



# Open Government Partnership

## Independent Reporting Mechanism

### Australia

## Comments Received on the First Progress Report

#### **Comment #1:**

The Steering Committee welcomes publication of the mid term report .

Daniel Stewart has made a valuable contribution in tracing the development of the plan and the implementation of commitments to date.

Throughout we found him interested in civil society experience and readily accessible.

However, we are disappointed that the summary attached to his Report did not reflect the strength of that Report. Where his Report identifies opportunities for learning from the experience of the first National Action Plan, the summary reduces his findings to inconsequential observations.

We regard the report as a wake-up call to both government and civil society that this first effort at partnership in pursuit of open government reform leaves room for major improvement.

We agree with its findings that development of the plan was marked by limited public awareness of the OGP initiative and an overall low level of civil society participation with limited, commendable exceptions and that commitments for the most part are vague. They did not meet the standard set by the OGP i.e., they were not concrete, transformative or ambitious.

Government efforts to ensure effective civil society engagement were weak.

The report is comprehensive in detailing the development of the plan and implementation action to date. The commentary on each commitment is consistent with the [Network assessment](#) of the government approach to implementation of commitments, published in February 2018.

Matters raised in [our comments](#) on the government draft self assessment in September last year should be given prominence in the report.

For example:

### **Leadership**

There have been few signs of enthusiasm and support for the initiative from ministers, a significant factor in the low level of public awareness of the initiative.

The Prime Minister signed the notification that Australia intended to proceed with membership of the OGP in November 2015. No Media Release was issued at the time. The Prime Minister has not referred publicly to the OGP since, other than in a sentence about open data in a joint statement with NZ Prime Minister English in February 2017.

There has been no statement in Parliament or reference to the OGP in speeches by the Prime Minister or the Minister for Finance, the minister responsible for coordinating implementation of the National Action Plan.

Continuity has been a problem in advancing the open government cause. Stability helps establish trust and collaborative working relationships. The turnover of staff in the Department of Prime Minister and Cabinet responsible for managing the process and coordinating agency involvement has led to the loss of knowledge and drive. Since the initiative got underway seven different middle/ senior managers within PM&C were assigned prime responsibility for OGP issues, reporting to a deputy secretary of the department who has changed three times.

### **Civil society engagement**

Attempts at public engagement at times were limited and rushed with deadlines that left little time for civil society input.

The 'co-creation workshop' in Canberra in April 2016 proved to be overly ambitious in its stated purpose of organising participants to co-create, draft and submit detailed commitments.

A number of lead agencies assigned to progress a commitment adopted a 'business as usual' approach to public engagement inviting the public and stakeholders to lodge a submission in response to a published report or discussion paper, but not engaging further. Long silences and little contact followed initial consultation.

"Guidance outlining the importance of ongoing engagement and collaboration with civil society was approved by the Interim Working Group in May 2017 and issued to agencies by Department of Prime Minister and Cabinet. The guidance has not been followed.

### **Sustainable Development Goals**

The government has not indicated that it has acted upon the stated intention in the national action plan to link the plan with the Sustainable Development Goals.

Plan page 62:

"The National Action Plan will support the achievement of the SDGs in Australia and globally, in particular Goal 16 on peaceful and inclusive societies, access to justice and effective institutions (which includes targets directly related to a range of commitments in this Plan, such as promoting the rule of law, substantially reducing corruption and bribery, and ensuring public access to

information). Australia strongly advocated for this goal, which will be critical for the success of the entire 2030 Agenda. Australia will also endorse the Joint Declaration on Open Government for the Implementation of the 2030 Agenda for Sustainable Development. This commits us to transparency, openness, and accountability in our domestic and international implementation of the 2030 Agenda for Sustainable Development. It also commits us to look for opportunities in future National Action Plans to progress implementation of the SDGs. As a member of the Open Government Partnership, we also note our responsibility to work globally to fight corruption, empower citizens and enhance transparency and integrity. We will continue to work with other countries to help achieve these goals, including through our support for the effective implementation of the UN Convention against Corruption and the Extractive Industries Transparency Initiative in Australia, our region and beyond. Australia will also continue to participate actively in forums such as the G20 Anti-Corruption Working Group and OECD Development Assistance Committee networks on governance, conflict and fragility."

### **Report Summary**

The summary should be re-written to better reflect the Report's key recommendations and suggestions.

### **The future**

The report's key recommendations and suggestions (page 100) for improvement will inform our approach to development of the second plan, now underway.

We will seek to ensure government partners similarly accept these lessons to be learned from the first attempt at partnership.

Best wishes as we move forward with the open government cause.

Dr Ken Coghill  
Chair

Peter Timmins  
Interim Convener  
Steering Committee

### **Comment #2:**

I can only offer a perspective from someone as a customer of a government department being the department of human services.

The department had created a case of fraud against me by generating an arrears amount during February 2017 from a decision they'd made then later reversed the decision not based on any procedure or legislation. The AAT only look at basic facts behind the decision so have no input to arrears amounts or fraud. The ombudsman chose not to investigate as they claimed to have no jurisdiction on the matter. The AFP was sent 60 pages of facts and evidence and chose not to investigate the matter based on the CCPM model. The attorney general and pm&c office couldn't offer any help. The ACLEI has no jurisdiction over the department. The APS commissioner covers staff misconduct however advised reports must go back to the department secretary, I reported 4 staff to the Ms Renee Leon and one of the people I'd reported replied on her behalf! The same person who replied that I reported had dismissed the case of fraud previously. The same person

also made entries on my cuba notes that were false entries. The ANAO that audits dhs info has no way of checking that the info entered is true and accurate, I'd asked the ANAO and they couldn't reply. ANAO audits may as well be guesswork. An acting national dhs manager dismissed being supplied false and misleading information and would not look into it.

The current minister has been sent nearly a dozen letters and not replied to one.

The prime minister sent the problems back to dhs to address who brushed them off.

Only today I received a letter from dhs stating I have another arrears amount payable on the 20th which is tomorrow yet haven't received any statements from them this year and have no payment information and if I dont pay they'll arrange payroll deductions.

The AHRC was able to help setting an agreement where the department was to contact by writing only but have continually ignored it which is back currently for the AHRC to try and negotiate again.

The problem is if there's a complaint it goes back to the same department which all have been dismissed except for one. If there's staff misconduct it's reported back to the same department to be dismissed. Criminal actions are being ignored. There's act's, codes, procedures, legislation and rules yet no one can enforce any of it.

No one..

The national integrity framework is non existent.

Government accountability is anything but open, until corruption is eliminated there wont be any confidence in government.

Feel free to contact me if any details are needed.

Andrew

**Further comments have been made directly in the full report copied below.**

# Independent Reporting Mechanism (IRM): Australia

## Progress Report 2016–18

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Daniel Stewart, Australian National University (in an independent capacity)

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# Executive Summary:



## Australia Year I Report

Action plan: 2016–2018  
Period under review: 2016–2017  
IM report publication year: 2018

The Australian government made substantial progress in completing several commitments in areas such as combatting corporate crime and steps to improve the discoverability of government data. To increase the ambition of commitments, future action plan development could involve a wider range of interests, and include further steps to enhance awareness and support of open government initiatives within government and in the community generally.

### HIGHLIGHTS

Commitment	Overview	Well-Designed?*
1. Improve whistle-blower protections in the tax and corporate sectors	This commitment seeks to introduce legislation that would establish greater whistleblower protections in the tax and corporate sectors, which would substantially increase the accountability of corporate actors.	No
3. Extractive industries transparency	As Australia has no centralized system for disclosure of information relating to domestic extractive industries payments to government, this commitment is notable in its intent to implement the EITI Standard.	No
15. Enhance public participation in government decision making	Developing and implementing a framework with best practices for public consultation that could be standardized across the Commonwealth government could substantially increase public participation.	No

\*Commitment is evaluated by the IRM as specific, relevant, and has a transformative potential impact

## PROCESS

Overall, participation during the development of the action plan was collaborative but involved a relatively narrow range of interests. There was also little involvement by the legislature and judiciary in this process. This, coupled with low public awareness and a delay in establishing an implementation monitoring body, limited the ambition of the commitments put forward.

### Who was involved?

		Government		
Civil society		Narrow/ little governmental consultations	Primarily agencies that serve other agencies	Significant involvement of line ministries and agencies
	Beyond "governance" civil society			
	Mostly "governance" civil society		✓	
	No/little civil society involvement			

Development occurred in two distinct phases: the first involved officers from within the Department of Prime Minister and Cabinet, who established a public consultation process that included representatives from state governments. Additionally, the first phase saw the creation of an Interdepartmental Committee, comprising representatives from up to 26 federal government departments and agencies, which together formulated 11 of the commitments. The second phase involved a revised consultation process following the election of a new government that had an interim working group with six representatives each from civil society groups and federal government agencies. There was limited evidence of participation by the legislative and the judiciary and of subnational governments beyond the initial public consultation. Governance organisations were the main representatives of civil society through the Australian Open Government Network.

### Level of input by stakeholders

Level of Input	During Development
<b>Collaborate:</b> There was iterative dialogue AND the public helped set the agenda	✓

<b>Involve:</b> The government gave feedback on how public inputs were considered	
<b>Consult:</b> The public could give input	
<b>Inform:</b> The government provided the public with information on the action plan	
<b>No Consultation</b>	

### OGP co-creation requirements

<b>Timeline Process and Availability</b> Timeline and process available online prior to consultation	Yes
<b>Advance notice</b> Advance notice of consultation	Yes
<b>Awareness Raising</b> Government carried out awareness-raising activities	Yes
<b>Multiple Channels</b> Online and in-person consultations were carried out	Yes
<b>Documentation and Feedback</b> A summary of comments by government was provided	Yes
<b>Regular Multi-stakeholder Forum</b> Did a forum exist and did it meet regularly?	No
<b>Government Self-Assessment Report</b> Was a self-assessment report published?	Yes
<b>Total</b>	<b>6 of 7</b>

<b>Acting Contrary to OGP process</b> A country is considered to have acted contrary to process if one or more of the following occurs: <ul style="list-style-type: none"> <li>The National Action Plan was developed with neither online or offline engagements with citizens and civil society</li> <li>The government fails to engage with the IRM researchers in charge of the country's Year 1 and Year 2 reports</li> <li>The IRM report establishes that there was no progress made on implementing any of the commitments in the country's action plan</li> </ul>	No
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## COMMITMENT PERFORMANCE

The majority of commitments were measurable and relevant to OGP values. Future commitments could aim for more transformative potential impacts with greater accountability for their completion.

### Current Action Plan Implementation

2016–2018 Action Plan	
Completed Commitments (Year 1)	0 of 15 (0%)
OGP Global Average Completion Rate (Year 1)	18%

### Potential Impact

2016–2018 Action Plan	
Transformative Commitments	0 of total 15 (0%)
OGP Global Average for Transformative Commitments	16%

### Starred commitments

2016–2018 Action Plan	
Starred Commitments* (Year1)	0 of 15 (0%)
Highest Number of Starred Commitments (All OGP Action Plans)	5

\* Commitment is evaluated by the IRM as specific, relevant, has a transformative potential impact, and is substantially complete or complete

## RECOMMENDATIONS

1. Broaden the range of stakeholders and interests reflected in the open government process at the commonwealth level, including increasing civil society collaboration in government decision making structures and processes. This should at least result in a new commitment topic for the next action plan.
2. Developing a whole of government approach to enhancing awareness, and support, for open government initiatives, including by monitoring, evaluating and publicizing their impact.
3. Establish a collaborative multi-stakeholder forum to work on establishing a federal anti-corruption agency and lobbying and political donation reform initiatives.
4. Detail a comprehensive review of information management practices within government agencies, including the role and resourcing of the Office of the Australian Information Commissioner.
5. Expand the role of the Open Government Forum to include consideration of open government initiatives at the state and territory level to enhance coordination between jurisdictions and to explore development of sub-national open government action plans.

## COMMITMENT OVERVIEW

Commitment Title	Well-designed (Year 1)*	Starred (Year 1)	Overview
1. Improve whistleblower protections in the tax and corporate sectors	No	No	A Parliamentary inquiry and public consultation paper on whistleblower protection in the corporate and taxation sectors have taken place, with feedback submitted on a draft of a proposed whistleblower bill.
2. Beneficial ownership transparency	No	No	Civil society groups expect that this commitment will lead to the establishment of a beneficial ownership register of some form, though consultation between Treasury and stakeholders is ongoing.
3. Extractive industries transparency	No	No	Although a multi-stakeholder group was created to oversee implementation of the EITI Standard, governmental review of the implications of amendments to the Standard has delayed completion.
4. Combating corporate crime	No	No	This commitment comprises a variety of initiatives relating to disclosure and transparency in corporate regulation, with public consultation papers released on current enforcement mechanisms and proposed reforms.
5. Release high-value datasets and enable data driven innovation	No	No	Commitment implementation, including establishing a high-value dataset framework, is behind while the government considers its response to a recent Productivity Commission report on government data usage and availability.
6. Build and maintain public trust to address concerns about data sharing and release	No	No	Establishment of an expert panel and a public engagement process on governmental information sharing is delayed, but a new privacy code was registered and the International Open Data Charter was adopted.
7. Digitally transform the delivery	No	No	While agency and sector digital transformation roadmaps are still being developed, the Digital Marketplace has improved ICT procurement and a live

of government services			dashboard is increasing public oversight of government services.
8. Information management and access laws for the twenty-first century	No	No	The Attorney-General's Department consulted with government and non-government stakeholders to understand current information frameworks and identify shortcomings, but implementation is delayed. Future commitments for reform could be more specific.
9. Understand the use of freedom of information	No	No	Information collected on metrics, determined by a working group and public consultation, was compiled to create a draft dataset on the public's use of freedom of information access rights.
10. Improve the discoverability and accessibility of government data and information	No	No	A collection of initiatives to increase the accessibility and use of open government data were generally substantially completed but there was some overlap with other commitments and their implementing institutions.
11. Confidence in the electoral system and political parties	No	No	The Joint Senate Committee on Electoral matters has so far produced three reports on the recent election and electoral system, but with legislative action still to come.
12. National Integrity Framework	No	No	The first Government Business Roundtable on Anti-Corruption was held on 31 March 2017, but there has been limited completion of responses related to ACLEI jurisdiction and stakeholders have criticized the lack of commitment to general national integrity body.
13. Open Contracting	No	No	A review of the AusTender procurement information system's compliance with the Open Contracting Data Standard was performed and made public. Feedback was solicited and compliance improvements still to be agreed upon.
14. Delivery of Australia's Open Government Action Plan	No	No	The commitment established an OGP multi-stakeholder forum, composed of government and civil society representatives with non-binding authority, to inform on creating future action plans and monitor implementation of the current one.

15. Enhance public participation in government decision making	No	No	A working draft report taking stock of current approaches to public participation includes initial elements of a framework for improving participation and engagement.
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\*Commitment is evaluated by the IRM as specific, relevant, and has a transformative potential impact

## ABOUT THE AUTHOR

**Daniel Stewart** is a senior lecturer at the Australian National University School of Law. He is also legal advisor to the Australian Capital Territory Legislative Assembly and a consultant for HWL Ebsworth Solicitors. His academic publications include articles on government confidentiality, privacy and access to information.

**The Open Government Partnership (OGP)** aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP's Independent Reporting Mechanism (IRM) assesses development and implementation of national action plans to foster dialogue among stakeholders and improve accountability.



## I. Introduction

The Open Government Partnership (OGP) is an international multistakeholder initiative that aims to secure concrete commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP provides an international forum for dialogue and sharing among governments, civil society organizations, and the private sector, all of which contribute to a common pursuit of open government.

Australia began its formal participation in May 2013, when Attorney-General Mark Dreyfus declared his country's intention to participate in the initiative<sup>1</sup>.

In order to participate in OGP, governments must exhibit a demonstrated commitment to open government by meeting a set of (minimum) performance criteria. Objective, third-party indicators are used to determine the extent of country progress on each of the criteria: fiscal transparency, public official's asset disclosure, citizen engagement, and access to information. See Section VII: Eligibility Requirements for more details.

All OGP-participating governments develop OGP action plans that elaborate concrete commitments with the aim of changing practice beyond the status quo over a two-year period. The commitments may build on existing efforts, identify new steps to complete ongoing reforms, or initiate action in an entirely new area.

Australia developed its national action plan from November 2015 to December 2016. It was publicly released on 7 December 2016. The official implementation period for the action plan was 1 July 2016 through 30 June 2018. This year one report covers the action plan development process, and first official year of implementation from 1 July 2016 to 30 June 2017. Beginning in 2015, the IRM started publishing end-of-term reports on the final status of progress at the end of the action plan's two-year period. Any activities or progress occurring after the first official year of implementation will be assessed in the end-of-term report. The government published its self-assessment in September 2017. A draft interim assessment was provided to the IRM researcher on 30 August 2017.

In order to meet OGP requirements, the Independent Reporting Mechanism (IRM) of OGP has partnered with Daniel Stewart, Senior Lecturer at the Australian National University, who carried out this evaluation of the development and implementation of Australia's first action plan. To gather the voices of multiple stakeholders, the IRM researcher held open meetings and individual interviews in Canberra, Sydney and Melbourne, as well as telephone and video-conferencing conversations. The IRM aims to inform ongoing dialogue around development and implementation of future commitments. Methods and sources are dealt with in Section VI of this report (Methodology and Sources).

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<sup>1</sup> <https://www.opengovpartnership.org/documents/australia-letter-of-intent-join-ogp>. A further commitment to finalise Australia's membership was made in November, 2015.

## II. Context

The Australian Government developed the national action plan in the context of continued development of open government initiatives, including the enactment of public interest disclosure legislation and expanding use of open government data. However, in several areas the government has adopted measures inconsistent with open government values, and has shown a lack of commitment to significant open government reforms.

### 2.1 Background

Since its initial expression of intention to join OGP in May 2013, the Commonwealth government (i.e. the federal level government) has continued to develop significant measures relating to the OGP values of access to information, civic participation and public accountability. The enactment of the *Public Interest Disclosure Act 2013* significantly improved the protection of whistleblowers to facilitate the disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector.<sup>1</sup> The government also continued to increase its use of technology to encourage access and participation, including development of the data.gov.au space for deposit of open government data, and the Public Data Policy Statement committing the Commonwealth government to release of non-sensitive data as open by default.<sup>2</sup> These and a number of other important initiatives are included in the national action plan as efforts to date.

However, as detailed below, since 2013 there have also been a number of government initiatives which are at odds with OGP values.

*Proposed abolition of the Australian Information Commissioner:* The 2014-15 budget announced the abolition of the Office of the Australian Information Commissioner (OAIC). OAIC had been established as a statutory agency in 2010 to provide independent oversight of privacy and access to information legislation and advance information policy and management across Australian Government agencies.<sup>3</sup> The introduction of the OAIC provided a two-tiered right to review, with all aspects of Commonwealth agency decisions relating to access to information decisions able to be reviewed both by the OAIC and the Commonwealth Administrative Appeals Tribunal. A review into the *Freedom of Information Act 1982* (Cth) (FOI Act)<sup>4</sup> had recommended that the two-tier external review model be 're-examined as part of a more comprehensive review of the FOI Act'.<sup>5</sup>

However, instead of a further review, the government introduced proposed legislation in 2014 to abolish the OAIC and its FOI functions, in what it claimed was an attempt to reduce costs, delays and complexity associated with two-tiered review.<sup>6</sup> Opposition to the Bill centered on the additional burden on applicants seeking review of access decisions, and the important role of the Information Commissioner in encouraging public access to government information.<sup>7</sup> The Bill was not brought for debate before Parliament, but the reduction of funding and succession of acting appointments to the role of Information Commissioner was widely criticised as undermining the effectiveness of the OAIC and access to government information more broadly.<sup>8</sup> The Bill eventually lapsed in 2016, and funding was partially restored in the 2016-17 budget.<sup>9</sup>

*Retention and use of personal information:* Legislation was introduced in 2014 requiring telecommunications companies to retain telecommunications metadata for two years. Amendments were introduced to address concerns raised over effects on privacy and journalistic freedom, including the need for warrants to access journalists' information and increased oversight of decisions.<sup>10</sup> However, telecommunications providers and journalists have continued to raise concerns over the potential for a wide range of government bodies to access the information,<sup>11</sup> and the lack of transparency over access decisions.<sup>12</sup>

Various submissions to the Senate Community Affairs References Committee raised concerns over discouragement of public participation following the disclosure of personal information of welfare recipients who had publicly criticised the use of an automated debt recovery system.<sup>13</sup> The disclosure was justified as necessary for maintaining confidence in the system.<sup>14</sup> Amendments were also proposed to veterans' entitlements legislation which would have allowed disclosure for similar purposes.<sup>15</sup>

*Use of technology:* Public confidence in the use of technology for the delivery of government services has also been affected. The Commonwealth Ombudsman criticised several aspects of the use of an automated system to identify and assist with the recovery of possible over-payments of welfare benefits used by the Department of Human Services, including that communication with those affected lacked transparency and usability.<sup>16</sup> The Minister for Human Services acknowledged that over a nine-month period the 'Online Compliance Intervention system' resulted in nearly 20,000 people being advised that they may owe a debt to the Commonwealth (though these were later revised to zero or reduced).<sup>17</sup>

The five-yearly census, collected online by default for the first time, was affected by substantial security and capacity concerns that prevented online access.<sup>18</sup> There have also been similar concerns raised over outages in online submission of taxation information.<sup>19</sup> The Digital Transformation Agency is currently conducting a review of digital service delivery.<sup>20</sup> Submissions to the Senate Economics Committee raised privacy concerns in the context of the census over storage of personal information for the purposes of future longitudinal studies.<sup>21</sup>

*Secrecy in the immigration context:* Several CSOs and individuals interviewed in preparation of this report raised concerns over the transparency and accountability of Australia's immigration processes.<sup>22</sup> A new national security agency, the Australian Border Force was established in 2014 and attracted widespread criticism for the lack of transparency of information relating to asylum seekers and other unauthorized boat arrivals.<sup>23</sup> Legislation introduced to govern immigration detention facilities<sup>24</sup> included secrecy provisions which may deter scrutiny and potentially interfere with the health and safety of persons held in the facilities.<sup>25</sup> A senate inquiry into conditions in an offshore Regional Processing Centre, established after more than 2,000 leaked reports of incidents within the Centre were published by the Guardian newspaper,<sup>26</sup> found that 'no guarantee of transparency and accountability can be given until significant changes are made and accountability systems are put in place.'<sup>27</sup> Amendments to that legislation, to make clear that the intention was not to prevent people disclosing information that was in the public interest, have only recently been passed.<sup>28</sup>

*National Security* – Security agencies are generally exempt from access to information laws and general transparency institutions, subject instead to specialised, and generally more limited oversight mechanisms.<sup>29</sup> One of those mechanisms is the independent national security legislation monitor, which was introduced in 2010 to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation. The government proposed to abolish the position in 2014.<sup>30</sup> Since then, the role of the monitor in conducting reviews of national security laws, including calling for and publishing public submissions, has provided what the Law Council of Australia has considered a critical step in exposing the impact of such laws.<sup>31</sup>

Australia was one of the countries implicated in the revelations by whistleblower Edward Snowden in 2013. In response, legislation<sup>32</sup> was introduced in 2014 to enhance penalties for the unauthorised use or communication of intelligence information.<sup>33</sup> Changes to telecommunications data retention<sup>34</sup> and immigration secrecy<sup>35</sup> have also been at least in part justified on the basis of national security concerns.

*Parliamentary entitlements, donations and lobbying reform* – On 1 July 2017 the Commonwealth government established the Independent Parliamentary Expenses Authority to audit and

report on parliamentarians' work expenses.<sup>36</sup> The Authority was established following several high-profile cases of politicians claiming expenses for non-parliamentary related business and calls for greater transparency and enforcement of parliamentary entitlements generally. A review of parliamentary entitlements in 2016 recommended more frequent reporting and publication of expenses claims,<sup>37</sup> as well as increased independent oversight.

There have also been a number of high-profile examples of concerns raised over the regulation of lobbying, including former politicians leaving to take up related industry positions.<sup>38</sup> A 2014 review found that 'Australian codes are, in general, far weaker than the strong statutory regimes operating in Canada and the United States'.<sup>39</sup>

Calls for lobbying reform have often drawn links with political donation regulation. The Joint Standing Committee on Electoral Matters, in light of submissions calling for more general lobbying reform as part of an inquiry into foreign donations (see the discussion of foreign donations in commitment 4.1), commented that it 'supports improvements to the coverage and timeliness of disclosure regulations to improve transparency.' The Joint Standing Committee recently released a discussion paper calling for submissions on political donations generally.<sup>40</sup>

*Recent developments* – In March 2017 the Productivity Commission released a detailed review of the use and disclosure of information by government.<sup>41</sup> While recommendations relating to consumer rights and safeguards for data are referred to as part of commitment 6 (Build and maintain public trust), the Commission's report also touches on important issues relating to governance and management of government-held information generally. A cross-agency taskforce is still to publicly report on its review of the Commission's recommendations, which is likely to give rise to a number of future commitments relating to open government.

Indigenous leaders have also criticised the government<sup>42</sup> for not supporting a proposal to establish a representative body that gives Aboriginal and Torres Strait Islander First Nations a voice in the Australian Parliament,<sup>43</sup> which was developed following an extensive consultation process including dialogues with communities throughout Australia.<sup>44</sup>

*Proposed changes to secrecy laws, foreign lobbying and charities.* The government has also introduced legislation relating to changes to secrecy provisions and foreign donations, which have been criticised by civil society groups, charities and the media as restricting freedom of speech and public participation.<sup>45</sup> Development of a Department of Home Affairs reduces independence and accountability over national security agencies. Further discussion of these recent developments and their influence on the development of the next national action plan will be included in the end-of-term report.

## **2.2 Scope of Action Plan in Relation to National Context**

Despite the areas of concern raised in the national context, the national action plan represents a recognition of the value of open government and the need for ongoing reform. Many of the concerns raised in the national context fall within one or more commitments under the existing action plan. For example, funding and the role of the Office of the Australian Information Commissioner could be considered as part of commitment 8 (information access and management). Concerns over parliamentary entitlements, donations and lobbying reform fall within the terms of commitment 11 (Confidence in the Electoral System) as they can be considered in the Joint Standing Committee's Inquiry into Electoral Matters, and 4.2 National Integrity Framework (in considering the potential jurisdiction of anti-corruption bodies) without explicitly being included. The way agencies have handled personal information and use of technology in connection with debt recovery, the census or taxation affects the public's trust in data sharing being developed under commitment 6. However, the current commitments do not squarely address the concerns raised by these elements of the national context.

Similarly, transparency and accountability of national security institutions and immigration systems is of considerable national importance. A range of civil society groups and individuals interviewed for this report raised the importance of measures including:

- Assessment of the impact of data retention and other national security related measures providing for retention and access to personal information;
- Review of the range of transparency and accountability measures applicable to agencies related to national security; and
- review of the range of accountability and accountability measures in place as they operate in the immigration context.

The Australian Law Reform Commission produced a report in 2010 on the extent and variety of legislative provisions restricting use or disclosure of information.<sup>46</sup> The Commission recommended that a range of general secrecy provisions be amended to better reflect the concern with protecting the public interest, and that there be a review of the large number of more specific secrecy provisions currently included in Commonwealth legislation.

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<sup>1</sup> Ian Moss, *Review of the Public Interest Disclosure Act 2013*, July 2016, <https://www.pmc.gov.au/resource-centre/government/review-public-interest-disclosure-act-2013>; also Commonwealth Ombudsman, Public Interest Disclosure Act, <http://www.ombudsman.gov.au/about/making-a-disclosure>

<sup>2</sup> Department of the Prime Minister and Cabinet, 'Australian Government Public Data Policy Statement', 7 December 2015, <https://www.pmc.gov.au/resource-centre/data/australian-government-public-data-policy-statement>

<sup>3</sup> Parliamentary Library, *Freedom of Information Amendment (New Arrangements) Bill 2014*, Bills Digest No. 44, 2014-15.

<sup>4</sup> Australian Government, *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010*, prepared by Alan Hawke, [the Hawke Review], Canberra, 2013.

<sup>5</sup> Hawke Review, above n.4, p. 37.

<sup>6</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 2 October 2014, 1107 (Scott Morrison).

<sup>7</sup> For example, Richard Mulgan, 'How the FOI watchdog was starved to death', Canberra Times, 3 June 2014, <http://www.canberratimes.com.au/national/public-service/how-the-foi-watchdog-was-starved-to-death-20140601-39ckf.html>.

