

As the Commission has previously raised, these statements infer manipulation of the statistics by agencies, by misreporting or inclusion of ineligible responses.

The OIA provides for the use of extensions under certain circumstances. All agencies are asked to report to the Commission the number of requests that meet legislated timeframes. (The Commission states with every publication of data since collection started that this measure is “the extent to which responses were provided within legislated timeframes. Legislated timeframes under the OIA require agencies to respond to requests as soon as reasonably practicable and within 20 working days, but also allow for the extension of response times under certain circumstances.”) As noted above, data from 2019/20 shows only around 1 in 10 requests are extended.

With regard to media requests, all requests for official information that are made to agencies subject to the Official Information Act 1982 are official information requests, whether they are made by a member of the public, by the media, or any other eligible party. The process an agency uses to respond does not determine the nature of the response nor change the need for the agency to meet the legal requirements of the OIA in responding.

In September 2021 [New Zealand’s Chief Ombudsman](#) made the point that agencies should be treating media information requests as OIA requests.

The “comparability of data” note published with the statistics states “figures may either include or exclude requests that are: transferred to another agency; received as less formal information requests, or; responded to, in full and immediately, at the time of the request”. A footnote in the data further states: “Agency practices can vary but generally a request should be logged and counted in an agency’s statistics when “it requires considered application of the provisions of the Official Information Act 1982””. This can include quick turnaround media requests.

**Statement**

In response, TKM notes that it measures the extent to which responses are provided within legislated timeframes; it allows for the extension of response times under certain circumstances; and there is no claim that “on time” means within 20 working days.

**Comment**

This wording suggested TKM allows for extensions to be used. It is the Official Information Act 1982 that allows for extensions to be used.

**Suggested change**

In response, TKM notes that it measures the extent to which responses are provided within legislated timeframes; **that the Official Information Act 1982** allows for the extension of response times under certain circumstances; and there is no claim that “on time” means within 20 working days.

**Statement**

Milestone 3's work is becoming business as usual. Cabinet Office Circular CO (18)4 requires that since 2019, Cabinet and Cabinet committee papers and minutes are proactively released and published online within 30 business days of final decisions being taken. TKM's list of online locations for OIA responses and cabinet papers shows that all 33 central agencies (41%) of government's 81 agencies proactively release cabinet papers online.

#### **Comment**

- Cabinet papers are only drafted for Ministers by Public Service departments and a small number of Crown agents.
- All agencies that routinely produce Cabinet papers have locations on their websites for the proactive release of those papers.
- The use of a percentage infers that a large proportion of agencies are not meeting the requirement of the policy. Those agencies do not produce Cabinet papers to release, so are not covered by the policy. The denominator should be the number of agencies that produce Cabinet papers.
- There are not 81 government agencies.

#### **Suggested wording**

Milestone 3's work is becoming business as usual. Cabinet Office Circular CO (18)4 requires that since 2019, Cabinet and Cabinet committee papers and minutes are proactively released and published online within 30 business days of final decisions being taken. TKM's list of online locations for OIA responses and **Cabinet papers shows that all agencies that routinely produce Cabinet papers have locations on their websites for the proactive release of those papers.**