



11 April 2019

S19.04

## **Submission to the Ministry of Justice public consultation on the Official Information Act 1982**

### **Introduction**

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
- 0.2. NCWNZ welcomes the opportunity to make a submission to the public consultation on the Official Information Act 1982 (the Act). This submission was prepared by the NCWNZ Public Issues Standing Committee, within the framework of the NCWNZ Gender Equal NZ Movement and the Observations of the United Nations' Committee on the Elimination of Discrimination Against Women (CEDAW). In particular, it refers to the [2018 CEDAW Concluding Observations](#) on the New Zealand 8th periodic report which recommends, in clause 12(c) that the state party include a gender-specific, rather than gender-neutral approach in its legislation, policies and programmes. This is in line with paragraph 5 of CEDAW's general recommendation No. 28.<sup>1</sup>
- 0.3. It has not been possible to consult with all NCWNZ branches, individual members and member organisations within the timeframe for submissions.

### **1. Executive Summary**

- 1.1. NCWNZ welcomes the ongoing work to improve practice relating to the Act and, more broadly, the encouragement for all citizens to participate in democratic processes. NCWNZ also welcomes the

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<sup>1</sup> Committee on the Elimination of Discrimination against Women. 2018. Concluding observations on the eighth periodic report of New Zealand. CEDAW/C/NZL/CO/8.

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en)

acknowledgement that this work must reflect and respond to the increasing diversity of New Zealand society.

- 1.2. However, as there has been no gender-specific analysis of the purpose, accessibility and use of the Act, it is not possible to assess the impact or effectiveness of the different actions taken so far and whether only further practice improvements or a fundamental review of the Act is required.
- 1.3. NCWNZ recommends that the Act be reviewed and that the review include a gender specific analysis of how it is working for women. In particular, the review should address how information released under the Act can be made more accessible to women, as major consumers and employees of public services and as citizens wishing to participate in democratic processes and understand how Government policy decisions are made.

## 2. Themes and commitments in the National Action Plan

- 2.1. This consultation on the Act is one of the series of commitments made by Government within the overarching framework of the Open Government Partnership NZ National Action Plan 2018-2020.
- 2.2. NCWNZ strongly endorses the three themes of the National Action Plan:
  - Participation in democracy
  - Public participation to develop policy and services
  - Transparency and accountability.<sup>2</sup>
- 2.3. In particular NCWNZ supports the recognition of the benefits and challenges of increasing diversity and the statement that:

*With the shift to MMP, our Parliament has become more diverse and representative of modern New Zealand society. We have seen an increase in the number of women, Māori, Pacific, and Asian Members of Parliament. We aim to deliver the commitments in this Plan in a way that reflects a commitment to diversity and inclusiveness.*<sup>3</sup>

## 3. Gender Specific approach

- 3.1. NCWNZ is appreciative of the considerable effort put into responding to earlier criticisms of the Act, with measures to increase access and more pro-active release of information. It is acknowledged that there is now a wide range of reports, policies, strategies and other documents available on the websites of central and local government agencies. It is also acknowledged that there are steady improvements reflected in the OIA statistics for the six months to December 2018, showing increases

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<sup>2</sup> National Action Plan p.30 <http://ogp.org.nz/assets/Publications/91b28db98b/OGP-National-Action-Plan-2018-2020.pdf>

<sup>3</sup> *ibid* P.9

in numbers of requests submitted on time (95%) and a large increase in numbers of agencies publishing OIA information on their websites.<sup>4</sup>

- 3.2. NCWNZ welcomes the progress made on a cultural shift in the public services to more openness and sharing of information with the public. The National Action Plan, however, acknowledges further improvements are needed, as reflected in the Plan's "Two Ambitions" for Official information:

*New Zealanders:*

- *Can have confidence that the regulation of official information remains fit-for-purpose.*
- *Have equitable access to official information released in response to specific request.*

- 3.3. However, NCWNZ is disappointed that the National Action Plan makes no reference to gender, barriers to civic participation by women and if and how, women are accessing and using official information.
- 3.4. Women are major consumers and employees of public services, and it is important to them that those services are transparent and accountable: yet NCWNZ questions whether many women are aware of the Act, its relevance to them and much less have the knowledge and confidence to use it. At present, release of OIA information is driven by individual cases, rather than a legal requirement to publish, which structurally discriminates against those already disadvantaged in society. A review of the Act should include exploration of a legal duty to publish, along with tools for easy access, such as accessible directories and "disclosure logs" as is already the case in a number of other jurisdictions.
- 3.5. Actions to improve practice on the Act must include specific actions to make women more aware of the Act, its relevance to them and wide and easily understandable dissemination of information that can be obtained under the Act.
- 3.6. Another very important point is that the Act is often used for research and advocacy about legislation and policy proposals. Recent examples are information relating to gender pay/promotion gaps in the public sector and advice to Cabinet on the impact of Fair Pay Agreements.
- 3.7. Therefore it is fundamentally important that those analysing and responding to legislative and policy proposals are able to access the advice Government is receiving from officials and other parties, so they can support, complement or challenge that advice.

## **4. Encouraging a cultural shift through review of the Act**

- 4.1. From a broader human rights approach, a review of the Act could help shift the culture around the freedom of information, greater transparency in Government (and elsewhere), and the proactive release of information. This would only be to the advantage of women and other groups who experience structural discrimination.

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<sup>4</sup> State Services Commission March 2019 [www.ssc.govt.nz/latest-oia-statistics-released](http://www.ssc.govt.nz/latest-oia-statistics-released)

4.2. The view of the Law Society is supported:

*In reviewing the legislation, it is worth asking what further changes might be needed to the culture and mind-set of those operating the legislation in order to achieve its aims, and how these might be encouraged...<sup>5</sup>*

## 5. Conclusion and Recommendation

- 5.1. NCWNZ welcomes the ongoing work to improve practice relating to the Act and more broadly, the encouragement of all citizens to participate in democratic processes. NCWNZ supports the acknowledgement that this work must reflect and respond to the increasing diversity of New Zealand society.
- 5.2. However, there has been no gender-specific analysis of the accessibility and use of the Act and information obtained under it by women. Therefore, it is not possible to assess the impact or effectiveness of the different actions taken so far for women, especially those most reliant on public services.
- 5.3. NCWNZ, therefore, recommends that the Act be reviewed, including a gender specific analysis. This is in line with the 2018 CEDAW recommendation in the Concluding Observations on NZ's 8th periodic report, clause 12(c), that the state party include a gender-specific rather than gender-neutral approach in its legislation, policies and programmes.



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<sup>5</sup> Law Commission 2012 The Public's Right to Know para 4.86; p.87 (<https://lawcom.govt.nz/our-projects/official-information-act-1982-and-local-government-official-information-act-1987>)