<sup>8</sup> For example, Parliamentary Library, *Freedom of Information Amendment (New Arrangements) Bill 2014*, Bills Digest No. 44, 2014-15, at 4; Parliamentary Library, 'Office of the Australian Information Commissioner: reinstatement of ongoing funding', *Budget Review 2016-17*, Research Paper Series, 2015-16, 79-80,

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201617/Office-AIC](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201617/Office-AIC).

<sup>9</sup> Parliamentary Library, 'Office of the Australian Information Commissioner: reinstatement of ongoing funding', *Budget Review 2016-17*, Research Paper Series, 2015-16, 80.

<sup>10</sup> Warrants needed to access journalists' information, <http://www.abc.net.au/news/2015-03-19/access-journalists-records-tougher-data-retention-deal/6331904>

<sup>11</sup> For example, 'Australia's data retention scheme is still a mess', <https://www.itnews.com.au/news/australias-data-retention-scheme-is-still-a-mess-456421>

<sup>12</sup> For example, <http://www.abc.net.au/news/2015-03-19/access-journalists-records-tougher-data-retention-deal/6331904>

<sup>13</sup> Senate Community Affairs References Committee, *Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative*, June 2017 at 26-27, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/SocialWelfareSystem](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/SocialWelfareSystem).

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<sup>42</sup> NITV, 'Turnbull government formally rejects proposal for Indigenous voice to Parliament', 26 October 2017, <https://www.sbs.com.au/nitv/nitv-news/article/2017/10/26/turnbull-government-rejects-proposal-indigenous-voice-parliament>.

<sup>43</sup> Final Report of the Referendum Council, *Uluru Statement from the Heart*, 30 June 2017, <https://www.referendumcouncil.org.au/final-report>

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<sup>45</sup> Johan Lidberg, 'New bill would make Australia worst in the free world for criminalising journalism', *The Conversation*, 1 February 2018, <https://theconversation.com/new-bill-would-make-australia-worst-in-the-free-world-for-criminalising-journalism-90840>; Paul Karp, 'Foreign donation and charity law changes 'likely' to face high court challenge', *The Guardian*, 12 January 2018, <https://www.theguardian.com/australia-news/2018/jan/12/foreign-donation-and-charity-law-changes-likely-to-face-high-court-challenge>.

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### III. Leadership and Multistakeholder Process

The national action plan represents the contributions of a large number of government agencies, civil society groups and individuals. However, limited public awareness of the process meant that the contributions to the national action plan were largely limited to those groups with a pre-existing interest in open government. The establishment of a forum for on-going multi-stakeholder participation by the OGP lead agency was also delayed.

#### 3.1 Leadership

This subsection describes the OGP leadership and institutional context for OGP in Australia. Table 3.1 summarizes this structure while the narrative section (below) provides additional detail.

**Table 3.1: OGP Leadership**

<b>1. Structure</b>	Yes	No
Is there a clearly designated Point of Contact for OGP (individual)?	✓	
	Shared	Single
Is there a single lead agency on OGP efforts?		✓
	Yes	No
Is the head of government leading the OGP initiative?		✓
<b>2. Legal Mandate</b>	Yes	No
Is the government's commitment to OGP established through an official, publicly released mandate?	✓	
Is the government's commitment to OGP established through a legally binding mandate?		✓
<b>3. Continuity and Instability</b>	Yes	No
Was there a change in the organization(s) leading or involved with the OGP initiatives during the action plan implementation cycle?		✓
Was there a change in the executive leader during the duration of the OGP action plan cycle?		✓

Australia has a federal system of government with power divided between the national (“federal”) and state governments according to a constitution. The commitment to OGP was made by the federal government, with state governments being consulted as part of the development of the national action plan. The limited scope of the federal government to unilaterally effect change is reflected in the national action plan commitments being concentrated in areas within the federal government’s control or where intergovernmental cooperation is established.

Australia first indicated its intention to join OGP in May 2013 but did not take steps to finalise that membership until November 2015. Since that formal recommittal, the Minister for Finance has been responsible, on behalf of the Prime Minister, for co-ordinating Australia’s involvement in OGP. The Minister for Finance is responsible to Parliament for the Department of Finance, whose roles include governance and transformation of the public sector and efficiency of services to, and for, the Commonwealth government. The

Minister is a senior Minister in the Government with sufficient influence to ensure participation of other government agencies in Australia's OGP processes.

The Minister is supported by a dedicated open government secretariat within the Department of the Prime Minister and Cabinet (PM&C). The secretariat supports overall coordination, monitoring and reporting of implementation activities.<sup>1</sup> Individual agencies have accepted responsibility for one or more commitments made under the national action plan. (See Table 3.1 on the leadership and mandate of OGP in Australia).

The OGP secretariat within the PM&C secretariat has the equivalent of approximately three full-time staff.<sup>2</sup> While an election interrupted the development of the national action plan (see discussion below), the same government agencies and senior executive officers have generally continued to be involved with the development and implementation of Australia's national action plan. There has, however, been substantial change in personnel within the OGP secretariat since the development of the national action plan.

There is individual budgetary allocation for some initiatives reflected in commitments under the national action plan, as indicated in the discussion of those commitments. However, there is no overall budgetary allocation for open government partnership activities, with government agencies generally expected to provide any resources required within normal operational budgets.

### 3.2 Intragovernmental Participation

This subsection describes which government institutions were involved at various stages in OGP. The next section will describe which nongovernmental organizations were involved in OGP.

**Table 3.2 Participation in OGP by Government Institutions**

<b>How did institutions participate?</b>	Ministries, Departments, and Agencies	Legislative	Judiciary (including quasi-judicial agencies)	Other (including constitutional independent or autonomous bodies)	Subnational Governments
<b>Consult:</b> These institutions observed or were invited to observe the action plan but may not be responsible for commitments in the action plan.	26 <sup>3</sup>	0	0	0	4 <sup>4</sup>
<b>Propose:</b> These institutions proposed commitments for inclusion in the action plan.	26	0	0	0	4

<b>Implement:</b> These institutions are responsible for implementing commitments in the action plan whether or not they proposed the commitments.	10 <sup>5</sup>	0 <sup>6</sup>	0	0	0
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The pathway to completion of the national action plan in Australia involved two distinct phases. In November 2015, officers from within the Department of Prime Minister and Cabinet (PM&C) established a public consultation process which initially involved five stages:

- Stage 1 sought feedback on the background to open government in Australia and a broad vision for the future as well as establishing the general framework for the national action plan.<sup>7</sup>
- Stage 2 solicited ideas for commitments, including through use of a public wiki, consultation with state, territory and local government bodies and various civil society and community organisations. This process also included a series of teleconferences held in March 2016 organised along themes developed out of the submissions received.<sup>8</sup> The PM&C engaged consultants to assist with this process.<sup>9</sup>
- Stage 3 sought to prioritise proposed commitments for the purpose of inclusion in the national action plan. Sixty-three participants attended a one-day workshop in Canberra in April 2016, which included 16 federal government representatives, as well as representatives from the Queensland, Northern Territory and New South Wales (NSW) governments and the NSW information commissioner.<sup>10</sup> The workshop produced 14 draft commitments to assist with drafting of the national action plan.
- Stages 4 (submission of a draft for government approval) and 5 (submission of the national action plan to OGP by July 2016) were also proposed.

However, in May 2016, an election to be held on 2 July 2016 was called prior to a draft being submitted for government approval. Conventions relating to the election period, which prevented the government from making major policy decisions that were likely to commit an incoming government, meant that no substantial further action was taken to develop and finalise the national action plan commitments.

As part of stage 2 of the initial phase of development of the action plan, an Interdepartmental Committee was established. This committee first met on 24 February 2016 and on three subsequent occasions leading up to submission of the national action plan. This Committee consisted of representatives from up to 26 federal government departments and agencies.<sup>11</sup>

The role of the interdepartmental committee has included:

- formulation of 11 commitments which were considered as part of the one-day workshop along with those submitted as part of the public consultation process.
- consideration of the terms of reference and process for establishment of the interim working group
- consideration of the results of the one-day workshop as well as the product of the interim working group
- submission of the draft national action plan for government approval

- overseeing implementation of the national action plan

The second phase of development of the national action plan followed the election and the return of the Liberal/National Party coalition government. The submission date for the draft action plan was extended to allow for a revised consultation process.<sup>12</sup> In response to a request from civil society groups,<sup>13</sup> the government established an interim working group to consider and prioritise commitments for possible inclusion in the draft national action plan, with six representatives each from civil society groups and federal government agencies.<sup>14</sup> The NSW Information Commissioner was also included as a non-voting member. The interim working group met five times during development of the national action plan, including at a workshop attended by the Assistant Minister for Cities and Digital Transformation.<sup>15</sup> The national action plan was submitted to the Open Government Partnership on 7 December 2016.

Table 3.2 above details the various government departments and agencies involved in the development and implementation to date of the national action plan. Overall, there was limited evidence of participation by the legislative and the judiciary. PM&C was also unable to provide information on involvement of state and territory governments beyond that indicated above.

### 3.3 Civil Society Engagement

The Australian OGP Civil Society Network had a particular influence on the development of the national action plan. Organisations and individuals interested in open government established this network in December 2015 following the Australian government's recommitment to OGP. Its purpose is to engage with the government on development of the national action plan.<sup>16</sup>

As part of stage one of the consultation process set out above, the PM&C established the 'ogpau' website in mid-November 2015 and promoted the site through media releases and social media posts including Twitter and Facebook.<sup>17</sup> The website included links to an outline of the five-stage consultation process discussed above with indicative timeframes. This outline is no longer publicly available. PM&C has reported that over the course of the development process, more than 500 people and organisations registered through the website to receive updates on progress and opportunities to participate.<sup>18</sup> Public awareness workshops were held in December 2015 in Brisbane, Sydney, Canberra and Melbourne, with the Canberra event livestreamed.<sup>19</sup> The government promoted these workshops for two weeks on its OGP Australia website (now hosted at [ogpau.gov.au](http://ogpau.gov.au)) and notified registered individuals. Several civil society groups, including the Australian Open Government Network, also distributed information about the sessions through their mailing lists. They were attended by over 160 people in person and 45 watched online.<sup>20</sup>

The call for public submissions and contributions to the public wiki in stage two resulted in 210 suggestions being made by 93 people or organisations over the course of four months, including the summer holiday period.<sup>21</sup> These submissions, along with a summary, were made publicly available on the OGP Australia website.<sup>22</sup> Participants who had suggested a commitment were invited to the one-day workshop as part of stage three, with 36 participants from civil society taking part.

The interim working group was formed as part of the extended consultation process following the July 2016 election. The PM&C selected members of the group, after a week-long public call for expressions of interest, on the basis of breadth and diversity of representatives and experience in open government. Six members from civil society were selected from approximately 40 submissions,<sup>23</sup> including the co-chair.<sup>24</sup>

Following development by the interim working group and the interdepartmental committee, a draft of the national action plan was opened to public consultation on 31 October 2016

with submissions due by 14 November 2016 (which was later extended to 18 November 2016). Public information sessions were also held in the cities of Melbourne, Brisbane, Sydney, Perth and Canberra. There was no public information session in South Australia, Northern Territory or Tasmania. In addition, sessions were held through a webinar with more than 200 people participating.<sup>25</sup>

A review of the submissions received as part of the first phase of the consultation process and interviews with members of the interim working group suggests that there was limited participation in the development of the national action plan by the business sector.

In interviews in preparation of this report, civil society groups and individuals involved in the development process generally indicated that they had been given the opportunity to participate in the development of the action plan, at least following the extension of the consultation period and formation of the interim working group. The interim working group used submissions in the first phase of consultation, and the draft commitments developed in the one-day workshop, to further develop the action plan by increasing the breadth and ambition of the commitments when compared to early drafts.

While the consultation process was largely accessible throughout Australia, a number of people and organisations interviewed as part of this review have indicated that there was limited public awareness of, or confidence in, the open government process and the range of potential issues that might be engaged through the national action plan.<sup>26</sup> This limited the influence of the consultation process and potentially restricted the breadth and ambition of the commitments ultimately put forward.

Countries participating in OGP follow a set of requirements for consultation during development, implementation, and review of their OGP action plan. Table 3.3 summarizes the performance of Australia during the 2016-2018 action plan.

**Table 3.3: National OGP Process**

Key Steps Followed: 6 of 7						
<b>Before</b>	<b>1. Timeline Process &amp; Availability</b>			<b>2. Advance Notice</b>		
	Timeline and process available online prior to consultation	Yes ✓	No	Advance notice of consultation	Yes ✓	No
	<b>3. Awareness Raising</b>			<b>4. Multiple Channels</b>		
	Government carried out awareness-raising activities	Yes ✓	No	4a. Online consultations:	Yes ✓	No
				4b. In-person consultations:	Yes ✓	No
	<b>5. Documentation &amp; Feedback</b>					
	Summary of comments provided				Yes ✓	No
<b>During</b>	<b>6. Regular Multistakeholder Forum</b>					
	6a. Did a forum exist?	Yes ✓	No	6b. Did it meet regularly?	Yes	No ✗

7. Government Self-Assessment Report						
After	7a. Annual self-assessment report published?	Yes	No	7b. Report available in English and administrative language?	Yes	No
		✓			✓	
	7c. Two-week public comment period on report?	Yes	No	7d. Report responds to key IRM recommendations?	Yes	No
		✓			N/A	

**Table 3.4: Level of Public Influence**

The IRM has adapted the International Association for Public Participation (IAP2) “Spectrum of Participation” to apply to OGP.<sup>27</sup> This spectrum shows the potential level of public influence on the contents of the action plan. In the spirit of OGP, most countries should aspire for “collaborative.”

Level of public input		During development of action plan	During implementation of action plan
<b>Empower</b>	The government handed decision-making power to members of the public.		
<b>Collaborate</b>	There was iterative dialogue AND the public helped set the agenda.	✓	
<b>Involve</b>	The government gave feedback on how public inputs were considered.		✓
<b>Consult</b>	The public could give inputs.		
<b>Inform</b>	The government provided the public with information on the action plan.		
<b>No Consultation</b>	No consultation		

### 3.4 Consultation During Implementation

As part of their participation in OGP, governments commit to identify a forum to enable regular multi-stakeholder consultation on OGP implementation. This can be an existing entity or a new one. This section summarizes that information.

The establishment of a multi-stakeholder forum to oversee implementation of Australia’s commitments and to engage with civil society is included as commitment 14 of the national action plan. The interim working group, established as part of the developments of the action plan, continued to meet to monitor implementation of the plan and establish a permanent forum.<sup>28</sup> A 15-week process to decide on the appointment and operation of the forum, now referred to as the Open Government Forum, began in April 2017. It consisted of inviting submissions on a proposal put forward by the interim working group established as part of the development of the action plan, a Twitter Q&A session and a public information session (parts of which were livestreamed online) held in Melbourne.<sup>29</sup>

As a result of that consultation process and recommendations put forward by the interim working group, the co-chairs of the interim working group opened a call for nominations for civil society positions on the forum on 8 June 2017.<sup>30</sup> A selection panel, consisting of the co-chairs of the interim working group and a member of civil society put forward by the interim working group, considered 25 nominations on the basis of:

- their demonstrated support of OGP's vision and the Open Government Declaration
- their expertise relevant to the Open Government Partnership, including existing or probable future Australian Open Government commitments
- their ability to engage broad and diverse community networks
- their previous experience working with and influencing government
- the desirability of maintaining some continuity between successive Forums, balanced with the desirability of reaching new communities and reflecting emerging open government priorities.<sup>31</sup>

Appointments to the Forum were announced on 21 July 2017 and the first meeting was held on 28 July 2017.<sup>32</sup> The Forum consists of representatives from eight government agencies and eight members from civil society, and is co-chaired. Ten male and six female members were appointed, including at least one with an indigenous heritage.<sup>33</sup> The members drawn from civil society act in a variety of capacities in non-government organisations as well as individuals with an interest in areas related to open government. A non-voting jurisdictional member, the current New South Wales Information Commissioner, was also invited to participate in the Forum. Four of the six civil society members of the interim working group were appointed to the forum. In addition, the government agencies represented on the interim working group, with the addition of a representative from the Digital Transformation Agency, continued to be represented on the Forum.

As the forum first met on 28 July 2017, table 3.3 above indicates that it did not meet regularly during the period of implementation considered in this report. However, since that first meeting the forum has met, and expects to continue to meet, approximately every two months.<sup>34</sup> The meetings will be held in Canberra although it may meet in other locations and with provision for online participation. The meeting agenda, minutes and working documents from the first meeting were made publicly available online.<sup>35</sup> In future the Forum intends to live-stream important proceedings and trial other methods of engagement.

One of the purposes of the Forum is to monitor implementation of the national action plan, including assessing and reporting on progress.<sup>36</sup> As part of this process the first meeting included representatives of government agencies with responsibility for commitments under the national action plan. The PM&C also established an online dashboard to record progress towards each of the commitment milestones. The dashboard, which was made publicly available after the first meeting of the Forum,<sup>37</sup> allows for public comments on each of the commitments. The PM&C intends to update this dashboard every two months in conjunction with a meeting of the Forum.

The Forum also has purposes related to developing future national action plans, including facilitating broad community engagement and raising awareness about open government generally, as well as seeking to improve government institutions through enhanced transparency, policy development, service delivery and decision making.<sup>38</sup>

### 3.5 Self-Assessment

The OGP Articles of Governance require that participating countries publish a self-assessment report three months after the end of the first year of implementation. The self-assessment report must be made available for public comments for a two-week period. This section assesses compliance with these requirements and the quality of the report.

A draft report was provided to the Open Government Forum, as well as the IRM researcher, on 30 August 2017. The PM&C released a revised draft for public comment for two weeks from 4-17 September 2017. The draft was available on the ogpau website and notices disseminated to individuals who had subscribed to receive news posted to that website and previous versions. PM&C made one post mentioning the mid-term self-assessment on Twitter.<sup>39</sup> Individuals were able to submit public comments via the ogpau website.

There were three submissions on the self-assessment report, including one from a member of the Open Government Forum, and a submission from the Australian Open Government Partnership network. Some changes were made to the draft report as a result of the submissions, such as the inclusion of links to agency web pages and documents. Other comments made in submissions were interpreted as 'general observations of Australia's performance through its first OGP cycle' or 'went beyond the scope of the report'.<sup>40</sup>

The final self-assessment report was approved by the Minister for Finance on 22 September 2017 and was submitted to the OGP support unit.<sup>41</sup> The report includes a review of the consultation process during development of the national action plan as well as a discussion of the role of the forum and other forms of consultation during implementation of the plan. The report discusses all commitments in the action plan, including a discussion of the delays in implementing three commitments (3 Extractive industries transparency; 12 National integrity framework; and 13 Open contracting). Links to relevant documents or agency websites are included in the discussion of the commitments as evidence of completion levels.

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<sup>1</sup> Interview with Department of Prime Minister and Cabinet, Canberra ACT, 8 September 2017

<sup>2</sup> Interview with Department of Prime Minister and Cabinet, Canberra ACT, 8 September 2017.

<sup>3</sup> Attorney-General's Department, Australian Bureau of Statistics, Australian Commission for Law Enforcement Integrity, Australian Electoral Commission, Australian Institute of Health and Welfare, Australian Public Service Commission, Department of Agriculture and Water Resources, Department of Communications and the Arts, Department of Defence, Department of Education and Training, Department of Employment, Department of the Environment and Energy, Department of Finance, Department of Foreign Affairs and Trade, Department of Health, Department of Human Services, Department of Immigration and Border Protection, Department of Industry, Innovation and Science, Department of Infrastructure and Regional Development, Department of Social Services, Department of the Prime Minister and Cabinet, The Treasury, Department of Veterans' Affairs, Digital Transformation Agency, National Archives of Australia, Office of the Australian Information Commissioner. Note that these agencies represent those that were involved in the interdepartmental committee established during the initial phase 2 of development of the national action plan. Information on government agencies that were invited to participate but were not involved in proposing commitments for inclusion on the national action plan was not made available.

<sup>4</sup> Representatives of the Queensland, Northern Territory and New South Wales (NSW) governments and the NSW information commissioner. Note that these agencies represent those that participated in the one-day workshop in Canberra on April 2016 (see PM&C, 'Consultation Stage 2: Commitments Drafting and Live Event', 14 December 2015, <https://ogpau.pmc.gov.au/2015/12/14/consultation-stage-2-commitments-drafting-and-live-event> (accessed 5/1/2018)). Information on local government bodies that were invited to participate but were not involved in proposing commitments for inclusion on the national action plan was not made available.

<sup>5</sup> Attorney-General's Department, Australian Bureau of Statistics, Australian Electoral Commission, Department of the Environment and Energy, Department of Finance, Department of Industry, Innovation and Science, Department of the Prime Minister and Cabinet, National Archives of Australia, Office of the Australian Information Commissioner, and The Treasury

<sup>6</sup> Note that Commitments 1.1 and 4.2 involve establishing a parliamentary inquiry or responding to a parliamentary committee report. However, parliamentary bodies are not responsible for the commitments as set out in the national action plan.

<sup>7</sup> PM&C, 'Consultation Stage 1: Preparation, Framework and History', 17 November 2015, <https://ogpau.pmc.gov.au/2015/11/17/consultation-stage-1-preparation-framework-and-history>

<sup>8</sup> PM&C, 'OGPAU theme teleconference times', 24 March 2016, <https://ogpau.pmc.gov.au/2016/03/24/ogpau-theme-teleconference-times> (accessed 5/1/2018).

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- <sup>9</sup> PM&C, 'Consultation Stage 2: Commitments Drafting and Live Event ', 14 December 2015, <https://ogpau.pmc.gov.au/2015/12/14/consultation-stage-2-commitments-drafting-and-live-event> (accessed 5/1/2018).
- <sup>10</sup> PM&C, 'Results of the co-creation workshop and ongoing engagement ', 18 April 2016, <https://ogpau.pmc.gov.au/2016/04/18/results-co-creation-workshop-and-ongoing-engagement> (accessed 5/1/2018).
- <sup>11</sup> See note 3 above.
- <sup>12</sup> PM&C, 'OGP Update - 3 August ', <https://ogpau.pmc.gov.au/2016/08/03/ogp-update-3-august>
- <sup>13</sup> Peter Timmins, Access to information advocate and Convener Australian Open Government Partnership Network, Sydney NSW, 23 August 2017; Australian Government Mid-Term Self-Assessment Report, at p5.
- <sup>14</sup> The government agencies represented were Department of the Prime Minister and Cabinet, Department of Finance, Attorney-General's Department, The Treasury, Office of the Australian Information Commissioner, National Archives of Australia.
- <sup>15</sup> See the various reports on each of the meetings [available at https://ogpau.pmc.gov.au/news/archives](https://ogpau.pmc.gov.au/news/archives) (accessed 6/4/2018).
- <sup>16</sup> In addition to individual members, organisations initially represented included Transparency International Australia, Accountability Round Table, Open Australia Foundation, Blueprint for Free Speech, Electronic Frontiers Australia, Australian Privacy Foundation, Australian Press Council, Media Entertainment and Arts Alliance, International Association for Public Participation, Open Knowledge Foundation Australia, Synod of Victoria and Tasmania, Uniting Church in Australia and Publish What You Pay Australia.
- <sup>17</sup> Interview with Department of Prime Minister and Cabinet, Canberra ACT, 8 September 2017.
- <sup>18</sup> Interview with Department of Prime Minister and Cabinet, Canberra ACT, 8 September 2017. Note that the original website used to document the development of the national action plan (<https://ogpau.govspace.gov.au/>) is no longer available.
- <sup>19</sup> Australian Government Mid-term Self-Assessment Report at p. 4. See also PM&C, 'An update from the coordination team, and a reminder to contribute to Stage 2', 22 December 2015, <https://ogpau.pmc.gov.au/2015/12/22/update-coordination-team-and-reminder-contribute-stage-2> No longer available, accessed 2/1/2018).
- <sup>20</sup> Australian Government Mid-term Self-Assessment Report at p. 4.
- <sup>21</sup> PM&C, 'Stage three: prioritisation and drafting workshop ', 9 April 2016, available at <https://ogpau.pmc.gov.au/2016/04/09/stage-three-prioritisation-and-drafting-workshop> (No longer available, accessed 5/1/2018).
- <sup>22</sup> PM&C, 'Collation of suggested actions and comments ', 10 April 2016, <https://ogpau.pmc.gov.au/2016/04/10/collation-suggested-actions-and-comments> (No longer available, accessed 5/1/2018).
- <sup>23</sup> PM&C, 'Submissions for the Interim Working Group are now closed', 24 August 2016, <https://ogpau.pmc.gov.au/2016/08/24/submissions-interim-working-group-are-now-closed>.
- <sup>24</sup> Members came from organisations including the Law Council of Australia, Monash University, Uniting Church of Australia, Open Data Institute Queensland, Australian Open Government Network, and OpenAustralia Foundation. See PM&C, 'Announcing the members of the Interim Working Group for Australia's OGP National Action Plan ', 30 August 2016, <http://ogpau.pmc.gov.au/2016/08/30/announcing-members-interim-working-group-australia%E2%80%99s-ogp-national-action-plan>
- <sup>25</sup> PM&C, 'Outcomes of OGP Public Information Sessions ', 15 November 2016, <http://ogpau.pmc.gov.au/2016/11/15/outcomes-ogp-public-information-sessions>. Note that no submissions or summary are now available.
- <sup>26</sup> This was the central issue raised in each of the three open forums in Sydney (22 August 2017), Melbourne (24 August 2017) and Canberra (29 August 2017).
- <sup>27</sup> IAP2 Spectrum, [http://c.yimcdn.com/sites/www.iap2.org/resource/resmgr/foundations\\_course/IAP2\\_P2\\_Spectrum\\_FINAL.pdf](http://c.yimcdn.com/sites/www.iap2.org/resource/resmgr/foundations_course/IAP2_P2_Spectrum_FINAL.pdf)
- <sup>28</sup> PM&C, 'Interim Working Group - Meeting 6: Agenda and papers', 28 March 2017, <https://ogpau.pmc.gov.au/2017/03/28/interim-working-group-meeting-6-agenda-and-papers>; PM&C, 'Interim working group meeting of 18 May: Agenda and papers', 15 May 2017, <https://ogpau.pmc.gov.au/2017/05/15/interim-working-group-meeting-18-may-agenda-and-papers>.
- <sup>29</sup> PM&C, 'Establishing Australia's first Multi-stakeholder Forum: Three ways to have your say', 1 May 2017, <https://ogpau.pmc.gov.au/2017/05/01/establishing-australias-first-multistakeholder-forum-three-ways-have-your-say>.
- <sup>30</sup> Open Government Forum, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.
- <sup>31</sup> These criteria were made publicly available in the call for nominations: PM&C, Join Australia's first Open Government Forum, 8 June 2017, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

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<sup>32</sup> Outcomes from the first Open Government Forum, <https://ogpau.pmc.gov.au/2017/08/07/outcomes-australias-first-open-government-forum-meeting-28-july-2017>.

<sup>33</sup> The selection process included notice that each gender would make up at least 40 per cent of positions on the Forum, and Aboriginal and Torres Strait Islander people and young people were particularly encouraged to apply.

<sup>34</sup> Papers and minutes of the forum meetings are available at <https://ogpau.pmc.gov.au/news/archives> (accessed 6/4/2018).

<sup>35</sup> <https://ogpau.pmc.gov.au/2017/07/21/first-meeting-australias-open-government-forum>

<sup>36</sup> PM&C, *Australia's Open Government Forum*, available from PM&C, Join Australia's first Open Government Forum, 8 June 2017, at p 3, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

<sup>37</sup> The dashboard is available on the home page of the ogpau website: <https://ogpau.pmc.gov.au/>.

<sup>38</sup> PM&C, *Australia's Open Government Forum*, available from PM&C, Join Australia's first Open Government Forum, 8<sup>th</sup> June 2017, at p 3, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

<sup>39</sup> Mid-term self assessment, [https://twitter.com/pmc\\_gov\\_au/status/907793475705491457](https://twitter.com/pmc_gov_au/status/907793475705491457).

<sup>40</sup> PM&C, 'Australia's first Midterm Self-Assessment Report: Have your say by 17 September, 2017', Comment by OGP Team, 19 September 2017, <https://ogpau.pmc.gov.au/2017/09/04/australia%E2%80%99s-first-midterm-self-assessment-report-have-your-say-17-september-2017>

<sup>41</sup> PM&C, 'Midterm Self-Assessment Report for Australia's first Open Government National Action Plan 2016-18', 26 September 2017, <https://ogpau.pmc.gov.au/2017/09/26/midterm-self-assessment-report-australia%E2%80%99s-first-open-government-national-action-plan>; the report is available at <https://www.opengovpartnership.org/documents/australia-mid-term-self-assessment-2016-2018>

## IV. Commitments

All OGP-participating governments develop OGP action plans that include concrete commitments over a two-year period. Governments begin their OGP action plans by sharing existing efforts related to open government, including specific strategies and ongoing programs.

Commitments should be appropriate to each country's unique circumstances and challenges. OGP commitments should also be relevant to OGP values laid out in the OGP Articles of Governance and Open Government Declaration signed by all OGP-participating countries.<sup>1</sup>

### What Makes a Good Commitment?

Recognizing that achieving open government commitments often involves a multiyear process, governments should attach time frames and benchmarks to their commitments that indicate what is to be accomplished each year, whenever possible. This report details each of the commitments the country included in its action plan and analyzes the first year of their implementation.

The indicators used by the IRM to evaluate commitments are as follows:

- **Specificity:** This variable assesses the level of specificity and measurability of each commitment. The options are:
  - **High:** Commitment language provides clear, verifiable activities and measurable deliverables for achievement of the commitment's objective.
  - **Medium:** Commitment language describes activity that is objectively verifiable and includes deliverables, but these deliverables are not clearly measurable or relevant to the achievement of the commitment's objective.
  - **Low:** Commitment language describes activity that can be construed as verifiable but requires some interpretation on the part of the reader to identify what the activity sets out to do and determine what the deliverables would be.
  - **None:** Commitment language contains no measurable activity, deliverables, or milestones.
- **Relevance:** This variable evaluates the commitment's relevance to OGP values. Based on a close reading of the commitment text as stated in the action plan, the guiding questions to determine the relevance are:
  - **Access to Information:** Will the government disclose more information or improve the quality of the information disclosed to the public?
  - **Civic Participation:** Will the government create or improve opportunities or capabilities for the public to inform or influence decisions?
  - **Public Accountability:** Will the government create or improve opportunities to hold officials answerable for their actions?
  - **Technology & Innovation for Transparency and Accountability:** Will technological innovation be used in conjunction with one of the other three OGP values to advance either transparency or accountability?<sup>2</sup>
- **Potential impact:** This variable assesses the potential impact of the commitment, if completed as written. The IRM researcher uses the text from the action plan to:
  - Identify the social, economic, political, or environmental problem;
  - Establish the status quo at the outset of the action plan; and

- Assess the degree to which the commitment, if implemented, would impact performance and tackle the problem.

**Starred commitments** are considered exemplary OGP commitments. In order to receive a star, a commitment must meet several criteria:

- Starred commitments will have “medium” or “high” specificity. A commitment must lay out clearly defined activities and steps to make a judgement about its potential impact.
- The commitment’s language should make clear its relevance to opening government. Specifically, it must relate to at least one of the OGP values of Access to Information, Civic Participation, or Public Accountability.
- The commitment would have a "transformative" potential impact if completely implemented.<sup>3</sup>
- The government must make significant progress on this commitment during the action plan implementation period, receiving an assessment of "substantial" or "complete" implementation.

Based on these criteria, Australia’s action plan did not have any starred commitments

Finally, the tables in this section present an excerpt of the wealth of data the IRM collects during its progress reporting process. For the full dataset for Australia and all OGP-participating countries, see the OGP Explorer.<sup>4</sup>

### General Overview of the Commitments

The action plan includes 15 commitments organised around five themes: Transparency and accountability in business; open data and digital transformation; access to government information; integrity in the public sector; and public participation and engagement. All but one of the commitments (Commitment 9 – understand the use of freedom of information) provides for action to be taken by Commonwealth government agencies, with some commitments involving milestones to be completed by different agencies.

Each of the commitments includes a number of milestones with start and end dates indicated for each, with some milestones broken down into further elements. The commitments in the national plan are numbered on the basis of the theme they relate to. In this report they have been numbered sequentially to avoid the confusion that comes from trying to identify individual elements.

### Themes

Generally the commitments involve distinct responsibilities. In reporting on the commitments, this report follows the order set out in the national action plan.

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<sup>1</sup> Open Government Partnership: Articles of Governance, June 2012 (Updated March 2014 and April 2015), [https://www.opengovpartnership.org/sites/default/files/attachments/OGP\\_Articles-Gov\\_Apr-21-2015.pdf](https://www.opengovpartnership.org/sites/default/files/attachments/OGP_Articles-Gov_Apr-21-2015.pdf)

<sup>2</sup> IRM Procedures Manual. Available at: [http://www.opengovpartnership.org/sites/default/files/IRM-Procedures-Manual-v3\\_July-2016.docx](http://www.opengovpartnership.org/sites/default/files/IRM-Procedures-Manual-v3_July-2016.docx)

<sup>3</sup> The International Experts Panel changed this criterion in 2015. For more information visit: <http://www.opengovpartnership.org/node/5919>

<sup>4</sup> OGP Explorer: [bit.ly/1KE2WII](http://bit.ly/1KE2WII)

## Theme I: Transparency and accountability in business

### I. Improve whistle-blower protections in the tax and corporate sectors

#### **Commitment Text:**

*Australia will ensure appropriate protections are in place for people who report corruption, fraud, tax evasion or avoidance, and misconduct within the corporate sector.*

*We will do this by improving whistle-blower protections for people who disclose information about tax misconduct to the Australian Taxation Office. We will also pursue reforms to whistle-blower protections in the corporate sector, with consultation on options to strengthen and harmonise these protections with those in the public sector.*

[...]

#### **Milestones:**

1. Establish Parliamentary inquiry.
2. Treasury to release a public consultation paper covering both tax whistle-blower protections and options to strengthen and harmonise corporate whistle-blower protections with those in the public sector.
3. Development and public exposure of draft legislation for tax whistle-blower protections (informed by consultation). Recommendation to Government on reforms to strengthen and harmonise whistle-blower protections in the corporate sector with those in the public sector (informed by consultation).
4. Finalise and introduce legislation for tax whistle-blower protections.
5. Introduce legislation to establish greater protections for whistle-blowers in the corporate sector, with a parliamentary vote no later than 30 June 2018.

**Responsible institution:** Treasury

**Supporting institution(s):** Australian Taxation Office, Australian Securities and Investments Commission, Australian Prudential Regulation Authority, Attorney-General's Department. For a full list of agencies, please see the Australia National Action Plan

**Start date:** December 2016

**End date:** June 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at

[https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative	Yes	Not Started	Limited	Substantial	Complete
I. Improve whistle-blower protections in the tax and corporate sectors			✓			✓					✓		Yes		✓		

### Context and Objectives

This commitment seeks to establish whistleblower protection in the corporate and taxation sectors. Current whistleblowing protection at the Commonwealth level is either limited to the public sector or to contraventions of particular legislation. This commitment will extend protection of wrongdoing by or within corporations as well as providing protection for breaches of taxation legislation.

The *Public Interest Disclosure Act 2013* (Cth) protects against reprisals for the disclosure of information about suspected wrongdoing within a Commonwealth government agency, by a public official or by entities that have contracts with the government to provide goods or services. It emphasizes ‘disclosures of wrongdoing being reported to, and investigated within, government.’<sup>1</sup> States and Territories have legislation with similar objectives.

The *Corporations Act 2001* (Cth) extends limited protection to corporate actors who disclose information about an actual or potential contravention of the corporations legislation. Similar protections apply to disclosures about misconduct in a range of institutions regulated by the Australian Prudential Regulatory Authority (APRA), including banks, insurers and superannuation providers.<sup>2</sup> However, these existing whistleblower protections are limited to contraventions of particular legislation. There is no broad protection that may cover disclosure of corporate corruption, bribery, fraud, money laundering, terrorism financing or other serious forms of misconduct. There are no whistleblower protections in Australian tax laws.

During passage of amendments to the *Fair Work (Registered Organisations) Act* in November 2016 to include protection against reprisals for people who report corruption or misconduct in unions and employer organisations, the government committed to supporting a Parliamentary inquiry to look at extending these protections to the corporate sector.<sup>3</sup> The calls for a parliamentary inquiry follow a large number of previous inquiries and academic reports on whistleblowing protection in Australia.<sup>4</sup> One such report concluded that ‘the scope of wrongdoing covered is ill-defined, anonymous complaints are not protected, there are no requirements for internal company procedures, compensation rights are ill-defined, and there is no oversight agency responsible for whistleblower protection.’<sup>5</sup> These inquiries have recognized that whistleblowing is one of the most effective ways to expose and remedy corruption, fraud and other forms of misconduct.<sup>6</sup>

Overall, this commitment stands to have moderate potential impact. By reiterating the commitment to establishing a parliamentary inquiry, the commitment provides a means to examine increasing the scope of whistleblower protection in the private, public and non-

profit sector. The wide-ranging inquiry will also provide a specific opportunity for public participation. Enhancing protection of whistleblowers within the corporate sector has the potential to substantially increase the accountability of corporate actors against a wide range of misconduct, including tax fraud, and the effectiveness of government agencies in enforcing regulatory compliance. Whistleblowing protection can also help to establish a culture of accountability and integrity, helping to 'empower citizens' against misconduct, corruption and fraud.<sup>7</sup>

The milestones to release a public consultation paper covering both tax whistle-blower protection, and then to progress the results of that consultation to legislation, are not as specifically defined. As Jessie Cato from Publish What You Pay Australia suggested, several of her member organisations were unclear about how the parliamentary inquiry related to the Treasury consultation on Corporate and Tax whistleblowing.<sup>8</sup> A number of people interviewed for this report were concerned that focusing on tax and corporate reforms, and attempting to legislate them separately, might complicate and perhaps restrict the scope of the whistleblowing protections, with any uncertainty over the coverage potentially affecting a potential whistleblower's willingness to come forward.<sup>9</sup>

## Completion

*Milestone 1.1:* This milestone was completed. The Parliamentary Joint Committee on Corporations and Financial Services ('PJCCFS') established an inquiry to examine whistleblower protections in the corporate, public and non-profit sectors on 30 November 2016.<sup>10</sup> The Committee invited submissions on its website for more than two months.<sup>11</sup> Over 75 submissions were received.<sup>12</sup> The Joint Committee held public hearings in Brisbane, Melbourne and Canberra.<sup>13</sup>

After extensions of the original reporting date of 30 June, the Committee reported in September 2017 (Parliamentary Joint Committee on Corporations and Financial Services, or 'PJCCFS Report'),<sup>14</sup> after the period of implementation considered in this report. The Committee's recommendations included bringing private sector whistleblowing protections into a single Act and aligning those protections with public sector protections, and that the Commonwealth, States and Territories should harmonise whistleblowing protection across Australia. It also recommended that a reward system be introduced in proportion to any penalty imposed as a result of whistleblowing disclosures, and that a Whistleblower Protection Authority be established.<sup>15</sup>

*Milestone 1.2:* This milestone was completed. Treasury released a consultation paper reviewing tax and corporate whistleblower protections in Australia on 21 December 2016.<sup>16</sup> The paper called for submissions on reforms to existing protections under the Corporations Act and similar provisions as well as a proposal for specific protection under tax legislation. The paper included consideration of the scope of the reforms including whether the information to be covered should be comprehensive across Commonwealth legislation, the range of whistleblowers and agencies to whom disclosures can be made should be expanded, anonymous disclosures, requiring companies to put in place internal systems for internal disclosures, and establishing an oversight agency. The consultation paper also stated that it was intended to complement the Parliamentary Inquiry with submissions made available to the parliamentary committee.<sup>17</sup>

The department advertised the consultation paper on its website.<sup>18</sup> It received 34 submissions from corporate bodies and peak organisations, religious and non-profit organisations, civil society organisations and individuals and published on that website.

*Milestone 3:* This milestone saw limited completion as of 30 June 2017. A draft of a proposed *Treasury Laws Amendment (Whistleblowers) Bill 2017* was released for public comment on 23

October 2017, with submissions due by 3 November 2017.<sup>19</sup> This draft included feedback on the range of submissions received as part of the consultation process.

*Milestones 4 and 5:* These activities were scheduled to begin in the second year of implementation of the action plan and had not started as of June 30, 2017.

Other than the submissions received as part of the consultation process, there was no evidence of results of this commitment as of the time of writing this report.

## Next Steps

The commitment as framed concentrates on exposing wrongdoing within the corporate sector or in relation to taxation. Civil society stakeholders interviewed for this report all commended extending the scope of any reforms beyond corporate and tax whistleblowing as reflected in the scope and recommendations of the PJCCFS inquiry. The next steps could therefore include:

- Establishing a process of evaluation of the implementation of any legislative reforms introduced under the commitment;
- Responding to the recommendations of the PJCCFS, including reforms to the Public Interest Disclosure Act and other elements of public sector whistleblowing, including collaboration through a multistakeholder group.

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<sup>1</sup> Treasury, *Review of tax and corporate whistleblower protections in Australia, Consultation Paper, 20 December 2016*, at p6, <https://treasury.gov.au/consultation/review-of-tax-and-corporate-whistleblower-protections-in-australia/> ('Whistleblowing Consultation paper').

<sup>2</sup> Whistleblowing consultation paper at p 5.

<sup>3</sup> Commonwealth Hansard, *Fair Work (Registered Organisations) Amendment Bill 2014 – Second Reading*, Senate, 21 November 2016, p 2745 (Senator Xenophon), [https://www.aph.gov.au/Parliamentary\\_Business/Hansard/Hansard\\_Display?bid=chamber/hansards/5e26e672-7115-4c74-85bb-c6d311556c93&sid=0158](https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/5e26e672-7115-4c74-85bb-c6d311556c93&sid=0158).

<sup>4</sup> For example, the discussion at Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections*, September 2017 pp 11-25, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections) ('PJCCFS Report'); Philip Moss AM, *Review of the Public Interest Disclosure Act 2013*, July 2016, <https://pmc.gov.au/government/legislation-review/statutory-review-public-interest-disclosure-act-2013> ('Moss Review').

<sup>5</sup> Simon Wolfe, Mark Worth, Suelette Dreyfus and A J Brown, *Whistleblower Protection Laws in G20 Countries: Priorities for Action*, September 2014, p 25 available at <http://pandora.nla.gov.au/pan/148392/20140917-0713/blueprintforfreespeech.net/wp-content/uploads/2014/09/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf> (accessed 6/4/2018).

<sup>6</sup> Simon Wolfe, Mark Worth, Suelette Dreyfus and A J Brown, *Whistleblower Protection Laws in G20 Countries: Priorities for Action*, September 2014, p 10.

<sup>7</sup> Testimony before the PJCCFS by Ms Serene Lillywhite, Chief Executive Officer, Transparency International, Committee, Hansard, 27 April 2017, p 2.

<sup>8</sup> Interview with Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.

<sup>9</sup> Professor AJ Brown, Griffith University and Director, Transparency International, Phone meeting, 1 September 2017; Peter Timmins, Access to information advocate and Convener Australian Open Government Partnership Network, Sydney NSW, 23 August 2017, Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017. See also submission to the PJCCFS inquiry of Ms Rebecca Maslen-Stannage, Chair, Corporations Committee, Business Law Section, Law Council of Australia, Committee Hansard, 28 April 2017, p. 15,

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Submissions).

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<sup>10</sup> The inquiry homepage,  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections).

<sup>11</sup> Submissions closed on 10 February 2017,  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections).

<sup>12</sup> Submissions,  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Submissions).

<sup>13</sup> Parliament of Australia, Public hearings,  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections/Public\\_Hearings](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Public_Hearings)

<sup>14</sup> PJCCFS Report,  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Report).

<sup>15</sup> PJCCFS Report.

<sup>16</sup> Treasury, *Review of tax and corporate whistleblower protections in Australia, Consultation Paper, 20 December 2016*, at p6, <https://treasury.gov.au/consultation/review-of-tax-and-corporate-whistleblower-protections-in-australia/>

<sup>17</sup> Whistleblowing Consultation Paper at 1.

<sup>18</sup> Treasury, 'Review of tax and corporate whistleblowing protections in Australia', at <https://treasury.gov.au/consultation/review-of-tax-and-corporate-whistleblower-protections-in-australia/>.

<sup>19</sup> Treasury, 'Treasury Laws Amendment (Whistleblowers) Bill 2017 - Exposure Draft', <https://consult.treasury.gov.au/market-and-competition-policy-division/whistleblowers-bill-2017/>.

## 2. Beneficial ownership transparency

### **Commitment Text:**

*Australia will improve transparency of information on beneficial ownership and control of companies available to relevant authorities.*

*As part of this, we will consult with the corporate sector, non-government organisations and the public on the details, scope and implementation of a beneficial ownership register for companies, as well as other options to improve beneficial ownership transparency.*

[...]

### **Ambition:**

*To ensure that adequate, accurate and timely information on beneficial ownership and control is available to relevant authorities in Australia to address issues of tax evasion, money laundering, corruption and terrorist financing.*

*To improve regional and international cooperation on taxation, including strengthening information sharing between tax authorities and sharing learnings to increase the transparency of beneficial ownership information. We will use outcomes of the work by the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes to help develop proposals to improve implementation of relevant international standards on transparency, including on the availability and exchange of companies' beneficial ownership information.*

### **Milestones:**

1. Treasury to release a public consultation paper seeking views on the details, scope and implementation of a beneficial ownership register for companies. The consultation will also consider the use of nominee shareholdings to conceal beneficial ownership.
2. Recommendation to Government on the details, scope and implementation of a beneficial ownership register for companies (informed by public consultation).
3. Begin work to implement Government decision on transparency of beneficial ownership of companies.

**Responsible institution:** Treasury

**Supporting institution(s):** Various

**Start date:** February 2017

**End date:** June 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at

[https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
Beneficial ownership transparency			✓			✓					✓		No		✓		

### Context and Objectives

This commitment considers establishment of a beneficial ownership register in Australia. The principles of beneficial ownership transparency are intended to assist in reducing the ability of companies and other legal arrangements to disguise the identity of those involved in corruption or other illicit activities, including tax evasion, money laundering, bribery, corruption and terrorism financing.<sup>1</sup> Common approaches to beneficial ownership can also facilitate information sharing among authorities internationally to combat cross-jurisdictional activities. It can also be used to prevent corruption of public officials in the procurement process.<sup>2</sup>

There are currently various obligations on entities to disclose beneficial ownership information in Australia. Under the *Corporations Act 2001* (Cth) companies are required to maintain a publicly accessible register of members, including whether shares are held beneficially. 'Relevant interests' in a substantial number of shares in publicly listed companies must be publicly disclosed.<sup>3</sup> Australian Securities and Investment Commission (ASIC) or a listed company can also issue a 'tracing notice' to require public disclosure of relevant interests. Various financial and other organisations<sup>4</sup> also have obligations under Australia's Anti-Money Laundering and Counter-Terrorism Financing legal framework<sup>5</sup> to verify beneficial ownership information in relation to certain customers. Beneficial ownership information relating to accounts held by foreign residents for tax purposes must also be provided by financial institutions to the Australian tax office and then shared with overseas tax authorities.<sup>6</sup>

However, in its *Mutual Evaluation Report*, completed in April 2015, the Financial Action Task Force (FATF) – an international body setting beneficial ownership standards - and the Asia/Pacific Group on Money Laundering considered that existing mechanisms in Australia were not sufficient to ensure accurate and up-to-date information on beneficial owners was available.<sup>7</sup> The report recommended that:

*Australia should also take measures to ensure that beneficial ownership information for legal persons is collected and available. Trustees should be required to hold and maintain information on the constituent elements of a trust including the settlor and beneficiary.<sup>8</sup>*

The introduction of a beneficial ownership register has the potential to increase the effectiveness of regulatory oversight of corruption or other illicit activities, including tax evasion, money laundering, bribery, corruption and terrorism financing. If the information was made public, a beneficial ownership register could have a transformative impact on the information available to the public, including information which could be used to scrutinise public officials, including regulatory authorities and those involved in public procurement, by exposing connections with private interests.<sup>9</sup> However, the commitment does not expressly commit to establishing a beneficial ownership register. It commits to consulting on the

details, scope and implementation of such a register, making a recommendation to government and work to begin to implement that recommendation, but does not set out measurable standards for that work other than the implicit basis that some form of register will be introduced.

It is the expectation of civil society groups interviewed for this report that the commitment will result in a beneficial ownership register being established which will be sufficient to meet the FATF standard, but not necessarily result in a public register.<sup>10</sup> Therefore, the potential overall impact of this commitment, including the opportunity for public participation it presents, is moderate.

The commitment does not provide any details on the scope and depth of consultation, and therefore is of medium specificity.

## Completion

*Milestone 2.1:* This milestone is completed. Treasury released a consultation paper on 13 February 2017 inviting submissions over a four-week period.<sup>11</sup> Treasury also emailed information about the consultation process to various stakeholders and civil society groups who had previously expressed an interest in the issues.<sup>12</sup> Several national newspapers including Guardian Australia provided coverage of the consultation.<sup>13</sup> Treasury published all non-confidential submissions on issues raised in or by the consultation paper.<sup>14</sup>

The consultation paper asks for submissions on a variety of issues, including: the identification of beneficial owners, what details should be collected, how should this information be collected and stored, and how any central register should operate. Issues involving use of nominee shareholders and bearer share and share warrants are also raised.

There were 23 non-confidential submissions responding to the consultation paper from a variety of industry and peak body groups, civil society organisations and individuals. Various submissions raised concerns with the scope of the consultation paper, especially the paper's failure to raise the issue of whether the register of beneficial ownership should be publicly available.<sup>15</sup> Other submissions discussed the need to consider how any beneficial ownership register would impact on other existing reporting requirements,<sup>16</sup> as well as those proposed in other national action plan commitments, including 1.3 on implementing EITI membership which includes a commitment to work towards public available beneficial ownership information.<sup>17</sup>

When interviewed, Publish What You Pay and Transparency International raised concerns about beneficial ownership of trusts and other legal arrangements not being considered in the consultation paper.<sup>18</sup>

There was no feedback provided by Treasury on the results of the consultation process. The Government's OGP mid-term self-assessment report indicated that Treasury was continuing to consult with stakeholders on the beneficial ownership register.

*Milestone 2.2:* This milestone was not completed within the expected timeframe of 30 June 2017. Interviews with Treasury Officials indicated that a recommendation to government was not expected until October 2017.<sup>19</sup>

*Milestone 2.3:* Work to implement any Government's decision following on from the recommendation was not commenced. It was scheduled to begin in the second year of implementation of the action plan and had not started as of June 30, 2017

There were no changes in government practice within the implementation period of this report.

## Next Steps

Depending on what recommendations are made as a result of the consultation, and the government's decision on those recommendations, in the view of the IRM researcher possible next steps could include:

- Further consultation on expanding any beneficial register to trusts and other forms of legal arrangement, including feedback on the results of the consultation process and its use in any recommendation to government;
- Establishing a collaborative process including forming a multi-stakeholder group to consider making beneficial ownership information publicly available;
- A process of evaluation of any implementation of a beneficial ownership register, including costs of compliance and use by authorities, if any.

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<sup>1</sup> Treasury, *Increasing Transparency of the Beneficial Ownership of Companies, Consultation Paper, 2017*, <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies/> ('Consultation Paper')

<sup>2</sup> For example, Anti-corruption summit London 2016, *Communique*, 12 May 2016 at [9], <https://www.gov.uk/government/publications/anti-corruption-summit-communique>

<sup>3</sup> Including persons with the power to exercise or control voting rights or other powers associated with shares: see Consultation Paper at 4-5.

<sup>4</sup> Including remittance, gaming and bullion businesses.

<sup>5</sup> The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and associated Rules made under that Act, see the Consultation Paper at 6.

<sup>6</sup> Consultation paper at 6.

<sup>7</sup> FATF and APG, *Anti-money laundering and counter-terrorist financing measures: Australia*, April 2015 at p.10, <http://www.fatf-gafi.org/countries/a-c/australia/documents/mer-australia-2015.html>

<sup>8</sup> Above at p 11.

<sup>9</sup> See for example the identification of politically exposed persons as beneficial owners in reviewing the operation of the UK public beneficial ownership register: Global Witness, 'What Does the UK Beneficial Ownership Data Show Us?', at <https://www.globalwitness.org/en/blog/what-does-uk-beneficial-ownership-data-show-us/> (9/4/2018).

<sup>10</sup> Interview with Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.

<sup>11</sup> Consultation Paper.

<sup>12</sup> Interview with Treasury Department, Canberra ACT, 14 September 2017.

<sup>13</sup> For example, Guardian Australia, 'Coalition to create public register to reveal true owners of shell companies', 22 April 2016, <https://www.theguardian.com/australia-news/2016/apr/22/coalition-to-create-public-register-to-reveal-true-owners-of-shell-companies>

<sup>14</sup> Treasury, <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies/>.

<sup>15</sup> For example, the submissions of Publish what you pay and Transparency International Australia, <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies/>.

<sup>16</sup> Law Council of Australia submissions, <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies/>.

<sup>17</sup> For example, the submissions of Publish what you pay and Transparency International Australia, <https://treasury.gov.au/consultation/increasing-transparency-of-the-beneficial-ownership-of-companies/>

<sup>18</sup> Interview with Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017, Interview with T Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017; See also Royce Millar, Ben Schneiders, 'Australia dodges international crackdown on trusts' Sydney Morning Herald, 11 April 2017, <http://www.smh.com.au/national/australia-dodges-international-crackdown-on-trusts-20170411-gvisrd.html>

<sup>19</sup> Interview with Treasury Department, Canberra ACT, 14 September 2017.

### 3. Extractive industries transparency

#### Commitment Text:

Australia will enhance disclosure of company payments and government revenues from the oil, gas and mining sectors.

We will do this by implementing the Extractive Industries Transparency Initiative (EITI) Standard (including working to enhance company disclosure of payments to governments for the sale of petroleum and minerals) and by continuing to support the application of EITI principles around the world.

[...]

#### Milestones:

1. Establish a Multi-Stakeholder Group (representing industry, non-government organisations and government) to oversee the implementation of the EITI Standard in Australia (including working to enhance company disclosure of payments to governments for the sale of petroleum and minerals)
2. Submit a formal application for EITI candidacy.
3. Produce Australia's first EITI report.
4. Commence validation to become EITI compliant (at discretion of EITI Secretariat).

**Responsible institution:** Department of Industry, Innovation and Science

**Supporting institution(s):** For details see the national action plan.

**Start date:** September 2016

**End date:** Mid 2019

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at

[https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
Extractive industries transparency				✓	✓	✓					✓		No		✓		

#### Context and Objectives

This commitment seeks to increase the transparency of disclosure of company payments to government and government revenues from the oil, gas and mining sectors through meeting the standards for membership of the Extractive Industries Transparency Initiative (EITI).

The EITI standard includes requirements for implementing countries to establish a multi-stakeholder group and otherwise ensure companies and civil society groups are able to fully

engage in the EITI process, including with monitoring and evaluation.<sup>1</sup> There has to be publicly available and comprehensive disclosure,<sup>2</sup> preferably through mainstreaming open data by default,<sup>3</sup> of:

- the legal and institutional framework, including allocation of contracts and licences.
- exploration and production information
- material taxes and revenues collected by government, and
- distribution, management and expenditure of revenues

Forms of social expenditure by companies and other contributions to the economy also have to be included. Membership of the EITI is then dependent on validation, or an assessment of a country's progress against the EITI standards by the EITI Secretariat, overseen by the EITI Board.

Australia has no centralised system for disclosure of information relating to domestic extractive industries' payments to government. The Commonwealth government currently publishes an annual report of tax information relating to large Australian and foreign-owned companies.<sup>4</sup> However, the information reported is limited to total and taxable incomes and tax payable as well as details of any petroleum resource rent tax (which applies to profits on petroleum extraction projects) payable. There are also reporting and disclosure requirements that apply at the state and territory level but they generally do not provide disaggregated data concerning individual mining companies or operations.<sup>5</sup> A number of companies in the extractives industry currently voluntarily provide information about payments to government.<sup>6</sup>

In 2011, a multi-stakeholder group, consisting of representatives from Commonwealth and State governments, industry and civil society, was formed to run a pilot program to consider whether Australia could comply with the EITI principles.<sup>7</sup> The multi-stakeholder group concluded that while there are a number of existing accountability measures in place relating to payments to government in the domestic extractives industry, these are not necessarily comprehensive and greater transparency and consistency of reporting is needed to ensure trust in the sector is maintained.<sup>8</sup> The pilot used a process involving a voluntary annual sampling of data. It recommended implementing this process, which it described as an adapted EITI model, as appropriate in the Australian context.

The pilot's recommended model was considered consistent with the adapted implementation arrangements introduced for the significant amendments to the EITI Standard in 2013.<sup>9</sup> However, the standard was further amended in 2016 to include a requirement that all implementing parties, by 2020, publicly disclose beneficial ownership information.<sup>10</sup> There is also currently an inquiry into corporate tax avoidance and issues relating to the treatment of royalties, deductions and taxes by corporations involved in Australia's offshore oil and gas industry which could also be relevant to Australia's membership of the EITI.<sup>11</sup>

This commitment sets out specific milestones towards commencing validation by the EITI Secretariat in 2019. It therefore represents a highly specific commitment given the detailed requirements needing to be addressed in submitting a formal application, producing the first EITI report and being validated as EITI compliant.

EITI compliance will enhance access to information on governance and payments in the oil, gas and mining sectors. By establishing a multi-stakeholder group to oversee the implementation of the EITI standard the commitment will also increase participation of civil society groups. The ability to reconcile payments against receipts will also assist in testing the reliability of the regulatory framework and exposing potential corruption or mismanagement by public officials.

Although civil society groups interviewed in preparing this report were highly supportive of Australia's implementation of the EITI standard, they considered the potential impact to be moderate given the yet unresolved issues with implementation. Jessie Cato, from Publish What You Pay (PWYP) Australia, for example, highlighted the limited nature of the pilot and its definition of materiality of payments (which excluded various loans and grants, tax credits and allowances<sup>12</sup>), and the need to resolve a number of issues including which forms of social expenditure will be included. The voluntary nature of the disclosure requirements under the standard and the focus on domestic payments also limited the potential benefits from EITI implementation. PWYP Australia, and Transparency International (TI) Australia, both members of the pilot multi-stakeholder group, have advocated for a mandatory disclosure reporting requirement that legally required extractives companies listed on the Australian Securities Exchange to make public their payments to government in every country in which they operate.<sup>13</sup> This would bring Australia in line with other countries, including the UK and Canada, that have introduced such a mandatory disclosure requirement and to which several Australian companies, including BHP Billiton and Rio Tinto, are already subject.<sup>14</sup>

## Completion

*Milestone 3.1:* This milestone was fully completed. The Department of Industry, Innovation and Science has re-established the multi-stakeholder group, which has met twice (on 23 November 2016 and 6 April 2017).<sup>15</sup> However, no information is publicly available relating to the membership of the group, its agenda or decisions to date. In an interview with the Department of Industry, Innovation and Science in preparation for this report, as confirmed in interviews with PWYP Australia<sup>16</sup> and TI Australia<sup>17</sup>, who are members of the multi-stakeholder group, indicate that the multi-stakeholder group was established on the same basis as the pilot, with representation from government (including some State representatives), the extractive industry and civil society, with each sector then responsible for determining who will represent it in the group.

*Milestone 3.2:* The interviews with the Department indicated that this milestone has not been started as the Department has not submitted an application for EITI Candidacy as required.<sup>18</sup> This is due to a comprehensive review being undertaken by the Department of the 2016 amendments to the EITI standard against the model adopted in the pilot.<sup>19</sup> Turnover of staff has also delayed further progress. Decisions relating to beneficial ownership transparency are also subject to policy positions being developed by Treasury (see Commitment 2 above).

PWYP and TI Australia indicated that they have had difficulty in getting further information about progress. They were also concerned about the lack of high-level ministerial support for the initiative, and the lack of clear resources that have been allocated towards achieving the commitments objectives.<sup>20</sup>

*Milestones 3.3 and 3.4:* Because these milestones are dependent on submission of an application for EITI membership they have also not been started.

The lack of transparency relating to progress of this commitment has meant that no early results are available.

## Next Steps

The delay in progressing this commitment may require this commitment to be taken forward into the next action plan with a revised timetable for implementation. Further details about progress, both through more regular reporting to the multi-stakeholder group established under this commitment and to the public through publication of agenda and minutes of multi-stakeholder meetings and status updates, should be provided.

The next action plan could also include an evaluation of the costs and benefits of establishing a mandatory disclosure regime for Australian Companies involved in the extractives industry

overseas, including an investigation of the impact of mandatory disclosure regimes adopted in other countries

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- <sup>1</sup> EITI, *The EITI Standard 2016*, 43, <https://eiti.org/document/standard>.
- <sup>2</sup> EITI Requirement 7.1 Public Debate, <https://eiti.org/document/standard#r7-1>)
- <sup>3</sup> EITI, *The EITI Standard 2016*, pp45-46, <https://eiti.org/document/standard>.
- <sup>4</sup> For further information see Australian Tax Office, 'Report of entity tax information' <https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Tax-transparency--reporting-of-entity-tax-information/>
- <sup>5</sup> Extractive Industries Transparency Initiative – Multi-stakeholder Group Report to Government , May 2015, Appendix 2, <https://industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/default.aspx>.
- <sup>6</sup> Interview with Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.
- <sup>7</sup> Department of Industry, Innovation and Science, 'EITI Pilot, Summary Update', <https://industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/pilot.aspx>; Also 'Terms of Reference for the EITI Pilot's Multi-Stakeholder Group', [https://industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/MSG\\_TOR.aspx](https://industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/MSG_TOR.aspx).
- <sup>8</sup> Extractive Industries Transparency Initiative – Multi-stakeholder Group Report to Government , May 2015, <https://industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/default.aspx> ('EITI Pilot Report')
- <sup>9</sup> EITI Pilot Report at p 37.
- <sup>10</sup> EITI, 'Beneficial Ownership', <https://eiti.org/beneficial-ownership>.
- <sup>11</sup> Senate Standing Committees on Economics, 'Corporate Tax Avoidance Inquiry', at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporatetax45th](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporatetax45th) This inquiry is due to report by 28 November 2017.
- <sup>12</sup> EITI Pilot report at p 62.
- <sup>13</sup> Publish what you pay, 'Opening Australia's extractive data for development', <http://www.publishwhatyoupay.org/opening-australias-extractive-data-for-development/>. Transparency International Australian, *Position paper #4, Preventing Corruption in Mining*, 2016, <http://transparency.org.au/our-work/preventing-corruption-in-mining/>.
- <sup>14</sup> Publish what you pay, 'Opening Australia's extractive data for development', <http://www.publishwhatyoupay.org/opening-australias-extractive-data-for-development/>.
- <sup>15</sup> Interview with Department of Industry, Innovation and Science, Canberra ACT, 8 September 2017.
- <sup>16</sup> Interview with Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.
- <sup>17</sup> Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017.
- <sup>18</sup> Interview with Department of Industry, Innovation and Science, Canberra ACT, 8 September 2017.
- <sup>19</sup> See also Mid-Term Assessment, at p 14.
- <sup>20</sup> Interviews with Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017; Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017;

## 4. Combating corporate crime

### **Commitment Text:**

*Australia will strengthen its ability to prevent, detect and respond to corporate crime, particularly bribery of foreign public officials, money laundering, and terrorism financing.*

*We will do this by pursuing reforms to relevant legislative frameworks, which will involve a process of public consultation.*

[...]

*Ambition:*

*We will ensure that our laws applying to the bribery of foreign public officials, money laundering and terrorism financing are strong and there are no unnecessary barriers to effective prosecution.*

*We will consult publicly on the implementation of recommendations from the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and associated Rules and Regulations.*

*We will respond to the public consultation into whether a DPA scheme would facilitate more effective and efficient responses to bribery and corporate corruption by encouraging companies to self-report.*

*We will review the enforcement regime of the Australian Securities and Investments Commission (ASIC), to assess the suitability of the existing regulatory tools available to it to perform its functions adequately.*

*Milestones:*

- 1. AGD to review laws applying to foreign bribery and consult publicly on possible reform options.*
- 2. Respond to the consultation on a possible Australian DPA scheme and consult on possible models.*
- 3. Consult publicly on the recommendations from the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and associated Rules and Regulations, and implement legislative reforms.*
- 4. Review ASIC's enforcement regime.*

**Responsible institution:** Attorney-General's Department

**Supporting institution(s):** ACLEI, Australian Federal Police, Australian Securities and Investments Commission, Commonwealth Director of Public Prosecutions, and Treasury: See the Australia National Action Plan for a full list.

**Start date:** December 2016

**End date:** 2019

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
4. Combating corporate crime			✓			✓					✓				✓		
4.1. Review foreign Bribery Laws		✓				✓				✓						✓	
4.2. Respond to consultation on DPA scheme			✓			✓					✓					✓	
4.3. Consult on AML/CTF Act recommendations			✓			✓					✓				✓		
4.4 Review ASIC's enforcement regime			✓			✓					✓				✓		

## Context and Objectives

This commitment brings together a variety of initiatives relating to disclosure and transparency in corporate regulation.

*Milestone 1:* It is currently an offence under section 70.2 of the Criminal Code<sup>1</sup> to provide a benefit not legitimately due to a person with the intent to influence a foreign public official in the exercise of their official duties. However, there have been very few prosecutions under this offence.<sup>2</sup> The OECD Working Group on Bribery reported in 2015 that further reforms and enforcement action was necessary to establish the government's commitment to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>3</sup> The government has recognised that it is difficult to prove the intention of the alleged offender, bribes can be concealed as legitimate payments in breach of false accounting laws,<sup>4</sup> detailed information may not be able to be obtained from other countries, and there is uncertainty over whether the offence extends to obtaining unforeseen business for other persons.<sup>5</sup>

Milestone 1 commits the government to review these current laws applying to foreign bribery and consult on their reform. The form and extent of the review and method of consultation is not made clear in the commitment text and therefore it is not very specific. The proposal to publicly consult on proposed reforms will enhance public consultation during the consultation process, but there is no provision for increased collaboration with civil society groups in the future.

The milestone has minor potential impact as it does not make any commitment to implement reforms after the consultation process. Even if implemented, it is not clear what impact any possible reforms might have in increasing access to information or accountability of public officials. Transparency International, for example, in various submissions and in interviews for this report, suggest that law reform is needed to curb foreign bribery. However, the impact of the proposed reforms will be limited unless they include the following: (a) protection of whistleblowers, (b) barring deficient companies from government work, (c) ensuring sufficient resources are available to enforce the laws on foreign bribery and (d) preventing suppression orders being issued in foreign bribery cases. Encouraging self-reporting and negotiated settlements, as in milestone 2, is also important.<sup>6</sup>

Outside of the commitment an inquiry into foreign bribery conducted by the Senate Economics References Committee was commenced on 24 June 2015.<sup>7</sup> The Committee report, published on 28 March 2018,<sup>8</sup> will be discussed in the end-of-term report.

*Milestone 2: Deferred prosecution agreements (DPA) involve voluntary, negotiated settlements between a prosecutor and defendant to avoid the need to successfully prosecute breach of a crime. They typically require cooperation with any investigation, payment of financial penalties, a program to improve future compliance and potentially compensating those affected.*

A public consultation paper inviting comments on whether a DPA scheme should be introduced in Australia to enhance the accountability of Australian business for serious corporate crime was released in March 2016.<sup>9</sup> Submissions generally agreed with the need for such a scheme to overcome the complexities associated with detecting, investigating and prosecuting corporate crime, encourage self-reporting of internal misconduct by companies, improving corporate compliance and culture, and mitigating the reputational impacts of prosecutions.<sup>10</sup>

This milestone committed the Australian government to further public consultation on a proposed model for introduction of a DPA Scheme. This will, therefore, increase public participation during the process of consultation, but although measurable, the milestone is not specific as to the model of consultation to be adopted and the extent any consultation will lead to introduction of a DPA scheme. This milestone has moderate potential impact. A DPA scheme has the potential to include public disclosure of negotiated outcomes as well as establishing public guidelines on their use. Such a scheme, once implemented, could increase public information on the investigation and enforcement of corporate crime.<sup>11</sup> The operation of the scheme itself is also likely to be subject to review. However, it is not proposed at this stage that additional mechanisms to ensure accountability for the use of DPAs are introduced with the scheme other than transparency of negotiated outcomes or instigation of prosecutions. These potential impacts are conditional on implementation of a DPA scheme along the lines currently being proposed.

*Milestone 3: The Anti-Money Laundering and Counter-Terrorism Financing Act 2006<sup>12</sup> (the AML/CTF Act) requires regulated businesses to establish, implement and maintain a compliance program, conduct due-diligence on their customers and lodge reports on specified transactions and suspicious matter with the Australian Transaction Reports and Analysis Centre (AUSTRAC).*

The Attorney-General's Department completed a review of this regulatory regime in April 2016.<sup>13</sup> Based on feedback from industry and the various agencies involved, the review concluded that industry was generally in support of the current regime and its risk-based approach, but that it needed to be strengthened and simplified. The review made 84 recommendations, including simplification of the legislation and rules, reforms to be co-designed in partnership with industry and partner agencies, that regulated businesses be provided with targeted feedback on their compliance activity, and that sharing of AUSTRAC information be improved. This milestone commits the government to publicly consult on the recommendations of the review, and to implement legislative reforms.

The nature and breadth of the consultation is not specified in the commitment text, though the recommendation in the review that reforms be co-designed with industry and partner agencies suggests that the consultation will involve more than merely release of further issues papers. The milestone has a moderate potential impact if the legislative reforms extend to the extent recommended in the review. In submissions to the consultation process to date and in interviews for this report, there was general support for simplifying the current regime and enhancing the transparency of its operation and impact.<sup>14</sup> Concerns were raised over some of the proposed reforms, including whether there is sufficient evidence of effectiveness of current laws to justify their expansion, and the associated regulatory intrusion, to new industries or professions.<sup>15</sup>

*Milestone 4:* A review of Australia's financial system in 2014 identified a number of gaps in the Australian Securities and Investment Commission's (ASIC) enforcement powers and recommended that ASIC be provided with stronger regulatory tools.<sup>16</sup> In response, in October 2016 the government established the ASIC Enforcement Review Taskforce to examine existing legislation dealing with corporations, financial services, credit and insurance, including the need for stronger penalties, availability of alternative enforcement mechanisms, enhanced information gathering powers, and expanding disclosure requirements for unlawful activity.<sup>17</sup> The Taskforce panel is chaired by the Treasury Department and includes senior representatives from ASIC, the Attorney-General's Department and the office of the Commonwealth Director of Public Prosecutions. An expert group was also established involving representatives from the Consumer Action Law Centre, the Law Council of Australia, academics and lawyers.<sup>18</sup>

While this milestone, on face value, commits the government to a review of ASIC's enforcement powers, in the context of the establishment of the taskforce, the scope and conduct of the review is highly specific. The role of the expert group and other consultation efforts in carrying out the review could have a significant impact in increasing civic participation. However, as the role of the expert group is limited in scope and duration the potential impact on civic participation is only moderate.

## Completion

*Milestone 1:* This milestone was completed. The Minister for Justice (MoJ) released a public consultation paper on proposed reforms to Australian foreign bribery laws on 4 April 2017.<sup>19</sup> It included an exposure draft of proposed legislative changes. The MoJ invited submissions until 1 May 2017, with 16 submissions being received from industry bodies, civil society organisations and academics. The Attorney-General's Department made all submissions publicly available.<sup>20</sup>

Foreign bribery laws were also discussed with non-government stakeholders during the Government Business Anti-Corruption Roundtable held on 31 March 2017.<sup>21</sup> However, interviews with participants at that roundtable pointed to the limited time available due to the broad range of topics covered, including terrorism and cyber security related issues.<sup>22</sup>

The Attorney General's Department had not provided feedback on the submissions of roundtable discussion or other evidence of further response at the time of writing this report.

*Milestone 2:* This milestone was completed. The MoJ released a public consultation paper, responding to the earlier consultation, on a proposed model for a DPA scheme on 31 March 2017 with submissions invited until 1 May 2017.<sup>23</sup> There were 18 submissions from stakeholders including law firms, business groups, civil society organisations and academics. The Attorney General's Department has not made any feedback or further response to the consultation process publicly available.

*Milestone 3:* This milestone saw substantial completion. The Attorney-General's Department released a project plan for implementing the 2016 review of the Anti-Money Laundering and Counter-Terrorism Financing Act in February 2017.<sup>24</sup> It sets out two implementation phases,

with consultation on the first phase already having commenced in November 2016. A consultation paper on phase 1 amendments had already been released by the Attorney-General's Department in December 2016<sup>25</sup> along with a separate paper on regulating digital currencies, a particular issue identified in the 2016 Review.<sup>26</sup> The Attorney-General's Department also released sector-specific consultation papers in November 2016 relating to accountants, dealers of high-value or luxury goods, legal practitioners and conveyancers, real estate professionals, and trust and company service providers.<sup>27</sup> Public submissions on each of these papers closed on 31 January 2017, with six general submissions and 25 sector-specific submissions made available on the Attorney-General's website.<sup>28</sup> The Attorney-General's Department had not made details of further roundtable discussions and the establishment and role of the Industry Consultation Council publicly available.<sup>29</sup>

The project plan provided for legislative implementation or reports on phase 1 projects would be completed by July 2017. Proposed legislation was introduced to Parliament on 17 August 2017, after the period of implementation under consideration.<sup>30</sup> Interviews with the Attorney General's Department indicate that recommendations to government coming out of the sector-specific consultations were provided on 30 June 2017, and that consultations relating to phase 2 projects also commenced in July 2017.

*Milestone 4:* This milestone was substantially completed. The ASIC Enforcement Review Taskforce, led by a panel chaired by the Treasury Department, has released six consultation papers up to the end of September 2017. These include 'Self reporting of contraventions by financial services and credit licensees' on 12 April 2017.<sup>31</sup> The Attorney-General's Department has not made submissions or feedback on the consultation process public at the time of preparation of this report. Interviews with the Attorney General's Department indicated that a report would be provided to government to consider by the end of 2017.<sup>32</sup>

Apart from the consultations undertaken in implementation of this commitment there were no publicly available results.

## Next Steps

The consultation and implementation process for milestone 3 is likely to continue into the next action plan cycle. The remaining aspects of that process should be reflected in the next action plan. An ongoing collaboration with non-government stakeholders could be considered to evaluate the implementation and impact of any reforms and consider further reform options.

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<sup>1</sup> The criminal code is contained in the schedule to the Criminal Code Act 1995, <https://www.legislation.gov.au/Series/C2004A04868>.

<sup>2</sup> Transparency International Australia, *Position Paper #1, Bribery of Foreign Public Officials*, at p 2, <http://transparency.org.au/our-work/bribery-of-foreign-public-officials/>.

<sup>3</sup> OECD, 'Australia: Follow-up to the Phase 3 report and recommendations', April 2015, [www.oecd.org/daf/anti-bribery/Australia-Phase-3-Follow-up-Report-ENG.pdf](http://www.oecd.org/daf/anti-bribery/Australia-Phase-3-Follow-up-Report-ENG.pdf).

<sup>4</sup> Introduced in March 2016, these make it an offence to intentionally or recklessly falsify accounting documents.

<sup>5</sup> Attorney-General's Department, 'Public Consultation Paper – Amendments to the foreign bribery offence in the Criminal Code Act 1995' at pp 3-4, <https://www.ag.gov.au/Consultations/Pages/Proposed-amendments-to-the-foreign-bribery-offence-in-the-criminal-code-act-1995.aspx>

<sup>6</sup> Transparency International Australia, *Position Paper #1, Bribery of Foreign Public Officials*, at p 3, <http://transparency.org.au/our-work/bribery-of-foreign-public-officials/>; Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017.

<sup>7</sup> Foreign Bribery inquiry home page. [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Foreignbribery45th](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Foreignbribery45th).

<sup>8</sup> Senate Economics References Committee, *Foreign Bribery*, March 2018 available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Foreignbribery45th/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Foreignbribery45th/Report) (accessed 6/4/2018).

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- <sup>9</sup> Attorney-General's Department, 'Deferred prosecution agreements – public consultation', <https://www.ag.gov.au/Consultations/Pages/Deferred-prosecution-agreements-public-consultation.aspx> ('2016 DAP Consultation')
- <sup>10</sup> Attorney-General's Department, 'Proposed model for a deferred prosecution agreement scheme in Australia', <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx> ('2017 DAP Proposal') at pp 1-2; 2016 DAP Consultation at pp 9-10.
- <sup>11</sup> Submissions to the 2016 DAP Consultation by the 'Law Council of Australia (Business Law Section) – working group on Foreign and Corrupt Practices', and 'Transparency International', <https://www.ag.gov.au/Consultations/Pages/Deferred-prosecution-agreements-public-consultation.aspx>; Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017.
- <sup>12</sup> Federal Register of Legislation, <https://www.legislation.gov.au/Series/C2006A00169>.
- <sup>13</sup> *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, April 2016, <https://www.ag.gov.au/Consultations/Pages/StatReviewAntiMoneyLaunderingCounterTerrorismFinActCth2006.aspx>
- <sup>14</sup> Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017; Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.
- <sup>15</sup> For example, submission of the Law Council of Australia, <https://www.ag.gov.au/Consultations/Pages/Amlctf-statutory-review-implementation.aspx>.
- <sup>16</sup> Financial System Inquiry, Recommendation 29, <http://fsi.gov.au/publications/final-report/chapter-5/strengthening-asic/> (The 'Murray' review).
- <sup>17</sup> ASIC enforcement Review Taskforce, Terms of Reference, <https://treasury.gov.au/review/asic-enforcement-review/terms-of-reference/>.
- <sup>18</sup> ASIC Enforcement Review, 'Expert Group', <https://treasury.gov.au/review/asic-enforcement-review/expert-group/>.
- <sup>19</sup> Attorney-General's Department, 'Proposed Amendments to the foreign bribery offence in the Criminal Code Act 1995', <https://www.ag.gov.au/Consultations/Pages/Proposed-amendments-to-the-foreign-bribery-offence-in-the-criminal-code-act-1995.aspx>
- <sup>20</sup> Attorney-General's Department, 'Proposed Amendments to the foreign bribery offence in the Criminal Code Act 1995', <https://www.ag.gov.au/Consultations/Pages/Proposed-amendments-to-the-foreign-bribery-offence-in-the-criminal-code-act-1995.aspx>.
- <sup>21</sup> This is specifically set out in Commitment 4.2.
- <sup>22</sup> Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017.
- <sup>23</sup> Attorney-General's Department, 'Proposed model for a deferred prosecution agreement scheme in Australia', <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx>.
- <sup>24</sup> Attorney General's Department, <https://www.ag.gov.au/Consultations/Pages/Amlctf-statutory-review-implementation.aspx>.
- <sup>25</sup> Attorney-General's Department, *Enhancing Australia's AML/CTF regime: Phase 1 amendments to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, December 2016, <https://www.ag.gov.au/Consultations/Pages/Amlctf-statutory-review-implementation.aspx>.
- <sup>26</sup> Attorney-General's Department, *Regulating digital Currencies under Australia's AML/CTF regime: Consultation paper*, December 2016, <https://www.ag.gov.au/Consultations/Pages/Amlctf-statutory-review-implementation.aspx>.
- <sup>27</sup> Attorney-General's Department, 'AML/CTF statutory review implementation', <https://www.ag.gov.au/Consultations/Pages/Amlctf-statutory-review-implementation.aspx>.
- <sup>28</sup> Attorney-General's Department, 'AML/CTF statutory review implementation', <https://www.ag.gov.au/Consultations/Pages/Amlctf-statutory-review-implementation.aspx>.
- <sup>29</sup> Interview with Attorney-General's Department, Canberra ACT, 8 September 2017.
- <sup>30</sup> Anti-Money Laundering, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5952](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5952)
- <sup>31</sup> ASIC Enforcement Review, 'Completed Consultations', <https://treasury.gov.au/review/asic-enforcement-review/>.
- <sup>32</sup> Interview with the Attorney-General's Department, Canberra ACT, 8 September 2017.

## Theme 2: Open data and digital transformation

### 5. Release high-value datasets and enable data driven innovation

#### Commitment Text:

*Australia will continue to make more public data openly available and support its use to launch commercial and non-profit ventures, conduct research, make data-driven decisions, and solve complex problems.*

*As part of this, we will work with the research, not-for-profit and private sectors to identify the characteristics of high-value public datasets, and to promote innovative use of data to drive social and economic outcomes.*

[...]

#### Milestones:

1. Consultation to assess barriers to using data, identify the characteristics of 'high-value' data and help inform the development of the High-Value Dataset Framework, including:
  - a. Roundtable discussions with the research, private and not-for-profit sectors
  - b. Undertake the second round of the Open Data 500.
  - c. Broader public consultation through surveys, social media and blog posts.
  - d. Undertake regular meetings of the Government Open Data Community Forum for public servants from federal, state and territory, and local government to share experience and discuss their ongoing open data work.
2. Identify and release high-value data:
  - a. Develop the High-Value Dataset Framework (informed by public consultation).
  - b. Develop and release a public registry of significant non sensitive datasets yet to be published on data.gov.au
  - c. Release non-sensitive data by default, with a focus on releasing high-value datasets.
3. Stimulate innovative use and re-use of public data:
  - a. Review and publicise the outcomes from the pilot DataStart initiative.
  - b. Expand the DataStart initiative.
  - c. Provide support and mentoring at GovHack events.

**Responsible institution:** Department of the Prime Minister and Cabinet

**Supporting institution(s):** See the Australian National Action Plan for a full list.

**Start date:** December 2016

**End date:** July 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
5. High-value datasets and data driven innovation			✓		✓	✓		✓			✓		Yes		✓		

### Context and Objectives

This commitment seeks to increase the quality and quantity of government datasets released to the public. In its 2010 Declaration of Open Government, the Commonwealth government made a commitment to act on the key principle of making government information more accessible and usable.<sup>1</sup> To assist government agencies, data.gov.au was released in 2011,<sup>2</sup> and then substantially rebuilt in 2013,<sup>3</sup> to act as a central repository of government held data.

The Public Sector Data Management Project, an Australian Public Service study commissioned in 2015 on how the Australian Public Service manages public sector data,<sup>4</sup> acknowledged that access to government data was still limited. The project report<sup>5</sup> found that access was restricted through a lack of understanding of the scope of the government’s data holdings and the potential demand for that data both inside and outside of government. Data.gov.au was not widely utilised, and there was an inconsistent approach to charging for access to government held data.

Another report by the Productivity Commission on data use and availability found that Australia’s provision of open access data was below comparable countries. There was considerable scope to improve the range of datasets published, and to improve their formatting and frequency.<sup>6</sup> An entrenched culture of risk aversion and ‘often perverse incentives’ inhibited more widespread data discovery, analysis and use.<sup>7</sup> The Commission recommended that the government ‘engage actively with the community on matters related to data availability and use’, including, ‘[a]t a minimum, ...[convening] forums for consultation, to ensure community concerns about increased use of data are addressed.’ PM&C established a task force with representatives from various government departments and agencies to prepare the government’s response to the Commission’s report.<sup>8</sup>

The elements of this commitment largely represent a number of commitments relating to increasing access to government data made by the present government prior to the finalisation of the national action plan. The response to the Productivity Commission Report may have a considerable impact on the extent they are completed or overtaken by alternative approaches to the release and use of high-value datasets.

Milestone 5.1 recognises that limited resources require priority be given to identifying and releasing datasets that have the greatest potential benefits. The consultation process will provide opportunities for civic participation through the roundtables and other opportunities presented to inform the government’s approach to identifying and releasing high-value datasets. This milestone also aims to undertake the second round of the Open Data 500 project, a collaboration between GovLab, a team of researchers at New York University, and the Australian Government Department of Communications.<sup>9</sup> The Open

Data 500 project identified and surveyed Australian companies and non-profit organisations on their use of open data as a business or operation resource.<sup>10</sup>

By exposing the process of developing and use of a High-Value Dataset Framework to public scrutiny (Milestone 5.2), the consultation process will also increase the information available to the public.

In milestone 5.3, the Datastart initiative sought to elicit and support development of innovative uses of government data, incorporating the use of technology to increase access and benefits from access to information. The Datastart initiative is a partnership between the PM&C and Australian incubator, Pollenizer, established in November 2015.<sup>11</sup> The initiative involved a competitive process to select a business idea that leverages openly available data from the Australian Government with the successful candidate receiving seed funding and government and private sector support.<sup>12</sup> By utilising government data on service delivery, some of the projects considered also potentially had the effect of increasing public participation or accountability.

This milestone also provides for support and monitoring of 'GovHack' events. The Government 2.0 task force, which was commissioned to examine how governments could benefit from the internet, established 'GovHack' in 2009 as a competition to encourage use of government data. GovHack has now developed into an annual competition, run by volunteers, to develop projects using open government data over the course of 46 hours.<sup>13</sup>

Although most of the elements of this commitment reflect pre-existing government policy, there are few details in the commitment language or other publicly available information about their intended implementation. For example, the number and extent of roundtable discussions, forms and potential impact of broader public consultation, and the number and issues to be considered by the meetings of the Government Open Data Community Forum, are not set out. The commitment to release non-sensitive data by default is made as an ongoing commitment without timeframes for when and how any change in government practice will commence or necessary intermediate steps other than the issue of the Public Data Policy Statement already in place. The nature of any expansion of the DataStart initiative is not made clear, particularly in light of similar initiatives in other government agencies.<sup>14</sup>

The potential impact of this commitment is moderate. It is acknowledged that making government data open can have significant economic benefits<sup>15</sup> as well as empowering individuals, increasing competition and product and service innovation, improving government service delivery, decision making and accountability, and enhancing social outcomes from research. However, as the commitment recognizes, it is difficult to anticipate the potential value of the release of any additional dataset.<sup>16</sup> The intended impact of the commitment is to develop a framework to prioritise the release of datasets based on their potential value. How many additional datasets are made available and their potential value will also depend on a variety of factors. These include the resources made available within government agencies to implement any high-value framework or otherwise respond to public demand for release of particular datasets, and remaining barriers to greater release of government information such as the legislative and governance context and cultural attitudes within agencies.

In the open meeting held in Canberra in preparing this report, some participants were concerned about the low level of awareness of the open data issue<sup>17</sup> certainly prior to the release of the Productivity Commission's report in March 2017, and the range of bodies or interests represented in the roundtable discussions.<sup>16</sup> They also suggested that more might have been done to increase the capacity of participants to contribute by increasing the level of information about current datasets that might be available and focusing attention away from the technical aspects of how information will be published.<sup>17</sup> The increasing use of open data at the State and Territory level and the need to facilitate access and data sharing among different levels of government was also raised.

## #001

Posted by **Kevin Joseph Keith** on **04/23/2018** at **7:43pm**

*Agree: 0, Disagree: 0*

There is an awareness issue with regards to open data, but of arguably equal importance, there is low awareness of all different types of data - closed, shared, open. It's critical to engage more of the right people (communicators) to help promote the benefits of data.

## #002

Posted by **Kevin Keith** on **04/23/2018** at **6:47am**

*Agree: 0, Disagree: 0*

How is 'value' being defined? Economic value? In addition to economic value, there is social value too: open data it is a tool to build trust through bringing together government, enterprise and citizens (often physically in the same room) to co-create and solve civic challenges.

Cameron Shorter, an open source advocate, commented on the success of the GovHack event in increasing awareness of the availability of government data and encouraging innovative approaches to its use.<sup>18</sup> However, he raised concerns over the attendance of a limited range of community interests at those events and the potential to lead to sustained development of high impact products and services.<sup>19</sup> Daniel Flanagan, an open data advocate, content creator and developer, pointed out the potential benefits of expanding the Datastart initiative in bridging the gap between initial ideas developed through events like GovHack and supporting them through to broader development and implementation.<sup>20</sup>

## Completion

*Milestone 5.1* was completed to a limited degree. Roundtable discussions commenced on 25 October 2016, and were attended by more than 30 members of the research sector as part of the National Longitudinal Data Conference, including representatives from the Australian Research Council, Research Australia, universities and other research organisations.<sup>21</sup> There were also roundtables held in Sydney on 20-21 February 2017<sup>22</sup> and Melbourne on 28 April 2017.<sup>23</sup> The PM&C also established an online survey<sup>24</sup> which was advertised on a blog post<sup>25</sup> but received only one publicly available response. PM&C did not make feedback from those roundtable discussions publicly available.

Discussions with PM&C in preparing this report indicated that they made a public call for responses<sup>26</sup> and contacted individuals who had participated in the Productivity Commission's inquiry on Data Availability and use and other academics, individuals and peak bodies to try to raise awareness of the roundtables and the issues relating to high-value data.<sup>27</sup> PM&C also believes that the work undertaken by the Productivity Commission to explore attitudes on a process to identify National Interest Datasets and other consultations has made a second round of the Open Data 500 survey unnecessary.<sup>28</sup> PM&C also indicated that it was still organising regular meetings of the Government Open Data Community Forum.

*Milestone 5.2:* This milestone has only limited completion. In interviews for this report, PM&C indicated that work on developing a High-Value Dataset Framework had been delayed while the Data Availability and Use Taskforce was considering the recommendations of the Productivity Commission report, which included detailed recommendations on such a framework. PM&C has also not commenced establishing a public registry of significant non-sensitive datasets.

*Milestone 5.3:* This milestone has seen limited completion. PM&C indicated that they had reviewed the pilot Datastart initiative but the review was no longer publicly available at the time of writing. PM&C also indicated that they were intending to expand the Datastart initiative but were working with other government departments to possibly consolidate the range of initiatives available in this area.<sup>29</sup> PM&C, with 11 other Commonwealth agencies, were also significant supporters of the GovHack events held across the country in July 2017 after the implementation period considered by this report.<sup>30</sup>

There are no early results available.

## Next Steps

Elements of this commitment may be affected by the Data Availability and Use Taskforce in responding to the Productivity Commission's report. However, development of a high-value dataset framework is likely to remain a priority and should be reflected in the next national action plan. Consideration should be given to ongoing roundtable discussions, or establishment of a multi-stakeholder forum involving the research, private and not-for-profit sectors as well as Commonwealth, State, Territory and local government representatives. This body could assist in monitoring and evaluating the operation of any framework developed, as well as encouraging greater coordination among different levels of government.

#003

Posted by **Kevin Keith** on **04/23/2018** at **6:41am**

*Agree: 0, Disagree: 0*

You may be able to get actual numbers / statistics re: representation of community interests through speaking to the organisers of GovHack?

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- <sup>1</sup> Lindsay Tanner, Declaration of Open Government, 2010, <https://www.finance.gov.au/blog/2010/07/16/declaration-open-government/>
- <sup>2</sup> Gary Grey, 'Release of Data.gov.au', 10 March 2011, <https://www.finance.gov.au/blog/2011/03/10/release-datagovau/>
- <sup>3</sup> Pia Waugh, 'New data.gov.au – now live on CKAN' 17 July 2013, <https://www.finance.gov.au/blog/2013/07/17/new-datagovau-%E2%80%93-now-live-ckan/>
- <sup>4</sup> Public Sector Data Management Project, <https://www.pmc.gov.au/public-data/public-sector-data-management-project>.
- <sup>5</sup> PM&C, Public Sector Data Management: Implementation report', <https://www.pmc.gov.au/resource-centre/public-data/public-sector-data-management-implementation-report>.
- <sup>6</sup> Finding 1.1 at p 76.
- <sup>7</sup> Finding 3.5 at p 153.
- <sup>8</sup> PM&C, 'Data Availability and Use Taskforce', <https://www.pmc.gov.au/public-data/data-availability-and-use-taskforce>
- <sup>9</sup> Open Data 500 Australia, <http://www.opendata500.com.au/>
- <sup>10</sup> Interim Report, August 2015, <https://www.communications.gov.au/publications/open-data-500-report>. The responses to the survey, <https://data.gov.au/dataset/open-data-500-australia-responses>
- <sup>11</sup> Press release, <https://www.pmc.gov.au/news-centre/data/datastart>
- <sup>12</sup> Winner of DataStart, <https://www.pmc.gov.au/news-centre/data/cohortiq-announced-winner-datastart>
- <sup>13</sup> GovHack, <https://govhack.org/about-us/>
- <sup>14</sup> The Business Research and Innovation Initiative by the Department of Industry, Innovation and Science, <https://www.business.gov.au/assistance/business-research-and-innovation-initiative>. Note that there are is also a program for commonwealth entities to receive support for initiatives increasing the availability or innovative use of high-value datasets or services, <https://www.pmc.gov.au/public-data/open-data/platforms-open-data>
- <sup>15</sup> For example, the Bureau of Communications Research estimated the value of government data in Australia of up to \$25 billion per year.
- <sup>16</sup> Canberra open forum, 29 August 2017.
- <sup>17</sup> This was also commented upon by Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.
- <sup>18</sup> Interview with Cameron Shorter, Open Source advocate, Sydney NSW, 23 August 2017.
- <sup>19</sup> Cameron Shorter, 'Making GovHack (and open government) more impactful', *The Mandarin*, 18 August 2017, <https://www.themandarin.com.au/82472-making-govhack-open-government-more-impactful/>.
- <sup>20</sup> Mel Flanagan, Director Nook Studios, Sydney NSW, 23 August 2017.
- <sup>21</sup> PM&C, 'High-Value Data Roundtables Commence', <https://www.pmc.gov.au/news-centre/public-data/high-value-data-roundtables-commence> (accessed 6/4/2018).
- <sup>22</sup> Roundtable tickets, <https://www.eventbrite.com.au/e/unlocking-high-value-public-data-private-sector-roundtable-tickets-31700854108#>
- <sup>23</sup> Not-for-profit sector, <https://www.eventbrite.com.au/e/unlocking-our-high-value-data-not-for-profit-sector-roundtable-tickets-32676942615#>.
- <sup>24</sup> The Source, <http://thesource.dss.gov.au/unlocking-australias-high-value-data?preview=true>
- <sup>25</sup> Blog.data.gov.au, 'High-Value Data Roundtables commence', <https://blog.data.gov.au/news-media/blog/high-value-data-roundtables-commence>.
- <sup>26</sup> For example, media release from Angus Taylor MP, Assistant Minister for Cities and Digital Transformation, *Asking business, researchers what high value data they need*, 17 November 2016, <https://ministers.pmc.gov.au/taylor/2016/asking-business-researchers-what-high-value-data-they-need>
- <sup>27</sup> Interview with PM&C, Canberra ACT, 7 September 2017.
- <sup>28</sup> Australian Government, *Midterm Self-Assessment Report for Australia's First Open Government National Action Plan 2016-18*, 20.
- <sup>29</sup> Interview with Department of Prime Minister and Cabinet, Canberra ACT, 7 September 2017
- <sup>30</sup> GovHack, 'GovHack 2017 National Sponsors', <https://govhack.org/competition/sponsors/>.

## 6. Build and maintain public trust to address concerns about data sharing and release

### Commitment Text:

*Australia will build public trust around data sharing and release.*

*We will do this by actively engaging with the public regarding how open data is being used to better communicate the benefits and understand public concerns, and we will improve privacy risk management capability across government.*

[...]

### Milestones:

1. Develop an ongoing and collaborative conversation with the public about the risks and benefits of data sharing and integration:
  - a. Establish an expert panel to advise government and to help communicate: value and utility of data sharing and integration; how government is using the data it collects; and how government is protecting personal information.
  - b. Develop and implement a public engagement process to demonstrate public-value examples and enable an ongoing dialogue with the public.
2. Improve privacy and personal information protections in using and sharing data:
  - a. Publicly release a process for government agencies to determine whether sensitive data can be made sufficiently confidential to enable open publication
  - b. Work with the Office of the Australian Information Commissioner to improve privacy risk management capability across the Australian Public Service.
  - c. Respond to the Productivity Commission's recommendations on consumer rights and safeguards for data.
3. Comply with international best practice on open data principles and participate in global fora on data:
  - a. Adopt the International Open Data Charter and develop a high-level public statement with public consultation.
  - b. Participate in the International Open Data Stewards Group.

**Responsible institution:** Department of the Prime Minister and Cabinet, Australian Bureau of Statistics and Office of the Australian Information Commissioner

**Supporting institution(s):** See the National Action plan for a full list.

**Start date:** December 2016

**End date:** July 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf).

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
6. Build and maintain public trust			✓		✓	✓					✓		No			✓	
6.1. Establish conversation with public			✓		✓	✓				✓			No	✓			
6.2. Improve privacy protections in using and sharing data			✓		✓						✓		Yes			✓	
6.3. Comply with international best practice			✓		✓	✓				✓			Yes			✓	

### Context and Objectives

This commitment represents a number of steps to build and maintain public trust in the way government shares the information it has collected. It seeks to raise awareness of the benefits to data sharing and protections against misuse, increase those protections and adopt internationally recognised principles for openness.

The Productivity Commission, in its Data Availability and Use Report,<sup>1</sup> identified the need to build and retain public trust in how data is managed and used as key to achieving the many potential benefits of data use. A survey conducted by the Office of the Australian Information Commissioner (OAIC) in 2013 found that nearly half of Australians surveyed are uncomfortable with government agencies sharing personal information about them with other government agencies,<sup>2</sup> or using their information for research, service development or policy development purposes.<sup>3</sup>

As the Commission reported, that lack of trust may arise due to a lack of understanding of how data collection and use is regulated. Consent to the collection and use of personal information may be provided without clear understanding of the terms and conditions of that consent and a lack of control over what happens to personal information after it has been provided. There have also been several high-profile examples in the public sector involving cybersecurity breaches or the re-identification of anonymised data based on matching with non-sensitive publicly available information.<sup>4</sup> The lack of accountability for misuse or inadequate protection of personal information, asymmetries of access to sensitive information or an understanding of its implications, and the general complexity of the data landscape may all contribute to eroding trust.<sup>5</sup>

In its Data Availability and Use Report, the Productivity Commission found that '[c]omprehensive reform of Australia's data infrastructure is needed', including enhancement

of consumer rights, improving the safeguards in place, increasing transparency and effective management of risk.<sup>6</sup> The Commission made a number of recommendations which relate to the rights of consumers and safeguards for data. These included the right of consumers to access and use their data;<sup>7</sup> legislative reform<sup>8</sup> to introduce a comprehensive risk-based approach by government agencies to the sharing and release of government data;<sup>9</sup> and the need to engage with the community, including forums for consultation to address community concerns about increased use of data.<sup>10</sup>

The milestones include a number of specific elements, such as the establishment of expert panel, releasing processes, responding to recommendations or adopting the charter. However, other elements, such as working with the OAIC or participating in the Steward's Group, are more subjective. Overall, therefore, this commitment is of medium specificity.

Milestone 6.1: Establishing an expert panel and a public engagement process will potentially increase public access to information on how government is using the data it collects and generates. By providing advice to government, and enabling an ongoing dialogue, the forums will improve the opportunities for the public to inform themselves on government information sharing practices. However, the commitment does not provide any indication of whether these forums will be able to influence decisions or reforms in this area. The relationship between the expert panel and existing governance arrangements for data integration projects within the public service, for example the Secretaries Data Group and Deputy Secretaries Data Group, is also not clear.<sup>11</sup>

Milestone 6.2: Providing a process for government agencies to determine whether sensitive data can be made sufficiently confidential to enable open publication is intended to increase the open publication of data which has been anonymised or de-identified. Similarly, improving privacy risk management capability should encourage disclosure where there is a low risk of sensitive information being inappropriately disclosed or used. This could in turn increase the quantity of information disclosed to the public. Its impact on increasing trust in government's collection and use of information, however, will depend on the transparency of the process as well as its implementation and enforcement. The extent of any additional information being made available is therefore uncertain, but is expected to be moderate.

This milestone also commits the government to respond to the Productivity Commission's recommendations on consumer rights and safeguards for data. The Productivity Commission's recommendations are wide ranging and call for a comprehensive reform of Australia's data infrastructure. They are also intended to increase the amount of government information made public, either entirely or indirectly via a limited user group who can be trusted to de-identify any public use or release.

Milestone 6.3: Adopting the International Open Data Charter represents an international commitment to making data openly available. The Open Data Charter is a collaboration between government and experts working to embed a culture and practice of openness in government. Adopting the charter involves agreeing to six principles for opening up data.<sup>12</sup> Institutions adopting the charter should also 'participate actively with recognised external accountability and impact evaluation mechanisms in regard to open data'.<sup>13</sup> Therefore, adopting the charter provides an additional basis for public criticism of government action or inaction on its open data commitments. In itself, however, it does not provide a redress mechanism leading to more accountability for government officials and while it may increase the usability of data released, it may have only a limited impact on increasing access to government information.

Some concerns were raised in interviews and open forums in the preparation of this report over the Productivity Commission's recommendations and whether they adequately reflected individual privacy interests when balanced against the benefits of extending the availability and use of data.<sup>14</sup> The availability of resources within government agencies to improve their risk management capability and to enforce privacy and other requirements was also raised. Interviewees considered this a more significant hurdle than release of

processes or OAIC guidance, with questions over whether budget announcements<sup>15</sup> of a public sector modernisation fund would be sufficient. The government needed to be committed to establishing a consultation process that does more than seek to promote government initiatives in this area. Comments at the Sydney and Melbourne Open Forums also suggested that recent data linkage projects at the Commonwealth, States and Territories and their impact on public trust should also be considered as part of the commitment.<sup>16</sup>

## Completion

Milestone 6.1: This milestone was delayed and not started after the first year of implementation. The time needed to properly respond to the many issues raised by the recommendations (see milestone 6.2 below) contributed to the delay in progressing establishment of an expert panel and developing the public engagement process as originally planned. PM&C indicated that a consultation process on the response was under way with several roundtables having been held with business groups and civil society organisations, but this was not directly addressing this milestone.<sup>17</sup> This milestone was therefore not started as at the reporting date.

Milestone 6.2: This milestone was on time and substantially completed as at the reporting date. The Australian Information and Privacy Commissioner and the Secretary of the PM&C jointly announced development of a new Australian Government Agencies Privacy Code on 18 May 2017.<sup>18</sup> The Code will set out specific requirements and key practical steps that agencies must accept as part of complying with the Australian Privacy Principles under the Privacy Act 1988. A consultation draft was released on 30 June 2017, with submissions invited until 11 August 2017, and was made available on the OAIC website.<sup>19</sup> The final version of the Code was registered on 27 October 2017.<sup>20</sup>

In May 2017, the Australian government established a task force with representatives from different department and government agencies to work on a response to the Productivity Commission's recommendations. A response is expected towards the end of 2017.<sup>21</sup> In interviews in preparing this report, PM&C indicated that the Commission's recommendations on consumer rights and safeguards were closely tied with other recommendations which affected this and other commitments in the national action plan (including commitment 5 - high-value datasets). The Minister for Cities and Digital Transformation, Angus Taylor, has recently indicated that the Government would support a consumer data rights framework giving individuals greater rights over their data to encourage competition.<sup>22</sup>

In addition, a process for government agencies to publish open data was released on 7 December 2017, after the period of implementation under consideration, and will be expanded upon in the end-of-term report.<sup>23</sup>

Milestone 6.3: This milestone has been substantially completed on time. The government adopted the Open Data Charter on 27 March 2017.<sup>24</sup> In the Government's Mid-Term Self-Assessment report it is suggested that Australia has offered to support the Charter Secretariat as they establish the Charter working groups and test projects over the next 12 months, however, there is no public evidence of that.

On 25 May 2017, the Government announced a new initiative: the Data Integration Partnership for Australia (DIPA) to support the integration and analysis of government held data.<sup>25</sup> This initiative is not included in the commitment but is relevant to its objectives of enhancing trust in government sharing and release of data. The DIPA will seek to build on data integration projects, including the Multi-agency data integration project (MADIP) and the Business Longitudinal analysis data environment.<sup>26</sup> The MADIP, for example, is a partnership between six commonwealth government agencies integrating census data with datasets involving healthcare, government benefit payments and income tax. The project was initiated in 2015 to facilitate analysis of government policies, programs and services. The

Australian Bureau of Statistics (ABS), as the agency responsible for protecting access to the de-identified data linked through the project, has recently released four case studies demonstrating some of the benefits of the project,<sup>27</sup> as well as consulting with a range of interested stakeholders and commissioning a privacy impact statement.<sup>28</sup>

There are no early results available.

## Next Steps

It is likely that the response to the Productivity Commission's recommendations will give rise to a number of initiatives to be reflected in the next national action plan cycle. The collaboration process committed to in milestone I could be adapted to further develop and implement that response.

The establishment and operation of an expert panel, which was not completed within this cycle, could be included as part of the next national action plan. If it were to be included, the panel should have a role in scrutinising and coordinating data integration projects, including review of privacy impact assessments and the consultation process involved in each project. The expert panel should have a clearly identified role in the governance of data management projects within the APS and complement the oversight role of the Australian Privacy Commissioner and other similar bodies.

An examination of the resourcing required to support the Australian Information Commissioner's role in monitoring and enforcing the Australian Government Agencies Privacy Code could also be undertaken, along with the resource implications of complying with the Code within agencies, to ensure adequate resourcing is available.

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<sup>1</sup> Productivity Commission, *Data Availability and Use, Inquiry Report No. 82*, 31 March 2017 at p 121 <http://www.pc.gov.au/inquiries/completed/data-access#report> (Data Report).

<sup>2</sup> At p 11.

<sup>3</sup> At p 12.

<sup>4</sup> Dr Vanessa Teague, Dr Chris Culnane and Dr Ben Rubinstein, 'The Simple Process Of Re-Identifying Patients In Public Health Records', in University Of Melbourne, *The Pursuit*, 18 December 2017, <https://pursuit.unimelb.edu.au/articles/the-simple-process-of-re-identifying-patients-in-public-health-records>

<sup>5</sup> Data Report at p 127-129.

<sup>6</sup> Data Report at p 35.

<sup>7</sup> Recommendation 5.1

<sup>8</sup> Recommendation 8.1

<sup>9</sup> Recommendation 6.8.

<sup>10</sup> Recommendation 10.1.

<sup>11</sup> The Secretaries Data Group and Deputy Secretaries Data Group were established as part of the governance model for data policy recommended in the 2015 Public Sector Data Management Report, <https://www.pmc.gov.au/resource-centre/public-data/public-sector-data-management-report>

<sup>12</sup> Namely that data should be: open by default; timely and comprehensive; accessible and usable; comparable and interoperable; for improved governance and citizen engagement; and for inclusive development and innovation: See Open Data Charter, Principles', <https://opendatacharter.net/principles/>

<sup>13</sup> Open Data Charter, 'FAQ', available at <https://opendatacharter.net/faq/> (accessed 6/4/2018).

<sup>14</sup> Interview with Anonymous, Open Government advocate, Phone meeting, 30 August 2017; Kat Szuminska, Director, Open Australia Foundation and member, Open Government Forum, Phone meeting, 11 September 2017; Melbourne Open Forum, 24 August 2017.

<sup>15</sup> OpenGovAsia, 'Australian government to invest AU\$350 million over 3 years to modernise, transform and enhance productivity of the Public Service', <https://www.opengovasia.com/articles/7585-australian-government-to-invest-au3500-million-over-3-years-to-modernise-transform-and-enhance-productivity-of-the-public-service>.

<sup>16</sup> Sydney Open Forum, 22 August 2017; Melbourne Open Forum, 24 August 2017. For examples of some of the State and Territory initiatives see Stephen Easton, 'Whole of government data linkage takes shape across the nation', *The Mandarin*, 26 October 2017 <https://www.themandarin.com.au/85285-whole-of-government-data-linkage-takes-shape-across-the-nation/>

<sup>17</sup> Interview with PM&C, Canberra ACT, 7 September 2017.

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- <sup>18</sup> OAIC, 'Developing an APS-wide Privacy Code', <https://www.oaic.gov.au/media-and-speeches/statements/developing-an-aps-wide-privacy-code>
- <sup>19</sup> OAIC, 'Consultation Information: APS Privacy Governance Code', <https://www.oaic.gov.au/engage-with-us/consultations/aps-privacy-governance-code/consultation-information-aps-privacy-governance-code>
- <sup>20</sup> Privacy code, <https://www.oaic.gov.au/privacy-law/australian-government-agencies-privacy-code/>
- <sup>21</sup> PM&C, 'Data Availability and Use Taskforce', <https://www.pmc.gov.au/public-data/data-availability-and-use-taskforce>.
- <sup>22</sup> The Mandarin, 'Taylor calls for universal citizen data right to drive new competition era', 26 September 2017, <https://www.themandarin.com.au/84134-taylor-calls-citizen-data-ownership-drive-new-competition-era/> The intention to legislate for a new consumer data right was formally announced on 26 November 2017, <https://ministers.pmc.gov.au/taylor/2017/australians-own-their-own-banking-energy-phone-and-internet-data>
- <sup>23</sup> PM&C, 'Release of process for publishing sensitive unit record level public data as open data', <https://blog.data.gov.au/news-media/blog/publishing-sensitive-unit-record-level-public-data>
- <sup>24</sup> A letter from Assistant Minister Taylor adopting the Charter is published on the Open Data Charter website, <https://drive.google.com/file/d/0B44SovahLueTMVNYY3pKNFh6ajAyZklScThvVWdOMIRLbkxB/view>.
- <sup>25</sup> Media release, <https://ministers.pmc.gov.au/taylor/2017/data-analytics-teams-deliver-better-targeted-services>
- <sup>26</sup> PM&C, 'Data Integration Partnership for Australia', <https://www.pmc.gov.au/public-data/data-integration-partnership-australia>
- <sup>27</sup> ABS, 'MADIP Case Studies', <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/Statistical+Data+Integration+-+MADIP+Case+Studies>
- <sup>28</sup> ABS, 'MADIP Consultation and Independent Privacy Impact Assessment', <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/Statistical+Data+Integration+-+MADIP+Consultation>

## 7. Digitally transform the delivery of government services

### Commitment Text:

Australia will continue to invest in digital technologies to make government services simpler, faster and cheaper, making it easier for the public to work and interact with government.

We will do this by preparing a digital transformation roadmap, and establishing public dashboards to improve transparency around the performance of government services.

[...]

Milestones:

1. Deliver a whole-of-government digital transformation roadmap.
2. Release agency-level digital transformation roadmaps.
3. Release and promote a beta version of the Digital Marketplace for ICT procurement.
4. Release and promote a live dashboard measuring the performance of government services, with user satisfaction being one of the key performance indicators.

**Responsible institution:** Digital Transformation Agency

**Supporting institution(s):** Department of the Prime Minister and Cabinet and various non-government organisations

**Start date:** December 2016

**End date:** Ongoing

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf).

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
7. Digitally transform government services delivery			✓		✓			✓		✓			No			✓	

### Context and Objectives

This commitment relates to the release of information about the development and use of digital technologies in the delivery and transparency of government services.

There are currently more than 1,500 commonwealth government websites, with more than 44 million content items.<sup>1</sup> The Commonwealth Government's Digital Transformation Agenda was announced in the 2015-16 Federal Budget.<sup>2</sup> It involved establishing the Digital Transformation Office, which has since been transformed into the Digital Transformation

Agency (DTA).<sup>3</sup> It also included funding initiatives related to the digital delivery of government services, such as developing a digital services standard, and common platforms to facilitate digital transformations within agencies.<sup>4</sup>

The development of digital delivery of government services is primarily the role of individual government agencies. The role of the DTA, along with other agencies, such as the National Archives of Australia and the Office of the Australian Information Commissioner, is to assist agencies in developing their digital delivery systems while developing common platforms and standards. The distributed nature of the development of digital services makes it difficult to monitor those developments and establish and compare their performance in the delivery of government services and facilitating interaction with government, including use, efficiencies and user satisfaction, across agencies.

The establishment of a whole-of-government roadmap will provide further information about the process and timing of the various initiatives making up the digital transformation agenda. Similarly, agency-level roadmaps are likely to provide further information about the nature and timing of initiatives relating to digital delivery of services within individual agencies.

The Digital Marketplace is part of the Commonwealth Government's National Innovation and Science Agenda, announced in December 2015.<sup>5</sup> It is intended to provide an online marketplace where government agencies can outline a 'brief' of their digital product or service requirements and providers of those services, who have already been assessed on their corporate stability and digital expertise, can respond.<sup>6</sup> As Mel Flanagan, an open data advocate, content creator and developer suggests, the Digital Marketplace may make it easier for small to medium suppliers of digital and associated expertise to compete for government contracts and allow them to pitch innovative solutions.<sup>7</sup>

The Digital Transformation Agenda's aim to increase the transparency of digitisation projects also includes providing users and government with access to data and analytics about the performance of digital delivery services and development, as well as making public key performance indicators on the initiatives within the Agenda as well as other whole-of-government activities. One of the ways in which these indicators will be made available will be through a live Performance Dashboard indicating compliance with the DTA's Digital Service Standard.<sup>8</sup> The Digital Service Standard applies to all new, redesigned or high volume transactional services, allowing individuals and business to transact with the government, including providing information, money or goods, or new or redesigned services providing information to the public.<sup>9</sup> The Standard includes requirements for services within its scope to measure and report on indicators relating to user satisfaction, take up of the digital service, completion rate and cost per transaction.<sup>10</sup> Those reports will be made publicly available through the live dashboard which is the subject of milestone 4.

This commitment is of medium specificity. The commitment overall is objectively verifiable but some of the milestones could benefit from more detailed scope. For example, how the Beta version will be promoted, and how feedback and its development will be managed, is not clear. In terms of relevance to OGP values, the live dashboard will allow the public to have access to government performance in delivering services.

The commitment overall is of minor potential impact. A live dashboard would make it easier for the public to access information about government services and, to the extent it includes measures relating to user satisfaction and service accessibility, go beyond existing reporting requirements relating to expenditure and legislative compliance. As suggested in the Beta version of the Dashboard, the data underlying the performance measurements is made public on data.gov.au in an open format, further increasing its potential use in scrutinising and comparing government service performance. As a Beta version, the operation of the Digital Marketplace will also be subject to feedback from potential suppliers of digital services, increasing opportunities for civic participation.

The impact of the dashboard will depend on the extent to which its use is monitored and enforced, especially the extent it is applied to existing high-volume transactional services. Even if fully realised, the impact of the dashboard will also be limited by the criteria to be applied in evaluating service delivery performance and the public perception, at least, that it relates to the performance of the digital delivery aspect of the service rather than the user experience of the service considered as a whole.

In terms of the roadmap, stakeholders interviewed raised concerns over the relatively undefined nature of the criteria to be applied in assessing compliance with the digital services standard, and the resources and influence of the DTA in being able to enforce compliance. The roadmap is also not likely to be directly enforceable or otherwise provide for accountability in the completion of the initiatives mapped.

## Completion

Milestone 7.1: This milestone was completed. The whole-of-government digital transformation road map<sup>11</sup> was launched on 15 December 2016.<sup>12</sup> It provides only a one-page overview of the main elements of the Digital Transformation Agenda, and strategies relating to ICT and Procurement, Digital platforms, and program management mapped against expected timelines. It includes Agency Transformation plans that were due to be completed by mid-2017, and Consolidated sector/domain transformation plans to be developed from April 2017 through to the end of 2018.

Milestone 7.2: This milestone was not started. The IRM researcher could find no evidence that Agencies had released roadmaps at the time of writing. Despite both email and phone communication with the DTA, an interview with the IRM researcher could not be arranged within publication deadlines. The Government's Mid-Term Self-Assessment report states that the DTA is on track to support agencies in the creation of sector-wide roadmaps, indicating that sector-wide roadmaps may now be given priority over agency-specific roadmaps. In its submission to the Finance and Public Administration Committee inquiry into Digital Delivery of Government Services, the DTA listed as one of its priorities for 2017-18 the development of a digital transformation roadmap which shows how users interact with government across different portfolios, including tracking 'life journeys' involving engagement with government in finding work and growing a business.<sup>13</sup>

Milestone 7.3: This milestone was completed. The Digital Marketplace continues to be publicly available online in its Beta form.<sup>14</sup> It was expanded in February 2017 to accommodate an unlimited number of sellers and an increased number of product and service categories including cyber security, data science, content and publishing, marketing, communications and engagement, support and operations and emerging technologies including artificial intelligence and virtual reality.<sup>15</sup> The DTA has promoted the Marketplace through media releases, social media and internal government communications.<sup>16</sup> However, Mel Flanagan, indicated that she became aware of the Marketplace after involvement with the OGP process and was concerned that it was not being widely promoted, particularly in sectors not traditionally involved with government software and hardware procurement.<sup>17</sup>

Milestone 7.4: This milestone was completed. The Beta Version of the Performance Dashboard was made publicly available in February 2017.<sup>18</sup> The DTA has promoted the Dashboard through media releases, social media and internal government communications.

## Early Results (if any)

The Government's Mid-Term Self-Assessment report claims that the Digital Marketplace has "dramatically increased SME involvement and made procurement of a range of services easier". At the end of September 2017, the Marketplace had 275 opportunities from Government, 620 sellers of services approved, and registered more than 760 buyers from the Commonwealth, State and Territory and Local governments.<sup>19</sup> More than \$40 million in

government contracts had been awarded. Mel Flanagan suggested that it was too early to assess whether the Marketplace had made it easier to identify, and, importantly, be successful in securing opportunities to supply digital products and services.<sup>20</sup>

As at the end of September 2017, the Performance Dashboard monitored eight government services and products.<sup>21</sup>

## Next Steps

Further information about the Government's use of digital services should be made publicly available and widely promoted as an incidental part in their development as a way to increase their use and value to the community. Agency or sector-specific roadmaps could be developed and continually reviewed by the DTA as part of providing information to the public on the potential benefits of future developments. The DTA's proposed use of 'life cycle' maps, reflecting how developments of digital services will impact on the way individuals engage with governments, may be a useful approach if they included collaboration with civic society and other interested individuals. However, their minor potential impact on increasing public access to government information or enhancing public participation limits their value in being included in future action plans.

The Digital Marketplace has the potential to not only match up government buyers and private sellers of digital services, but increase transparency over the approach taken by government agencies to procurement of government services. The Marketplace could be expanded to include reporting on the lifecycle of projects, including where possible the terms on which sellers were engaged and the outcomes, if any, of the projects undertaken or individuals engaged.

The Performance Dashboard also potentially provides a useful insight into the performance of government programs if it is comprehensive and accurate. However, unless incorporated as part of a process of holding agencies accountable for their performance, perhaps including the involvement of civil society and other user groups, the impact of this milestone is not likely to be sufficient to warrant inclusion in the next national action plan.

It should also be noted that the Senate Finance and Public Administration References Committee commenced an inquiry into the Digital Delivery of Digital Services on 16 August 2017.<sup>22</sup> After two extensions extension, the Committee is now due to report by 14 May 2018. This report may give rise to additional recommendations relevant to the elements of this commitment.

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<sup>1</sup> DTA, 'Digital Delivery of Government Services', submission to the Finance and Public Administration References Committee inquiry into Digital Delivery of Digital Services, 29 September 2017, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/digitaldelivery/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery/Submissions)

<sup>2</sup> Parliamentary Library, *Budget Review 2015-16*, 'Communications', [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201516/Comm](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Comm).

<sup>3</sup> The DTA was established on 1 November 2016, <https://ministers.pmc.gov.au/taylor/2016/transforming-commonwealths-digital-agenda>.

<sup>4</sup> DTA, 'The Digital Transformation Agenda in the 2015-16 Federal Budget', <https://www.dta.gov.au/blog/the-digital-transformation-agenda-in-the-2015-16-federal-budget/>.

<sup>5</sup> Media release, <http://www.minister.industry.gov.au/ministers/pyne/media-releases/agenda-transform-australian-economy>.

<sup>6</sup> National Innovation and Science Agenda, 'Digital Marketplace', <https://www.innovation.gov.au/page/digital-marketplace>

<sup>7</sup> Interview with Mel Flanagan, Nook Studios, 23 August 2017.

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- <sup>8</sup> The Digital Service Standard, <https://www.dta.gov.au/standard/>. It came into effect on 6 May 2016 (see DTA Blog, 'Digital Service Standard goes live', <https://www.dta.gov.au/blog/standard-goes-live/>).
- <sup>9</sup> DTA, 'Scope of the Digital Service Standard', <https://www.dta.gov.au/standard/scope-of-standard/>
- <sup>10</sup> DTA, Digital Service Standard, 'I1 Measure performance', <https://www.dta.gov.au/standard/I1-measure-performance/>.
- <sup>11</sup> Government Digital Transformation Roadmap, <https://www.dta.gov.au/what-we-do/transformation-agenda/roadmap/#image>
- <sup>12</sup> DTA, 'Digital steps to benefit users', <https://www.dta.gov.au/news/digital-steps-to-benefit-users/>
- <sup>13</sup> DTA, Submission to the Finance and Public Administration Committee Inquiry into Digital Delivery of Governments Services, 29 September 2017, at p 4, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/digitaldelivery/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery/Submissions)
- <sup>14</sup> Digital Marketplace, <https://marketplace.service.gov.au/>.
- <sup>15</sup> DTA, 'Digital Marketplace opens for new sellers', <https://www.dta.gov.au/news/marketplace-expansion/>; Other areas include strategy and policy, user research and design, and software engineering and governance: See Digital Marketplace, 'what you can buy', <https://marketplace1.zendesk.com/hc/en-gb/articles/115011271567-What-you-can-buy>.
- <sup>16</sup> Interview with Department of Prime Minister and Cabinet, Canberra ACT, 7 September 2017.
- <sup>17</sup> Interview with Mel Flanagan, Nook Studios, 23 August 2017.
- <sup>18</sup> Performance Dashboard Overview, <https://dashboard.gov.au/>
- <sup>19</sup> Digital Marketplace, <https://marketplace.service.gov.au/>; See also DTA, Submission to the Finance and Public Administration Committee Inquiry into Digital Delivery of Governments Services, 29 September 2017, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/digitaldelivery/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery/Submissions)
- <sup>20</sup> Interview with Mel Flanagan, Nook Studios, 23 August 2017.
- <sup>21</sup> Performance Dashboard Overview, <https://dashboard.gov.au/>; See also DTA, Submission to the Finance and Public Administration Committee Inquiry into Digital Delivery of Governments Services, 29 September 2017, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/digitaldelivery/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery/Submissions).
- <sup>22</sup> Inquiry web page, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/digitaldelivery](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery).

### Theme 3: Access to government information

#### 8. Information management and access laws for the twenty-first century

**Commitment Text:**

*Australia will ensure our information access laws, policies and practices are modern and appropriate for the digital information age.*

*As part of this, we will consider and consult on options to develop a simpler and more coherent framework for managing and accessing government information that better reflects the digital era, including the Freedom of Information Act 1982 (FOI Act), the Archives Act 1983 (Archives Act) and, where relevant, the Privacy Act 1988 (with primary focus on the Archives Act and FOI Act), which is supported by efficient and effective policies and practices.*

*Milestones:*

1. AGD undertake work with a range of stakeholders (government and non-government) to better understand how current information frameworks operate in practice and identify issues.
2. AGD develop, in consultation with stakeholders, a range of options for reform to information access laws, policies and practices, including consideration of oversight mechanisms.
3. AGD conduct broad public consultation on options for reform to information frameworks.
4. Recommendation to Government, informed by consultation outcomes, on preferred reforms to deliver a coherent and simpler framework for information management and access, supported by effective and efficient policies and practices, that is appropriate for the digital information age.
5. Implementation of Government decision on reforms to information access laws, policies and practices.

**Responsible institution:** Attorney-General's Department

**Supporting institution(s):** The National Archives of Australia, the Office of the Australian Information Commissioner and the Department of the Prime Minister and Cabinet and various non-government actors.

**Start date:** January 2017

**End date:** July 2019

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf).

Commitment Overview	Specificity	OGP Value Relevance	Potential Impact	On Time?	Completion
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	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
8. Information management and access laws		✓			✓	✓		✓		✓			No		✓		

### Context and Objectives

This commitment will review the operation of current information access laws, policies and practices to inform reforms. There are more than 72 different sources of legislation, policies, standards and guidance that impact on government agencies' recordkeeping and information management responsibilities, including the *Freedom of Information Act 1982* (FOI Act), *Archives Act 1983*, and *Privacy Act 1988*.<sup>1</sup> As several reviews of this information management framework have noted, the number and complexity of these different and overlapping sources make it difficult for government agencies to identify their obligations.

There have been several relatively recent government-commissioned reviews, informed by submissions and contributions from government, business, civil society groups and the broader community, on the state of access to information in Australia.<sup>2</sup> Some of their main findings include the fact that legislative and administrative changes were needed to make FOI procedures more streamlined and increase agencies' capacity to manage the FOI workload.<sup>3</sup> They also found the current records management system inadequate and in need of a move towards a system inclusive of the whole-of-Government.

Some of the recommendations made as a result of these reviews included: (a) undertaking a comprehensive review of the FOI Act, (b) reducing the administrative burden of FOI processes by adopting least burdensome mechanisms, considering more active publication and consolidating FOI publication requirements with other government initiatives such as the digital transformation agenda;<sup>4</sup> (c) that the National Archives of Australia work with entities to be more closely involved in policy development processes and decision-making forums on government information management, including digital transformation-related matters;<sup>5</sup> (d) that the Attorney-General's Department (AGD) develops a simpler legislative framework for accessing government-held information,<sup>6</sup> and (e) developing a policy across the Australian Public Service requiring the creation and retention of records of deliberative discussions in all forms, including digital.<sup>7</sup>

The reviews and their findings represent both recognition of the need for a wide-ranging review of information management practices within the Australian Public Service and the difficulties of doing so.

It is in this context that this commitment seeks to simplify the access to information framework by putting in place updated policies and information sharing practices. The AGD has undertaken to work with a range of stakeholders to better understand how current information frameworks operate in practice and the issues those frameworks present, to use that understanding to develop options for reform, and then to consult broadly on those options to inform a recommendation to government.

One concern raised in interviews for this report was uncertainty over the scope of this commitment and what issues are likely to be considered. For example, participants in the Melbourne open meeting questioned whether significant concerns over the level of funding

of the OAIC, given its crucial role in the administration of the FOI Act and Privacy Acts, would be addressed in implementing the commitment.<sup>8</sup> To the extent that access to information also potentially extends to public engagement and consultation, access to government data, grant and procurement information, digitisation of government services, and the role of Archives in providing guidance on access to government records, the relationship between this commitment and others in the national action plan was also raised.

Uncertainty also extended to the process of consultation that would be undertaken, whether submissions to previous reviews would be considered, and what level of resources would be available to undertake the review.<sup>9</sup> Officials from the AGD indicated that the commitment had been broadly interpreted so as not to close off any issues that might be relevant and to encourage as many new ideas and approaches as possible.<sup>10</sup>

Given the potential breadth of the inquiries to be conducted, uncertainty over the consultation process at each stage, the wide range of issues presented in previous reviews and new issues likely to arise, and the range of reform options that might be considered, this commitment is of low specificity.

This commitment is of minor potential impact. The extent to which implementation of the commitment will increase access to information is unclear. As discussed above, while the reviews that have led up to this commitment have been premised on the value of access to information, they have also been concerned about the burdens placed on agencies in meeting access to information obligations. Previous reviews had also raised concerns over having to release material to support the deliberative processes of government policy formulation. This commitment, as written, would not address these concerns.

The commitment includes working with stakeholders outside of government to identify issues and develop and explore options for reform. The commitment will therefore create opportunities for the public to participate in reviewing access to information laws, though the extent of this contribution is unclear. Similarly, as the context of the commitment includes the use of digital information by government agencies, there may be scope for technical innovation to play a role in increasing transparency or participation in the future.

## Completion

*Milestone 8.1:* This milestone was substantially completed. The AGD consulted with 32 government agencies, 17 civil society members and nine end users up to July 2017 in meeting its commitment to better understand current information frameworks and develop options for reform.<sup>11</sup> A list of the bodies consulted is now available on the AGD's website.<sup>12</sup> Although there was no formal request for submissions, two submissions were also received – from the Accountability Round Table criticising the decrease in funding of the OAIC, and from the Australian Society of Archivists suggesting a range of issues to be considered in the reform process.<sup>13</sup> The AGD did not make feedback on the results of the consultation public. Some individuals who were consulted as part of this initial phase indicated that they had been asked to describe their engagement with government information access practices and given the opportunity to raise any issues that arose out of that engagement.<sup>14</sup>

*Milestone 8.2:* This milestone was not commenced within the implementation period for this report. The expected timetable of developing options for reform by the end of June 2017 was not met. On 30-31 August, the Attorney-General's Department held a workshop in conjunction with the Department of Human Services Design Hub.<sup>15</sup> Participants at that workshop have indicated that some findings of the initial consultation were presented but participants were asked not to make them public.<sup>16</sup> Some common themes raised by workshop participants have been made available on the PM&C OGP website,<sup>17</sup> including:

- the need for cultural reform within government agencies to encourage improved information management practices;

- recognition of the role of government in holding information in trust on behalf of the public and the individuals who have provided the information;
- costs efficiencies from currently available systems are available;
- the need to improve education of government and the community on issues relating to information access and management.

The Attorney-General's Department has indicated that they will consider feedback from the workshop and other consultation 'to date' in preparing advice to Government.<sup>18</sup> There has been no further consultation on options for reform.

Milestones 8.3-8.5 were not started at the end of the first year of implementation.

There were no early results available for the period of implementation considered in this report.

## Next Steps

The need for a comprehensive review into information management and access to government information laws and practice has been widely recognised. However, given the potentially broad scope and complexity of the issues that have or might arise in any such review, a more detailed and specific program for consultation should be developed and made public, and include the identification of available resources and relationship with other OGP commitments.

<sup>1</sup> National Archives of Australia, *Legislation, policies, standards and advice*, August 2015, <http://www.naa.gov.au/information-management/information-governance/legislation-standards/index.aspx>; The requirements vary from mandatory or required practice to recommended good practice and information resources.

<sup>2</sup> *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010*, 2013, <https://www.ag.gov.au/Consultations/Pages/ReviewofFOI.aspx> ('Hawke Review'); *The Independent Review of Whole-of-Government Internal Regulation*, 2015, <http://www.finance.gov.au/publications/reducingredtape/> (Belcher Review); and Professor Peter Shergold, *Learning from Failure: why large government policy initiatives have gone so badly wrong in the past and how the chances of success in the future can be improved*, 2015, <http://www.apsc.gov.au/publications-and-media/current-publications/learning-from-failure> (Shergold Review).

<sup>3</sup> Hawke Review, at p 3.

<sup>4</sup> Belcher Review, Volume 2 at p 117.

<sup>5</sup> Belcher Review, Volume 2 at p 122.

<sup>6</sup> Belcher Review, Volume 2, at p 122-3.

<sup>7</sup> Shergold Review, Recommendation A.4 at p 24.

<sup>8</sup> Melbourne open meeting, 24 August 2017: See also Accountability Round Table, 'Freedom of Information? Not so free now – Part 2. ART and the Audit of the implementation of the Freedom of Information Act 1982', 14 November 2016, <https://www.accountabilityrt.org/freedom-of-information-not-so-free-now-part-2-art-and-the-audit-of-the-implementation-of-the-freedom-of-information-act-1982/>.

<sup>9</sup> Interviews with Kat Szuminska, Director, Open Australia Foundation and member, Open Government Forum, Phone meeting, 11 September 2017; Peter Timmins, Access to information advocate and Convener Australian Open Government Partnership Network, Sydney NSW, 23 August 2017, Associate Professor Johan Lidberg, Monash University, Melbourne VIC, 25 August 2017.

<sup>10</sup> Interview with Attorney General's Department, Canberra ACT, 8 September 2017.

<sup>11</sup> Interview with Attorney General's Department, Canberra ACT, 8 September 2017. See also Australian Government Mid Term Assessment at p 20.

<sup>12</sup> Attorney-General's Department, 'Commitment 3.1 - Information management and access laws for the 21st century', <https://www.ag.gov.au/RightsAndProtections/Australias-open-government-partnership/Pages/Commitment-3-1-Information-management-and-access-laws-for-the-21st-century.aspx>.

<sup>13</sup> Information management, <https://www.ag.gov.au/RightsAndProtections/Australias-open-government-partnership/Pages/Commitment-3-1-Information-management-and-access-laws-for-the-21st-century.aspx>.

<sup>14</sup> Interviews with Kat Szuminska, Director, Open Australia Foundation and member, Open Government Forum, Phone meeting, 11 September 2017; Peter Timmins, Access to information advocate and Convener Australian Open Government Partnership Network, Sydney NSW, 23 August 2017, Associate Professor Johan Lidberg, Monash University, Melbourne VIC, 25 August 2017.

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- <sup>15</sup> PM&C, Open Government Partnership Australia, '3.1 - Information management and access laws for the 21st century', <https://ogpau.pmc.gov.au/commitment/31-information-management-and-access-laws-21st-century>.
- <sup>16</sup> Interviews with Kat Szuminska, Director, Open Australia Foundation and member, Open Government Forum, Phone meeting, 11 September 2017; Associate Professor Johan Lidberg, Monash University, Melbourne VIC, 25 August 2017
- <sup>17</sup> PM&C, Open Government Partnership Australia, '3.1 - Information management and access laws for the 21st century', <https://ogpau.pmc.gov.au/commitment/31-information-management-and-access-laws-21st-century>.
- <sup>18</sup> PM&C, Open Government Partnership Australia, '3.1 - Information management and access laws for the 21st century', <https://ogpau.pmc.gov.au/commitment/31-information-management-and-access-laws-21st-century>.

## 9. Understand the use of freedom of information

### Commitment Text:

Australia will better measure and improve our understanding of the public's use of rights under freedom of information laws.

We will do this by working with states and territories to develop uniform metrics on public use of freedom of information access rights, and by collecting and publishing this data.

[...]

Ambition:

To facilitate an assessment of the effectiveness of Australia's right to information laws across jurisdictions, and raise awareness about the public's rights to access government information. This will improve understanding of the public's utilisation of access rights, government processes and practices, and allow for international benchmarking, including against the World Justice Project's Open Government Index.

[...]

Milestones:

1. Information Commissioners and Ombudsman to agree and publish metrics on information access rights, aligned with the Open Government Index.
2. Undertake pilot for data collection and validation for the 2014/15 financial year.
3. Data collection and validation for the 2015/16 financial year.
4. Publicly release dataset on 2015/16 metrics.

**Responsible institution:** Australian Information Commissioners and Ombudsmen

**Supporting institution(s):** Various

**Start date:** September 2016

**End date:** December 2017

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf).

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative	Yes	Not Started	Limited	Substantial	Complete
9. Understand the use of freedom of information			✓		✓					✓			Yes			✓	

### Context and Objectives

This commitment seeks to develop standard measures for the reporting of use of information access laws in Commonwealth, State and Territory governments. Currently, each of the Commonwealth, States and Territories have access to information legislation in

place allowing for public access to government information either proactively and/or upon request. The operation of those Acts, and in some instances rights to review decisions on whether to release information, is generally administered by an information commissioner or ombudsman with obligations to inform the public and various other reporting requirements on the rights and operation of the legislation in question.<sup>1</sup> However, there is no common standard for the information collected and made publicly available.

The motivations for this commitment included the development of the Open Government Index by the World Justice Project (WJP).<sup>2</sup> The Open Government index attempts to measure government openness based on public experience and perceptions in 102 countries. In its 2015 report, Australia was ranked relatively poorly, compared to its overall result, on the Right to Information dimension, which measures awareness of access to information laws as well as the timeliness and responsiveness of government's response to access to information requests.<sup>3</sup>

By referencing the Open Government Index, this commitment is expected to reflect the measures adopted in that Index in identifying common metrics for reporting on the public experience with access to information laws. The commitment is, therefore, quite specific on the range of metrics that might be adopted and the ultimate objectives sought. However, the process by which agreement will be reached on metrics, including any consultation process to be undertaken, and the method of public release of the data collected, is not specified in the commitment.

This commitment stands to have a minor potential impact. In creating a common standard for reporting on access to information, the commitment seeks to improve our understanding on the public experience with access to information laws, allowing comparisons to be drawn across jurisdictions, including internationally, and over time. The initiative may therefore indirectly increase the accountability of public officials in the implementation of access to information laws.

Civil society groups interviewed indicated broad support for the commitment. However, interviewees emphasised that it was important that the agreed metrics provide meaningful information on government response to access to information requests and not just present a common subset of existing reporting requirements. For the information to be meaningful it should enable comparisons of government agency practices including reasons for refusal, and allocation of resources to access decisions and review.<sup>4</sup>

## Completion

*Milestone 1:* This milestone saw substantial completion during the period of implementation under consideration, after it was delayed beyond its timetabled completion date of December 2016. A working group to develop the metrics was established by the Association of Information Access Commissioners (AIAC) comprising statutory officers in each Australian jurisdiction responsible for freedom of information oversight and development of information policy. The proposed suite of metrics was agreed by the AIAC in March 2017 and published on the NSW Information and Privacy Commission website in May 2017.<sup>5</sup>

The metrics include type of applicant (whether individual, member of parliament, not for profit, etc), number of applications per population size, percentage of valid applications where access was granted in full or in part, percentage of valid applications where information was available but access was refused, timeliness of decisions made within the statutory timeframes and percentage of external reviews sought.<sup>6</sup>

Public consultation on the proposed metrics took place in July and August 2017 with the release of a public survey.<sup>7</sup> The government's Mid-Term Self-Assessment Report states that there were 42 responses to the survey which will be considered in preparation of the final

metrics to be presented to the AIAC in its September 2017 meeting.<sup>8</sup> The final metrics and feedback on the survey results were made publicly available on 27 November 2017.<sup>9</sup>

*Milestones 2 and 3:* These milestones were substantially completed as at the implementation period for this review. The Information and Privacy Commission stated that it collected data on the metrics for both the 2014/15 and 2015/16 reporting years which was used to create a draft dataset and sent to each jurisdiction for validation in July 2017.<sup>10</sup> Further progress on this milestone will be assessed in the end-of-term report.

*Milestone 4:* This milestone was not due for commencement during the period covered by this report. However, the live dashboard providing access to the data was publicly released on 27 November 2017, after the period of implementation under consideration, completing the overall commitment ahead of schedule.<sup>11</sup> Progress will be reflected in the end-of-term report.

There were no results of the impact of this commitment as at 1 July 2017.

## Next Steps

The publication of further information concerning public use of access to information laws can be a significant step in increasing the accountability of information commissioners and ombudsmen, and encouraging public engagement in development of both laws and their application. Future steps could include:

- Publication of the dataset in an open data format allowing access and reuse;
- Evaluation of the public access and use of the dataset; and
- Further consideration of extending the range of metrics used, perhaps including a breakdown of the agencies from which information is sought, reasons for refusing access, estimates and resources allocated by agencies in making access to information decisions, charges and other fees for access, and changes over time.

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<sup>1</sup> Compendium of information access laws across Australian states and territories, January 2017 prepared by the Association of Information Access Commissioners, <https://www.ipc.nsw.gov.au/node/6601/attachment/newest>; Note that the *Freedom of Information Act 2016* (ACT) will come into effect in the ACT on 1 January 2018 establishing the role of the ACT Ombudsman in overseeing operation of that Act.

<sup>2</sup> World Justice Project, WJP Open Government Index 2015, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index-2015>.

<sup>3</sup> WJP, Open Government Index 2015, 'Right to information', <http://data.worldjusticeproject.org/opengov/#>

<sup>4</sup> Peter Timmins, Access to information advocate and Convener Australian Open Government Partnership Network, Sydney NSW, 23 August 2017; Open Forum, Melbourne, 24 August 2017.

<sup>5</sup> NSW IPC, 'Open Government', <https://www.ipc.nsw.gov.au/open-government>.

<sup>6</sup> *Metrics on Public Use of Freedom of Information Access Rights*, <https://www.ipc.nsw.gov.au/node/8086/attachment/newest> (accessed 6/4/2018).

<sup>7</sup> Australian Government, *Midterm Self-Assessment Report for Australia's First Open Government National Action Plan 2016-18*, at p 31. The survey is now closed but was available at <http://ipc.e-newsletter.com.au/survey.php?sid=19425&name=have-your-say-on-the-development-of-uniform-metrics-on-the-use-o> (accessed 7/10/2017).

<sup>8</sup> Australian Government, *Midterm Self-Assessment Report for Australia's First Open Government National Action Plan 2016-18*, at p 31.

<sup>9</sup> NSW IPC, 'Release of inaugural dashboard and metrics on the public's use of FOI laws', 28 November 2017, <https://www.ipc.nsw.gov.au/news-media/news/release-inaugural-dashboard-and-metrics-publics-use-foi-laws>.

<sup>10</sup> Interview with NSW Information Commissioner, NSW, Sydney NSW, 23 August 2017; see also Australian Government, *Midterm Self-Assessment Report for Australia's First Open Government National Action Plan 2016-18*, at p 31.

<sup>11</sup> NSW IPC, 'Release of inaugural dashboard and metrics on the public's use of FOI laws', 28 November 2017, <https://www.ipc.nsw.gov.au/news-media/news/release-inaugural-dashboard-and-metrics-publics-use-foi-laws>; The dashboard is available at <https://www.ipc.nsw.gov.au/node/8086/attachment/newest>

## 10. Improve the discoverability and accessibility of government data and information

### Commitment Text:

*Australia will make it easier for the public to find, access and use government data and information.*

*We will do this by making greater use of central portals, digital platforms and other tools to improve discoverability and accessibility.*

[...]

### Milestones:

1. PM&C to upgrade and improve data.gov.au:
  - a. work with Data 61 to conduct research and discovery into data consumption (to better understand user behaviours and needs) and publishing (to improve quality, timeliness and value of published data).
  - b. work with Data61 to create, circulate and gather feedback on design concepts and prototypes for improved search functionality and user experience on the data.gov.au platform.
  - c. deliver live platform elements for data.gov.au, including integration with NationalMap to provide a more efficient workflow for the publishing and discovery of spatial data.
  - d. design and prototype further data.gov.au platform capabilities, including: functionality to promote examples and collaboration using public data; and integration with other platforms for open data projects and third party open data platforms.
2. Finance to implement Phase One of the GrantConnect platform to enable public users to:
  - a. register to receive notification on grant opportunities that match their self-defined profiles;
  - b. watch forecast opportunities as they move from planning to requests for applications; and
  - c. access grant guidelines for each opportunity and be notified about changes to grants processes.
3. Finance to launch the pilot of the digital corporate and administrative reporting platform.
4. National Archives of Australia to modernise and improve access to archived records:
  - a. lead transition to digital information practices in Australian Government agencies and report progress to the Prime Minister in 2018;
  - b. increase number of archival records available in digital formats, including World War II service and passenger arrival records; and
  - c. make additional groups of archival records of high research interest available for public access.
5. DoEE to improve the discoverability and accessibility of environmental information:
  - a. launch a map-based tool to visualise Bioregional Assessment results; and

- b. publish the State of the Environment 2016 report through an online information publishing and reporting platform and release the underlying data on data.gov.au.

**Responsible institution:** Department of the Prime Minister and Cabinet , Department of Finance, National Archives of Australia, and Department of the Environment and Energy.

**Supporting institution(s):** CSIRO's Data61

**Start date:** July 2016

**End date:** July 2018

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
10. Improving government data and information			✓		✓			✓			✓		Yes			✓	
10.1. Upgrade and improve data.gov.au			✓		✓			✓		✓			Yes			✓	
10.2. Implement Phase One of GrantConnect platform				✓	✓			✓			✓		Yes				✓
10.3. Digital corporate and administrative reporting platform pilot			✓		✓			✓		✓			Yes		✓		
10.4. Modernise and improve access to archived records			✓		✓			✓			✓		Yes		✓		
10.5. improve discoverability and accessibility of environmental information			✓		✓			✓		✓			No			✓	

## Context and Objectives

This commitment combines a variety of initiatives to increase the accessibility and use of open government data with a general commitment to improve access to Commonwealth records. It is related to commitment 5 which provides for identifying and making available high-value datasets.

*Milestone 1:* As set out in commitment 5, data.gov.au is the central repository for open data maintained by the Commonwealth government. When the national action plan was finalised it provided access to more than 23,000 datasets of information from Commonwealth, State and Territory government sources.<sup>1</sup> Data61,<sup>2</sup> a part of the Commonwealth Scientific and Industrial Research Organisation (CSIRO), received funding in July 2016 as part of the Commonwealth Government's National Innovation and Science Agenda<sup>3</sup> to work with the PM&C to improve accessibility and use of the data.gov.au portal.

Milestone 1 sets out four elements of that work: to gather and analyse information about use and providing access to government data; developing prototypes to improve search functionality to make it easier for users to find the datasets they are looking for; improving the way data.gov.au interacts with other platforms such as the NationalMap which provides mapping of spatial data; and developing data.gov.au further by promoting the benefits of its use, enabling users to collaborate on projects and integrating with other open data platforms.

The elements of milestone 1: will involve either a degree of subjectivity in verifying the delivery, such as evaluating the functionality of the concepts and prototypes developed by Data61; are not measurable in calling for merely research or discovery; and do not clearly set out what form of circulation or feedback is involved, including whether that includes public participation. However, the verifiable nature of the main elements of the milestone make it of medium specificity. Implementing the commitment could encourage greater awareness and use of the open data available through the data.gov.au portal, improving the quality of the information available and its potential use by the public in participating in government decisions. It will also involve use of innovative technology. However, the potential impact of the improvements is difficult to assess at the early stages of development.

*Milestone 2:* The Commonwealth Government makes more than \$30 billion in grants annually.<sup>4</sup> Commonwealth agencies issuing grants<sup>5</sup> are generally required to make the guidelines setting out the conditions for payment of the grant and grants awarded publicly available on the agency's website, subject to limited privacy and other exemptions. This makes obtaining information about grant opportunities difficult to find without knowing the appropriate government agency involved, and makes it difficult to trace grant payments from offer to completion.

Under the terms of milestone 2, guidelines for all grant opportunities will instead be made publicly available through GrantConnect, a central web-based portal. This will also enable users to register to receive information about new grant opportunities, including where they move from forecast, or possible future, opportunities, through to calling for requests for applications. It will also enable users to access the documentation involved with making an application and be notified of any changes to the process associate with grant decisions. This milestone is therefore highly specific.

GrantConnect, once implemented, will make it easier to find out about and apply for government grants as well as monitor their progress over time. It will also enable analysis of trends in awarding and completion of grants over time. It will therefore improve the quality of information available to the public, using technological means. Mel Flanagan, who has participated in several government procurement rounds for both State and Federal government agencies, and Kat Szuminska, who as director of Open Australia Foundation has advocated for opening government procurement information, commented that the impact of

GrantConnect would depend on how it continued to develop in the future, how much publicity it was given to encourage its use by those seeking grant opportunities, and whether there would be a requirement for information to be made available in an open and accessible format to enable analysis of the use of government grants over time.<sup>6</sup> While further phases of the GrantConnect platform may enhance its functionality and lead to changes in government practice in the format and amount of information that is provided to the public, Phase One of the GrantConnect platform has the potential to have only a moderate impact.

*Milestone 3:* 182 government agencies and other entities, including the main Government departments, authorities and other national institutions, are subject to annual reporting requirements under the *Public Governance, Performance and Accountability Act 2013*.<sup>7</sup> Entities are required to report on financial performance, whether it met its purposes as set out in the corporate plan, management of personnel including use of consultants, external scrutiny, compliance with procurement rules, advertising, and grants made.<sup>8</sup> The annual reports are presented to the entities responsible and to Parliament, and have to be made available on the agencies' website.<sup>9</sup>

This milestone will create a pilot of an online platform through which annual reports and similar publications can be made available. The milestone does not set out which elements of the platform will be developed in the pilot, which forms of publications will be included in the pilot, whether it will be available publicly or other form of public feedback sought, or how it will be further developed. The milestone is therefore of medium specificity.

The Department of Finance confirmed in interviews<sup>10</sup> that the intention of the pilot was to create an easy-to-navigate platform allowing online access to the annual reports with search, comparison and reporting features for different elements across multiple annual reports. The data used in constructing the annual reports will be publicly available in an open format. The milestone will therefore bring together the various annual reports, with multiple formats and approaches to setting out the information, to be accessed more easily and, by enabling comparison and analysis of the information presented, increase the quality of information publicly available through technological means. Therefore, although the underlying information is already publicly available, the increased access and utility of the information means this milestone has a minor potential impact.

*Milestone 4:* Under the Archives Act 1983, the National Archives of Australia (Archives) has the role of identifying, preserving and making publicly available government records of national significance or public interest, as well as determining standards and providing advice on Commonwealth record-keeping. As part of that role, Archives released its Digital Continuity 2020 policy in October 2015,<sup>11</sup> which in turn built on the Digital Transition Policy approved in 2011.<sup>12</sup>

The 2020 policy provides for Commonwealth government agencies, by the end of 2016, to establish an information governance framework to assist with meeting the various business, information management and legislative requirements over the development, use, storage and destruction of government information. It also requires government agencies to record information digitally and migrate existing information to digital formats, and to adopt interoperable information management systems and processes, by 2020. Agencies have to report to Archives each year on their progress, which is then reported in annual reports to the Minister. Support and guidance is offered to agencies to assist in the transition.<sup>13</sup>

Therefore, while the first element of this milestone is expressed without specificity as leading the transition to digital information practices in government agencies, it relates to a detailed policy which includes agency implementation targets and pathways and reporting requirements.<sup>14</sup> In its first report under the 2020 policy, it was suggested that 26 percent of Commonwealth agencies did not generally manage records digitally.<sup>15</sup> Only 6 percent of agencies claimed to have optimised the benefits of digital records management. The continued shift to digital information practices, apart from reducing the burden of having to

store paper-based archival records, could have a significant impact on the accessibility and use of information both within and outside of government.

In interviews for this report,<sup>16</sup> several individuals suggested that the transformative potential of this commitment was restricted by the reliance on demonstrating the benefits to be gained through implementing the policy rather than direct enforcement of the policy, dependence on the allocation of resources particularly in relation to historical records, and being of most benefit to those agencies which have not yet adopted digital management practices. There was also concern raised over how this commitment related to other commitments relating to release of government data (Commitment 5) and information management practices (Commitment 8) given the overlap between government records, data and information. The need to integrate digital records management with any digital delivery of government services meant that this milestone was also related to Commitment 7, suggesting a potential overlap in the roles of Archives and the Digital Transformation Agency.

The other elements of this commitment are also of medium specificity, given that although measurable it does not detail how many archival records will be made available in digital formats or the process of their selection, including the role of consultation. In interviews in preparing this report, Archives indicated that they have identified World War II services and passenger arrival records as being of high value due in part to the high levels of demand for those paper-based records.<sup>17</sup> They have also collected feedback from users of archives through surveys, both online and when visiting, nomination through the Archives website and through feedback from consultative fora held in each capital city.<sup>18</sup> Access will also be facilitated through the development of innovative technological approaches. The digitisation and release of these high-value records will therefore increase the ability to access these records as well as their use in future research and analysis. Therefore the potential significant impact of this commitment means that it is of moderate impact.

*Milestone 5:* Bioregional assessments detail the impacts of coal seam gas and coal mining developments on water resources such as rivers, wetlands and groundwater systems.<sup>19</sup> Drawing on information provided by actors including government agencies and scientists, they focus on selected areas within Queensland, NSW, Victoria and South Australia under the National Partnership on Coal Seam Gas and Large Coal Mining Development.<sup>20</sup> The assessments are used by Commonwealth and state governments in decisions about coal mines and coal seam gas extraction projects. They are also used by governments, industry and the community to identify areas where impacts on water resources and water-dependent assets are likely to occur when making regulatory, water management and planning decisions.<sup>21</sup> It is also of interest to communities, industry, and researchers and non-government organisations with an interest in mining and the environment.

Data used in the assessment is made publicly available in an open format on [data.gov.au](http://data.gov.au) where licensing restrictions allow. The web platform used to access the assessments was made publicly available in April 2016, with two of the 13 planned assessments being available at the time of writing.<sup>22</sup>

The milestone to launch a map-based tool to visualise the assessment results does not provide much information as to the level of detail to be provided or potential uses of the tool, other than using spatial data associated with the assessments. The Department of Environment and Energy (DoEE) indicated that it was intended that different users would be able to use the tool to get information relevant to their interests, with local community members potentially able 'to identify water-dependent assets that may be affected by hydrological changes caused by new coal mines and coal seam gas projects.'<sup>23</sup>

Making information available in a map-based platform could increase the ease of use of the assessments and make them more relevant and therefore useful to those impacted by the mining developments under assessment. However, the mapping tool will utilise information

otherwise publicly available, and therefore will only have a minor potential impact on making the information more accessible, using a technological approach to do so.

The Commonwealth Government is required under the Environment Protection and Biodiversity Conservation Act 1999 to report every five years on the State of the Environment (SoE). The first SoE report was produced in 1996.<sup>24</sup> The report considers the state of the environment across nine thematic areas, considering the pressures, state and trends, management effectiveness and risks factors in each area as well as considering overall drivers and outlooks.<sup>25</sup> The report brings together information from a variety of sources, including state and local governments, and provides qualitative analysis and expert assessment from a variety of scientific disciplines. The DoEE indicated in interviews that the value of the report consisted in bringing together information on the state of the environment at a particular time that might be publicly available but from a wide variety of places, and subjecting it to analysis.

The milestone also committed the government to publish the 2016 report through an online information platform as well as releasing the underlying data on data.gov.au. While the milestone does not provide details as to the elements of the platform, it is intended to make it easier to access the information through avoiding having to access a hard copy,<sup>26</sup> to allow searching by keywords and metatags, to access links to underlying data for graphs and maps, interactive graphs and to enable comparisons between reports.<sup>27</sup> The commitment will therefore increase the quality of the information available using technological innovation to do so. However, a stakeholder with expertise in government platform design noted that as the report provides a point in time detailed analysis of environmental information its potential impact is more limited than if the information on which it was based was available as it was updated.<sup>28</sup>

## Completion

*Milestone 1:* This milestone was substantially completed on time. Interviews with PM&C<sup>29</sup> indicated that Data61 had analysed use of the data.gov.au website and the quality of the data published. There had also been comments left by users on data.gov.au itself. However, results of this research were not publicly available at the time of writing. A prototype version of the new search capability was made available on 3 March 2017.<sup>30</sup> Design concepts have been released for facilitating project collaboration and a way of promoting the links between the insights or stories developed through use of the data available on data.gov.au and the data itself.<sup>31</sup> Responsibility for management of data.gov.au was shifted to the Digital Transformation Agency on 14 September 2017.<sup>32</sup>

*Milestone 2:* This milestone was completed on time. Finance made GrantConnect publicly available on 6 February 2017,<sup>33</sup> enabling users to register<sup>34</sup> to receive notification of grant opportunities, watch forecast opportunities and access grant guidelines and changes to grants processes. Details of grants awarded are also available, including whether the contract and outputs are confidential. Reports are available to download in an .xls format.<sup>35</sup> Amendments to the Commonwealth Grant Rules and Guidelines made it mandatory for all non-corporate government agencies subject to the *Public Governance, Performance and Accountability Act 2013* to report grant opportunity guidelines and information on grants awarded on GrantsConnect with limited exceptions.<sup>36</sup>

*Milestone 3:* This milestone saw limited completion. In interviews with the Department of Finance in preparation for this report,<sup>37</sup> a version of the platform under development was demonstrated. However, the platform is not publicly available online yet. Consultation was occurring with various entities to ensure the compatibility of the platform with the current methods for preparing annual reports.

*Milestone 4:* This milestone saw limited completion. Archives released the 2016 report into the 2020 policy in April 2017.<sup>38</sup> This includes the results of surveys on agency's digital records practices in 2015 and 2016. It also released an Information Management Standard in

April 2017 outlining principles and expectations for management of information relating to the business of Australian government agencies.<sup>39</sup> Archives also released a Digital Authorisations Framework in November 2017 to assist in the shift from analogue to digital decision making and approval processes.<sup>40</sup>

In May 2017, the government announced that the Department of Finance, in consultation with Archives, will implement a 'Whole-of-Government Digital Records Platform' to automate records management functions in line with the 2020 policy.<sup>41</sup> The platform is intended to be piloted prior to being rolled out in 2020. As detailed in the Government's Mid-Term Self-Assessment report, Archives have also continued to make archival records publicly available and launched digital access projects to present archived records in innovative ways, including stories of indigenous service personnel, tutorials on accessing World War I service records, and photographs documenting the post-war migration. Archives indicated in interviews that they were progressing the digital availability of World War II records and had released several groups of service records in support of various commemorations of World War II events.<sup>42</sup> This milestone is therefore on time. However, the limited publicly available information relating to progress towards this milestone and the scope and ambition of the 2020 policy means that there was only limited additional overall progress during the reporting period.

*Milestone 5:* This milestone was substantially completed but delayed. The mapping tool was not publicly available at the time of writing. It is therefore delayed from its expected implementation of mid-2017. It was indicated that the tool was being developed in conjunction with the Bureau of Meteorology and was being tested with the existing data. The intention was to release the tool publicly in association with the two assessments available in 2017, followed by a further two assessments in 2018.<sup>43</sup>

The 2016 State of the Environment Report was made available online using the SoE Digital platform on 7 March 2017 after user testing with researchers, non-government organisations and businesses, starting in October 2016.<sup>44</sup> The 2011 State of the Environment Report was also made available on the SoE platform.<sup>45</sup> Spatial data can also be viewed on the National Map.<sup>46</sup>

## Early Results

The Government Mid-Term Self-Assessment report indicates that 16 government agencies and other entities have advertised 118 grant opportunities on the GrantConnect platform, and more than 2,950 people and organisations have registered to receive notifications.<sup>47</sup>

The State of the Environment 2011 and 2016 reports, being online for the first time, made available or improved online access to more than 330 government datasets, allowed a comparison between the two periods, including through use of data visualization approaches, and had more than 25,000 unique visitors through to September 2017.<sup>48</sup>

There were no early results for other milestones available for the assessment period.

## Next Steps

While each of milestones in this commitment is a useful addition to improving public access to government data, and further evaluation of impact would be useful,<sup>49</sup> the potential impact of any further development suggests that they are not a priority for the next national action plan.

The interaction with development of digital information practices, lead by Archives in milestone 4, should be integrated with the review of information management laws, policies and practices being conducted by the Attorney-General's Department under Commitment 3.1. Clearer performance indicators under the 2020 policy could also be established and a consultation process established to evaluate its progress and consider priorities.

As this collection of commitments suggests, there are likely to be a large number of potential projects across a range of government agencies which would improve the accessibility and value of government information, but which individually would not warrant inclusion in the next national action plan. However, a broader consultation process to identify and prioritise projects of this sort, as well as developing facilities and resources to support their development, could be considered.

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<sup>1</sup> Blog.data.gov.au, 'Working on the new data.gov.au', available at <https://blog.data.gov.au/news-media/blog/working-new-datagovau>

<sup>2</sup> Privacy-preserving technology, <https://www.data61.csiro.au/>

<sup>3</sup> National Innovation and Science Agenda, 'Data61: Australia's digital and data innovation group', <http://www.innovation.gov.au/page/data61-australias-digital-and-data-innovation-group>.

<sup>4</sup> Department of Finance, 'GrantConnect - Discovery and Grants Awarded', <https://www.youtube.com/watch?v=XttF5BLID7c>.

<sup>5</sup> Generally involving financial assistance not involving procurement of property or services, act of grace payments, payments of compensation, benefits or entitlements established by legislation, tax concessions, investments or loans, financial assistance to states or local governments, or certain education-related payments, or international assistance. Commonwealth Grants Rules and Guidelines, [2.5], [https://www.legislation.gov.au/Details/F2014L00908/Html/Text#\\_ftnref41](https://www.legislation.gov.au/Details/F2014L00908/Html/Text#_ftnref41).

<sup>6</sup> Mel Flanagan, Director Nook Studios, Sydney NSW, 23 August 2017; Kat Szuminska, Director, Open Australia Foundation and member, Open Government Forum, Phone meeting, 11 September 2017.

<sup>7</sup> Public Governance, Performance and Accountability Act 2013 s 46.

<sup>8</sup> Division 3-A, Part 2-3 of the Public Governance and Accountability Rule 2014, <https://www.legislation.gov.au/Details/F2017C00730>

<sup>9</sup> See *Freedom of Information Act 1982* paragraph 8(2)(e).

<sup>10</sup> Department of Finance, Canberra ACT, 12 September 2017.

<sup>11</sup> Archives, *Digital Continuity 202 Policy*, October 2015, <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/digital-continuity-2020/index.aspx>

<sup>12</sup> Archives, 'Digital Transition policy', <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/digital-transition-policy/index.aspx>

<sup>13</sup> Archives, 'Agency Service Centre', <http://www.naa.gov.au/information-management/support/agency-service-centre/index.aspx>

<sup>14</sup> Archives, 'Agency implementation targets and pathways', <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/agency-implementation-targets-pathways/index.aspx>

<sup>15</sup> Archives, 'Implementation of Digital Continuity in the Australian Government, August 2016', <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/reporting/implementation-digital-continuity-government-1st-report-august-2016.aspx>.

<sup>16</sup> Interviews with Kat Szuminska, Director, Open Australia Foundation and member, Open Government Forum, Phone meeting, 11 September 2017; Associate Professor Johan Lidberg, Monash University, Melbourne VIC, 25 August 2017.

<sup>17</sup> Interview with Christine Johnstone, Archives, 14 September 2017.

<sup>18</sup> These include representatives from historical and archivists societies, researchers and other users of archival material. There are also Aboriginal Advisory Groups in Darwin and Melbourne relating to accessing stolen generation and other material. Interview with Christine Johnstone, Archives, 14 September 2017, and subsequent emails.

<sup>19</sup> Bioregional Assessments, 'Frequently Asked Questions', <http://www.bioregionalassessments.gov.au/about/frequently-asked-questions>

<sup>20</sup> Department of the Environment and Energy, 'National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development', <http://www.environment.gov.au/water/coal-and-coal-seam-gas/office-of-water-science/npa>.

<sup>21</sup> Bioregional Assessments, 'About the program', available at <http://www.bioregionalassessments.gov.au/about> (accessed 6/4/2018).

<sup>22</sup> Australian Government's Mid-Term Self-Assessment report.

<sup>23</sup> Interview with Department of Environment and Energy, Canberra, 21 September 2017.

<sup>24</sup> All SoE reports are available at <https://soe.environment.gov.au/download/reports> (accessed 6/4/2018).

<sup>25</sup> Australia State of the Environment Report, 'SoE 2016 content and processes', <https://soe.environment.gov.au/how-why/how-report-written>.

<sup>26</sup> It is estimated that the final version of the report would weigh more than 6 kg when printed: interview with Department of Environment and Energy, Canberra, 21 September 2017.

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- <sup>27</sup> Interview with Department of Environment and Energy, Canberra, 21 September 2017. See also Australia State of the Environment Report, 'So Digital', <https://soe.environment.gov.au/how-why/soe-digital>.
- <sup>28</sup> Interviews with Mel Flanagan, Director Nook Studios, Sydney, NSW, 23 August 2017. Mel Flanagan has designed and developed a number of open government platforms relating to the environment, including Common Ground (available at <http://commonground.nsw.gov.au> (accessed 6/4/2018) providing information about mining and exploration activity in NSW).
- <sup>29</sup> Interview with Nick Newhouse, PM&C, Canberra ACT, 15 September 2017.
- <sup>30</sup> Search for open data, <http://search.data.gov.au/>; blog.data.gov.au, 'Have your say on the next generation of data.gov.au', <https://blog.data.gov.au/news-media/blog/have-your-say-next-generation-datagovau>.
- <sup>31</sup> Technology preview, <http://preview.data.gov.au/index.html>
- <sup>32</sup> PM&C, 'Data functions transfer to the DTA', <https://www.pmc.gov.au/news-centre/public-data/data-functions-transfer-dta>
- <sup>33</sup> Department of Finance Blog, 'GrantConnect – Commonwealth Grant Opportunities', <https://www.finance.gov.au/blog/2017/02/06-GrantConnect-Commonwealth-Grant-Opportunities/>
- <sup>34</sup> GrantConnect, <https://www.grants.gov.au/?event=public.registereduser.new>
- <sup>35</sup> GrantConnect reports, <https://www.grants.gov.au/?event=public.reports.list>.
- <sup>36</sup> Commonwealth Grant Rules and Guidelines 2017, [5.1]-[5.8], <https://www.finance.gov.au/resource-management/grants/>.
- <sup>37</sup> Department of Finance, Canberra ACT, 12 September 2017.
- <sup>38</sup> Archives, 'Implementation of Digital Continuity in the Australian Government, August 2016', <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/reporting/implementation-digital-continuity-government-1st-report-august-2016.aspx>.
- <sup>39</sup> Archives, 'Information Management Standard', <http://www.naa.gov.au/information-management/information-management-standard/index.aspx> (accessed 4/9/2018).
- <sup>40</sup> Archives, 'Digital Authorisations and workflows', <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/information-is-managed-digitally/digital-authorisations-and-workflows/index.aspx>.
- <sup>41</sup> Archives, 'Whole-of-government digital records platform', <http://www.naa.gov.au/information-management/digital-transition-and-digital-continuity/information-is-managed-digitally/Whole-of-Government-Digital-Records-Platform.aspx>.
- <sup>42</sup> Interview with National Archives of Australia, 14 September 2017.
- <sup>43</sup> Interview with Department of Environment and Energy, 21 September 2017.
- <sup>44</sup> Government Mid-Term Self-Assessment Report at p 40.
- <sup>45</sup> See <https://soe.environment.gov.au/how-why/soe-digital> (accessed 6/4/2018).
- <sup>46</sup> State of the Environment, <https://soe.terria.io/>
- <sup>47</sup> Australian Government Mid-Term Self-Assessment Report at p 36.
- <sup>48</sup> Australian Government Mid-Term Self-Assessment Report at p 40.
- <sup>49</sup> Department of Environment and Energy officials have indicated that user research and evaluation of the State of the Environment Report is underway.

## Theme 4: Integrity in the public sector

### 11. Confidence in the electoral system and political parties

#### Commitment Text:

To enhance integrity and confidence in Australia's electoral system.

We will do this by working with the Parliament and the public to investigate the conduct of the 2016 election, use of technology in elections and the framework of donations to political parties and other political entities.

[...]

Milestones:

1. JSCEM inquiry and report.
2. Government considers recommendations.
3. Parliament and other relevant stakeholders address Government decisions.

**Responsible institution:** Department of Finance

**Supporting institution(s):** Australian Electoral Commission

**Start date:** September 2016

**End date:** 2017

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative	Yes	Not Started	Limited	Substantial	Complete
11. Confidence in the electoral system		✓			✓	✓		✓		✓			Yes		✓		

#### Context and Objectives

This commitment seeks to increase the integrity and confidence in Australia's electoral system by inquiring into various issues that arose in the context of the 2016 federal election.

On 21 September 2016, the Joint Standing Committee on Electoral Matters (JSCEM), a parliamentary committee consisting of members from both houses of parliament, commenced an inquiry into 'all aspects of the 2016 Federal Election and related matters'.<sup>1</sup> The Terms of Reference for the inquiry reflect a range of broad issues that arose in the lead-up to the 2016 election, including:

- how requirements relating to *authorisation of electoral material* applied to all forms of communication with voters;
- the extent of *donations* and contributions from foreign sources and how these might be regulated; and

- the applicability of ‘*truth in advertising*’ requirements to communications to voters including third party carriage services, such as internet providers and social media platforms.

The inquiry into these matters is likely to identify further issues that may need to be addressed. As the commitment as written merely provides for an inquiry and report, it is of low specificity. The significance of many of the issues and the range of potential recommendations that may emerge suggests that the inquiry may have a moderate potential impact. However, the low specificity limits the commitment’s potential impact by requiring only that the inquiry’s recommendations be considered rather than implemented. Therefore, the commitment is coded as having minor potential impact. Many of the issues under consideration have also been identified in past inquiries and may raise complex or politically sensitive matters which may limit the impact of any reform possible within the term of this national action plan.

One of the issues that arose from the 2016 election was whether requirements relating to the authorisation of electoral material need to be updated to reflect the use of new and emerging forms of media.<sup>2</sup> An inquiry into authorisation of electoral materials could increase the transparency of the communication around electoral matters, ensure consistency and predictability in the treatment of new forms of media and accountability for the information being presented. It therefore can have an important effect on voters’ trust in the integrity of the electoral campaign process.

There have been a number of proposals for reform of the disclosure system for political donations to address some of its weaknesses.<sup>3</sup> Notably, the disclosure requirements do not make any distinction over whether the donor is Australian or from overseas. Several examples of foreign donors received media attention in 2016 leading to concerns over whether foreign donations should be regulated, and if so, how.<sup>4</sup> Some charities and non-profit organisations have raised concerns over whether the administrative burden of having to disclose all foreign donations might discourage political advocacy activities.<sup>5</sup>

An inquiry into political donations is likely to consider these and other aspects of the present disclosure requirements. Any reforms could potentially have a significant effect on the availability of information on political donations, enhancing understanding of the use of donations as a form of civic participation and accountability for the influence such donations might have on government decision making. Enhanced disclosure requirements may also encourage the development of innovative technological approaches to the use of donation information.

## Completion

Milestone 11.1 has seen substantial progress during the implementation period under review in this report. The JSCEM had released three interim reports prior to 1 July 2017 – on the authorisation of voter communication,<sup>6</sup> foreign donations<sup>7</sup> and modernisation of the Australian Electoral Commission.<sup>8</sup> The Committee announced a general review into political donations on 22 August 2017.<sup>9</sup>

As of the second interim report, the Committee had accepted more than 140 submissions and conducted 12 public hearings in all capital cities except Darwin, and the regional location of Townsville in north Queensland.<sup>10</sup> The Committee had received submissions and evidence in public hearings from individuals including academics, charities, not-for-profit organisations and other civil society organisations, business representatives, unions and political parties.<sup>11</sup>

In its first interim report, the Committee recommended taking a principled approach to authorisation of voter communication requirements to cover all forms of emerging voter

communication, and that further inquiries be made into the issues of impersonating a Commonwealth officer or entity.<sup>12</sup>

The Second Interim Report recommended a prohibition on donations from foreign citizens and entities. It also recommended that there be a further inquiry into how to prevent foreign funds being channeled through organisations engaged in political activities but who are not currently subject to regulation under the Electoral Act.

Milestone 11.2, which is dependent on the inquiry process saw limited completion. Government considered the recommendations made in the first report (see milestone 1.3 completion below). At the same time, the Government committed to introducing legislation before the end of 2017 to address the Committee's second report on donations.

Milestones 11.3 saw limited completion. In response to the Committee's recommendations, the *Electoral and Other Legislation Amendment Bill 2017* was introduced to the Parliament on 30 March 2017 and assented to on 14 September 2017, after the period of implementation under consideration. The Act extends authorisation requirements in the Electoral Act and *Referendum (Machinery Provisions) Act 1984* to all forms of paid electoral advertising, no matter the source or channel of communication. It also amends authorisation to the person who has approved the content of the communication and extends the information to be provided.<sup>13</sup>

The Parliamentary Library has raised some concerns about how practical it will be to enforce the new authorisation requirements and the deterrent effect of the civil penalties now involved for breach of the requirements.<sup>14</sup> The Senate did not agree to proposed amendments relating to impersonating a Commonwealth body originally included in the Bill.

Legislation addressing the second interim report on foreign donations was introduced into Parliament on 7 December 2017.<sup>15</sup> This Bill and concerns raised about its potential impact on public participation will be discussed in the end-of-term report.

As the substantive effect of the *Electoral and Other Legislation Amendment Act 2017* was not due to commence until 14 March 2018 there have not been any results as yet of the implementation of this commitment.

### Next Steps

While the JSCEM inquiry process provides an open opportunity for consideration of the issues that might have arisen in past elections, further community collaboration in implementing the recommendations of the Committee would enhance community awareness of the issues and legitimacy of any proposals that result. The relationship between political donations and broader questions of political influence was also raised by several civil society organisations as warranting consideration.<sup>16</sup>

Therefore, next steps to be considered could include:

- Developing a more specific consultation process to respond to proposals arising from the final report of the JSCEM inquiry;
- Establishing a collaborative process to examine the role of disclosure of political donations in enhancing transparency of lobbying and other forms of political influence.

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<sup>1</sup> JSCEM, Inquiry into and report on all aspects of the conduct of the 2016 Federal Election and matters related thereto, inquiry home page, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election)

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- <sup>2</sup> Parliamentary Library, 'Bills Digest no. 101, 2016-17, Electoral and other Legislation Amendment Bill 2017, 26 May 2017, [http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/5298470/upload\\_binary/5298470.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/5298470/upload_binary/5298470.pdf;fileType=application/pdf); Australian Government, *Electoral Reform Green Paper: Strengthening Australia's democracy*, September 2009 ('Electoral Reform Green paper').
- <sup>3</sup> JSCEM, *Report on the funding of political parties and election campaigns*, November 2011, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=em/political%20funding/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=em/political%20funding/report.htm); See also Parliamentary Library, *Election funding and disclosure in Australia: a quick guide to recent reforms and current issues*, Research Paper, 10 July 2017, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1718/Quick\\_Guides/ElectionFunding](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/ElectionFunding).
- <sup>4</sup> Joo-Cheong Tham, 'Better regulation of all political finance would help control foreign donations', *The Conversation*, 1 September 2016, <https://theconversation.com/better-regulation-of-all-political-finance-would-help-control-foreign-donations-64597>.
- <sup>5</sup> Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017. See also Michael Koziol, 'Political donations: Charities fear 'unintended consequences' of new rules', *The Sydney Morning Herald*, 3 September 2017, <http://www.smh.com.au/federal-politics/political-news/political-donations-charities-fear-unintended-consequences-of-new-rules-20170825-gy4kzs.html>.
- <sup>6</sup> JSCEM, *The 2016 Federal Election: Interim Report on the authorisation of voter communication*, December 2016, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Report)
- <sup>7</sup> JSCEM, *Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations*, March 2017, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Report\\_1](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Report_1)
- <sup>8</sup> JSCEM, *Third interim report on the inquiry into the conduct of the 2016 federal election: AEC modernisation*, June 2017, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Third\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Third_Interim_Report)
- <sup>9</sup> Media release, <https://www.aph.gov.au/DocumentStore.ashx?id=6ec031f7-1dad-4d55-b5de-313fec132b5b>.
- <sup>10</sup> JSCEM, *Second Interim Report*, at p 5.
- <sup>11</sup> Submissions, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2016Election/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2016Election/Submissions).
- <sup>12</sup> JSCEM, *First Interim Report* at p vi.
- <sup>13</sup> *Electoral and Other Legislation Amendment Bill 2017, Revised Explanatory Memorandum*, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5858](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5858).
- <sup>14</sup> Parliamentary Library, 'Bills Digest no. 101, 2016-17, Electoral and other Legislation Amendment Bill 2017, 26 May 2017 at pp 12-13.
- <sup>15</sup> *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017*, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fs1117%22;rec=0>.
- <sup>16</sup> Interview with Greg Thompson, Board Member, Transparency International Australia, Phone meeting, 5 September 2017, and Ken Coghill, Monash University and Accountability Round Table, Canberra, ACT, 28 July 2017.

## 12. National Integrity Framework

### **Commitment Text:**

*Australia will strengthen its ability to prevent, detect and respond to corruption in the public sector.*

*We will do this in collaboration with the corporate sector, non-government organisations, academia and the public, including by holding the first Government Business Roundtable on Anti-Corruption in 2017.*

*We will review the jurisdiction and capabilities of the Australian Commission for Law Enforcement Integrity (ACLEI) and the Australian Federal Police (AFP)-led Fraud and Anti-Corruption Centre (FACC) with the development of each National Action Plan to ensure they can focus on protecting Commonwealth agencies from risks of corruption.*

[...]

### **Milestones:**

1. Respond to the recommendations of the Parliamentary Joint Committee on ACLEI's inquiry into the jurisdiction of ACLEI.
2. Hold the first Government Business Roundtable on Anti-Corruption, to improve cooperation and consultation on anti-corruption work, and identify areas for reform.
3. Respond to recommendations for reform and improvement arising from the Roundtable.
4. Review the jurisdiction and capabilities of ACLEI and FACC in consultation with the public in the context of developing Australia's second National Action Plan.

**Responsible institution:** Attorney-General's Department

**Supporting institution(s):** ACLEI, Australian Federal Police, Commonwealth Director of Public Prosecutions and Department of the Prime Minister and Cabinet. See the national action plan for a full list.

**Start date:** 2016

**End date:** July 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
12. National integrity framework			✓			✓	✓			✓			No		✓		
12.1 Respond to ACLEI inquiry			✓				✓			✓			No		✓		
12.2 Hold business anti-corruption roundtable		✓				✓				✓			Yes				✓
12.3. Respond to roundtable recommendations		✓					✓			✓			No		✓		
12.4. Review ACLEI and FACC			✓			✓				✓			Yes	✓			

### Context and Objectives

This commitment seeks to reduce corruption in the Commonwealth public sector. The government has committed to responding to previous recommendations and conducting a review of bodies that currently have investigation and enforcement powers in this area, as well as consulting with business over other steps that can be taken.

All Australian States and the Northern Territory have a broad based anti-corruption agency which has jurisdiction over public officials, has coercive powers, is overseen by a Parliamentary committee, and mostly has investigative, preventative and educational functions.<sup>1</sup> A key theme in their establishment has been to combat the practice or perception of corruption as a way to restore and maintain public trust in government institutions.

Public sector corruption at the Commonwealth level is regulated through a “Multi-agency framework”.<sup>2</sup> These include at least eight different agencies, from the Australian Commission for Law Enforcement Integrity (ACLEI), which monitors other law enforcement agencies including the Australian Federal Police (AFP) and the immigration and customs officials; to the Fraud and Anti-Corruption Centre (FACC), led by the AFP, which includes officials from a number of law enforcement agencies in an effort to coordinate and provide specialised expertise to tackle complex fraud and corruption. The Department of Prime Minister and Cabinet (PM&C) is also involved in addressing corruption risks through applying the Ministerial Code of Conduct and the Lobbying Code of Conduct.

In its interim report, the Senate Select Committee on a National Integrity Commission identified major concerns regarding the adequacy of the current system at the Commonwealth level: It should not be assumed that the Commonwealth public sector is less prone to corruption; that there has been several high-profile instances of corruption; and that the multi-agency approach has its flaws including uncoordinated development, fragmentary and ill-defined nature, and a lack of resources.<sup>3</sup> The Senate Select Committee also concluded that the current framework resulted in a “complex and poorly understood system that can be opaque, difficult to access and challenging to navigate, particularly for complainants unfamiliar with the Commonwealth public sector and its processes more broadly.”<sup>4</sup> It recommended that the framework be strengthened to make it more coherent, comprehensible and accessible, and that consideration be given to establishing a new commonwealth agency with broad scope and jurisdiction to address integrity and corruption matters.<sup>5</sup>

The Parliamentary Joint Committee on the ACLEI, in its 2016 inquiry into the jurisdiction of the ACLEI recommended extending ACLEI’s jurisdiction to include the Department of Agriculture and Water Resources, holding an independent assessment of the Australian Taxation Office within ACLEI’s jurisdiction, and considering transferring responsibility for the assessment of maritime and aviation identification cards to an agency within ACLEI’s jurisdiction. However, the Joint Committee did not recommend any wholesale increase in ACLEI’s jurisdiction, preferring ACLEI’s current focus on agencies with law enforcement functions.<sup>6</sup>

The commitment in milestones 12.1 and 12.4 relate to reforming the jurisdiction of the ACLEI and FACC. They are of medium specificity given they will involve government responding to each of the recommendations of the Joint Committee and conducting a review to consider further changes. Implementing the recommendations is likely to involve extending the jurisdiction of ACLEI, improving the degree of oversight or potential to investigate corruption within the government agencies involved. It is not clear what form any further review might take. In submissions to the various Senate and Joint Committees and in interviews for this report, Transparency International Australia were critical of the limited impact of the recommendations of the Joint Committee and advocated for any further review to consider the details of the establishment of a federal anti-corruption agency.<sup>7</sup>

Milestones 12.2 provides for the first Government Business Roundtable on Anti-Corruption. It does not provide information about what form the roundtable will take, who will take part in the discussion or the scope of considerations. Milestone 12.3 provides for a response to the recommendations of the roundtable without any details on what form the response might take. These are therefore of low specificity. In interviews in preparing this report, it was considered that the roundtable discussions were likely to be of more relevance to Commitment 1.4 and regulation of corrupt conduct by corporations than to regulating public sector corruption at the federal level in Australia.<sup>8</sup> In the context of reforming the institutions involved with regulating public sector corruption in Australia these milestones were likely to have only minor potential impact.

## Completion

Milestone 12.1: This milestone is delayed and with no evidence of more than limited progress being publically available as of 1 July 2017. At the time of writing, the government has not responded to the Joint Committee Report. Interviews with the Attorney General’s Department indicate that the delay is in part due to the need to resolve the implications for the jurisdiction of ACLEI associated with the creation of a new Home Affairs portfolio combining Australia’s immigration, border protection and domestic security agencies.<sup>9</sup>

Milestone 12.2: This milestone was fully implemented. The Government Business Roundtable was held on 31 March 2017. Interviews with participants in the roundtables considered that they were focused on industry groups and private sector views, but did include broader civil society representatives.<sup>10</sup> Greg Thompson from Transparency

International, considered that the roundtable was primarily focused on regulation of the non-government sector.<sup>11</sup> The wide range of different initiatives around corruption meant that it was difficult for CSOs with an interest in this area to effectively engage in all aspects of the consultation. The fragmentation made it difficult to establish priorities and to ensure the coherence of the various measures was being maintained.

Milestone 12.3: This milestone was not completed during the period of implementation reported on in this report. There was no evidence of more than limited progress being publicly available as of the end of August 2017 as set out in the timeframe for the milestone. No feedback or other results from the roundtable have been made public. The Crimes Legislation Amendment (Combating Corporate Crime) Bill 2017, which includes amendments to address bribery of foreign officials and introduction of a deferred prosecution agreement scheme that were discussed at the Roundtables, was introduced into Parliament on 6 December 2017. This Bill will be discussed further in the end-of-term report.

Milestone 12.4: The general review of the jurisdiction and capabilities of ACLEI and FACC had not formally commenced at the time of writing.

### Early Results (if any)

There were no early results available during the implementation period reviewed by this report.

### Next Steps

In fulfilment of milestone 12.2, government should consider making public the recommendations from the roundtable discussions and the government response combined with the various elements of commitment 4 in consulting further on anti-corruption measures involving corporate regulation. The general review of ACLEI and FACC could be expanded in the next national action plan to encompass a collaborative approach to investigating the establishment of a single federal anti-corruption agency with a broad based jurisdiction.

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<sup>1</sup> Senate Select Committee on the Establishment of a National Integrity Commission, *Interim Report*, May 2016, p 6 ('Interim Report'),

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Establishment\\_of\\_a\\_National\\_Integrity\\_Commission/NIC/Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Establishment_of_a_National_Integrity_Commission/NIC/Interim_Report).

<sup>2</sup> Senate Committee on a National Integrity Commission, *Report*, September 2017 at p 7 ('Report'),

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/National\\_Integrity\\_Commission/IntegrityCommissionSen/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Integrity_Commission/IntegrityCommissionSen/Report).

<sup>3</sup> Interim Report at p 21-27.

<sup>4</sup> Report at p 218.

<sup>5</sup> Report at p 218.

<sup>6</sup> Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, May 2016, at p. 37,

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Australian\\_Commission\\_for\\_Law\\_Enforcement\\_Integrity/Jurisdiction\\_of\\_ACLEI/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Jurisdiction_of_ACLEI/Report).

<sup>7</sup> Submissions to the Joint Committee inquiry,

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Australian\\_Commission\\_for\\_Law\\_Enforcement\\_Integrity/Jurisdiction\\_of\\_ACLEI/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Jurisdiction_of_ACLEI/Submissions); and to the Senate Committee,

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/National\\_Integrity\\_Commission/IntegrityCommissionSen/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Integrity_Commission/IntegrityCommissionSen/Submissions); Interviews with Professor AJ Brown, Griffith University and Director, Transparency International, Phone meeting, 1 September 2017; Greg Thompson, Board Member, Transparency International Australia, Phone meeting, 5 September 2017.

<sup>8</sup> Interviews with Professor AJ Brown, Griffith University and Director, Transparency International, Phone meeting, 1 September 2017; Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017.

<sup>9</sup> Joint media release, 18 July 2017, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22media%2Fpressrel%2F5401895%22>.

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<sup>10</sup> Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017; Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017.

<sup>11</sup> Interview with Greg Thompson, Board Member Transparency International Australia, Phone meeting, 5 September 2017.

### 13. Open Contracting

**Commitment Text:**

*Australia will ensure transparency in government procurement and continue to support the Open Contracting Global Principles.*

*As part of this, we will publicly review the Australian Government’s compliance with the Open Contracting Data Standard.*

[...]

Milestones:

1. Undertake review of compliance with the Open Contracting Data Standard.
2. Publish review.
3. Receive public comment on the review.
4. Implement agreed measures to improve compliance with the Open Contracting Data Standard.

**Responsible institution:** Department of Finance

**Supporting institution(s):** See the national action plan for other actors involved with this commitment.

**Start date:** February 2017

**End date:** August 2017

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
13. Open Contracting		✓			✓	✓		✓		✓			No		✓		

#### Context and Objectives

This commitment aims to review compliance of the way the Commonwealth reports on procurement against the Open Contracting Data Standard and consider reform.

The Open Contracting Data Standard (‘Standard’) provides for the publication of information about the government contracting process.<sup>1</sup> It requires open publication of data in machine readable form, with a release schema specifying the fields and data structures to be used when publishing data. It is intended to increase transparency and support analysis of the efficiency, effectiveness, fairness, and integrity of public contracting systems.<sup>2</sup> Potential benefits from adopting the Standard include:

- Achieving value for money for government;

- Strengthening the transparency, accountability and integrity of public contracting to prevent fraud and corruption;
- Enabling the private sector to fairly compete for public contracts, especially smaller firms;
- Monitoring the effectiveness of service delivery; and
- Promoting smarter analysis and better solutions for public problems, including the use of tools developed in other countries for use with standard compliant data.<sup>3</sup>

Australia has not committed to implementing the Standard,<sup>4</sup> but this commitment reflects Australia's general support for the principles of open contracting by undertaking a review of compliance with the Standard in publication of procurement information. Currently, under the Commonwealth Procurement Rules,<sup>5</sup> most Commonwealth government agencies have obligations of transparency and accountability in relation to how they acquire goods and services. Agencies must publish details of any planned procurements, open tenders, contracts awarded above the relevant reporting thresholds<sup>6</sup> and any amendments on the AusTender procurement information system, a centralised web-based facility.<sup>7</sup> AusTender also supports secure electronic tendering to enhance integrity of the tendering process. There are approximately 70 different systems used among government entities to contribute information into AusTender.

In interviews for this report, various individuals highlighted the complexity of the Commonwealth procurement rules and the difficulty of identifying areas of reform.<sup>8</sup> Incompatibility with the Standard has also possibly restricted any comparison or analysis of the current tendering practices of government. A review of the current requirements against the open contracting standards would identify any current potential deficiencies with the current rules as the first step in an evaluation of the costs and benefits of reform.

The Commitment is of low specificity, with no details of what form of review will be carried out, how extensive the consultation is likely to be, and a commitment to only agreed measures for some improvement in compliance.

The anticipated potential impact of this commitment is minor. The review will provide information to the public on the extent of current compliance with the Standard. Interviews with the Department of Finance indicated that the review would not include an evaluation of the costs and benefits of moving towards implementation of the Standard as, in their view, such an evaluation was outside the scope of the commitment.<sup>9</sup> Therefore, whether there will be substantial changes made to the information that has to be published on AusTender to better comply with the Standard is uncertain, making it difficult to assess any impact of the commitment beyond providing an opportunity to comment on the review. In interviews and open meetings, various civil society groups and individuals were critical of the lack of any commitment to at least collaborate with civil society and other interested stakeholders in assessing the costs and benefits of working towards implementation of the Standard.<sup>10</sup> While it was not possible to identify specific issues with the current procurement processes which would be resolved through increased compliance with the Standard, extending the procurement information provided, and allowing for analysis and comparisons through methodologies adapted to the Standard, could identify areas for reform.

## Completion

Overall, the commitment saw limited completion.

Milestone 13.1 was completed. A review of AusTender's compliance with the Standard was carried out by Maddocks Lawyers, a law firm with experience in Commonwealth government procurement.<sup>11</sup>

Milestone 13.2 was not started within the implementation period of this report. The review was released to the public on 19 July 2017 and therefore not made publicly available by the end of the period of implementation under consideration (30 June 2017). Further details of the review will be provided in the end-of-term report.

As responses were invited with the release of the report,<sup>12</sup> milestone 13.3 was also not started within the implementation period. As milestone 13.4 derived from previous milestones it was also not started.

### Early Results (if any)

There were no evidence of early results prior to July 2017.

### Next Steps

Given the importance of transparency in government procurement and the potential benefits that might derive from compliance with the Standard, a comprehensive review of the costs and benefits associated with implementation should be carried out. This should include a collaborative approach to consultation with civil society stakeholders and an evaluation of the uses of currently available information.

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<sup>1</sup> Open Contracting Data Standard, 'Getting Started', [http://standard.open-contracting.org/latest/en/getting\\_started/](http://standard.open-contracting.org/latest/en/getting_started/).

<sup>2</sup> Open Contracting Data Standard, 'Getting Started', [http://standard.open-contracting.org/latest/en/getting\\_started/](http://standard.open-contracting.org/latest/en/getting_started/).

<sup>3</sup> Open Contracting Data Standard, 'Users and Use Cases', [http://standard.open-contracting.org/latest/en/getting\\_started/use\\_cases/](http://standard.open-contracting.org/latest/en/getting_started/use_cases/), and 'Why open contracting', <https://www.open-contracting.org/why-open-contracting/>.

<sup>4</sup> Statement at the Anti-Corruption Summit held in London in 2016: Open Contracting Partnership 'How open contracting is taking hold', <https://www.open-contracting.org/why-open-contracting/worldwide/>.

<sup>5</sup> Made under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/> ('Procurement Rules').

<sup>6</sup> The reporting thresholds are \$10,000 for non-corporate Commonwealth entities, which includes Government departments, or, for prescribed corporate commonwealth entities, \$400,000, or \$7.5million for construction services. See [7.18] Procurement Rules.

<sup>7</sup> Section 7, Procurement Rules.

Interviews with Jessie Cato, National Coordinator, Publish What You Pay Australia,<sup>8</sup> Melbourne, Vic, 24 August 2017; Ken Coghill, Monash University and Accountability Round Table, Canberra, ACT, 28 July 2017.

<sup>9</sup> Interview with Department of Finance, Canberra ACT, 12 September 2017.

<sup>10</sup> Peter Timmins, Access to information advocate and Convener, Australian Open Government Partnership Network, Sydney NSW, 23 August 2017; Jessie Cato, National Coordinator, Publish What You Pay Australia, Melbourne, Vic, 24 August 2017; Open forum, Sydney, 22 August 2017.

<sup>11</sup> Maddocks, *Review of AusTender data against the Open Contracting Data Standard*, <https://www.finance.gov.au/blog/2017/07/20-Open-Government-Contracting-Data/> ('Open Contracting Review').

<sup>12</sup> Department of Finance, 'Open Government – Contracting Data', <https://www.finance.gov.au/blog/2017/07/20-Open-Government-Contracting-Data/>.

## Theme 5: Public Participation and Engagement

### 14. Delivery of Australia's Open Government Action Plan

#### Commitment Text:

*Australia will ensure that our Open Government National Action Plan is a platform for ongoing dialogue, collaboration and open government reform.*

*We will do this by establishing a permanent dialogue mechanism with civil society, which includes a multi-stakeholder forum and transparent reporting and accountability mechanisms.*

*The multi-stakeholder forum will at a minimum track the implementation of commitments, ensure commitments continue to be relevant and ambitious, inform the drafting of future National Action Plans and raise awareness about open government in the broader community.*

[...]

#### Milestones

1. *Establish the OGP multi stakeholder forum by partnering with civil society to determine its structure, role, governance and membership, including reporting and accountability mechanisms for this National Action Plan.*
2. *Operation of the multi-stakeholder forum, with (at a minimum) the following responsibilities:*
  - a. *inform the co-creation of future National Action Plans;*
  - b. *track and report on implementation of National Action Plan commitments;*
  - c. *facilitate broader community engagement and conduct awareness activities that foster informed participation, including face-to-face meetings and events; and*
  - d. *document decisions and publish reports.*
3. *Review the National Action Plan and update milestones and commitments (as necessary) to provide further clarity and ambition for plan.*

**Responsible institution:** Department of the Prime Minister and Cabinet

**Supporting institution(s):** All Commonwealth entities, non-government organisations including Australian Open Government Civil Society Network), private sector, peak bodies (including Law Council of Australia) and the public

**Start date:** December 2016

**End date:** July 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity	OGP Value Relevance	Potential Impact	On Time?	Completion
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	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
14. Delivery of Australia's Open Gov AP			✓			✓					✓		No		✓		

### Context and Objectives

This commitment will establish a multi-stakeholder forum to oversee implementation and development of Australia's national action plans.

Under the OGP Guidelines for Public Consultation on Country Commitments, countries 'are to identify an existing or new forum to enable regular multi-stakeholder consultation on OGP implementation'.<sup>1</sup> The national action plan commits Australia to working with civil society to determine the appropriate structure, role, governance and membership of that forum. It also recognises the need for any forum to be sufficiently representative of the wide range of interests in open government and to facilitate broader engagement with the general public. Members of the interim working group, as well as a number of individuals and civil society organisations, were critical of the lack of representativeness of the participants in the development of the national action plan.<sup>2</sup>

The commitment is of medium specificity. The commitment sets out the role of civil society in establishing the forum and minimum responsibilities. However, it does not establish how civil society, or other sectors including the business or private sector, will be engaged as a partner in the forum's development and ongoing role in monitoring and developing Australia's open government commitments. Similarly ongoing reform of the role of the forum is not set out.

The forum is likely to have a moderate impact. As the development of Australia's first national action plan demonstrates, there are a large number of individuals and groups interested in open government reforms who are reliant on ad hoc opportunities to participate in reform. The forum will present an ongoing opportunity for civil society groups and individuals to cooperate with government to 'identify, develop and implement ambitious open government commitments'. Both the development and intended operation of the forum will allow civil society organisations and individuals interested in open government to contribute to developing commitments under the current and future national action plans, either through membership of the forum or through raising community awareness. The forum is also intended to provide for oversight of the implementation of action plan commitments. There is, however, no formal means of complaint or redress provided where agencies are identified as not meeting their OGP commitments other than through publication of reports. There are also no formal monitoring powers provided; under its terms of reference the forum will 'receive regular updates on implementation of Australia's Open Government Commitments, and be able to make requests for relevant information' from the agencies involved.<sup>3</sup> The Department of Prime Minister and Cabinet (PM&C) provides secretariat and financial support for forum.

## Completion

The consultation process leading up to development of the Open Government Forum is discussed above in section 3.4 Consultation During Implementation.<sup>4</sup>

Milestone 14.1: This milestone was fully implemented. A 15-week process to decide on the appointment and operation of the forum, now referred to as the Open Government Forum, began in April 2017. It consisted of inviting submissions on a proposal put forward by the interim working group established as part of the development of the national action plan, a Twitter Q&A session and a public information session (parts of which were livestreamed online) held in Melbourne.<sup>5</sup>

As a result of that consultation process and recommendations put forward by the interim working group, the co-chairs of the interim working groups opened a call for nominations for civil society positions on the Forum on 8 June 2017.<sup>6</sup> A selection panel, consisting of the co-chairs of the interim working group and a member of civil society put forward by the interim working group, considered 25 nominations on the basis of:

- their demonstrated support of OGP's vision and the Open Government Declaration
- their expertise relevant to the Open Government Partnership, including existing or probable future Australian Open Government commitments
- their ability to engage broad and diverse community networks
- their previous experience working with and influencing government
- the desirability of maintaining some continuity between successive Forums, balanced with the desirability of reaching new communities and reflecting emerging open government priorities.<sup>7</sup>

Appointments to the Forum were announced on 21 July 2017 and the first meeting was held on 28 July 2017.<sup>8</sup> The Forum consists of representatives from eight government agencies and eight members from civil society, and is co-chaired. Ten male and six female members were appointed, including at least one with an indigenous heritage.<sup>9</sup> The members drawn from civil society act in a variety of capacities in non-government organisations as well as being individuals with an interest in areas related to open government. A non-voting jurisdictional member, the current New South Wales Information Commissioner, was also invited to participate in the Forum. Four of the six civil society members of the interim working group were appointed to the Forum. In addition, the government agencies represented in the interim working group, with the addition of a representative from the Digital Transformation Agency, continued to be represented on the Forum.

The Forum expects to meet approximately every two months. The meetings will be held in Canberra although they may be held in other locations with provision for online participation. The Forum may also live-stream important proceedings and trial other methods of engagement.

Milestone 14.2 saw limited implementation during the period under consideration. One of the purposes of the Forum is to monitor implementation of the national action plan, including assessing and reporting on progress.<sup>10</sup> As part of this process the first meeting included representatives of government agencies with responsibility for commitments under the action plan. The PM&C also established an online dashboard to record progress towards each of the commitment milestones. The dashboard, which was made publicly available after the first meeting of the Forum,<sup>11</sup> allows for public comments on each of the commitments. PM&C intends to update this dashboard every two months in conjunction with a meeting of the Forum.<sup>12</sup>

The Forum also has purposes related to developing future national action plans, including facilitating broad community engagement and raising awareness about open government

generally, as well as seeking to improve government institutions through enhanced transparency, policy development, service delivery and decision making.<sup>13</sup>

The development of the Forum was delayed beyond its original start date of March 2017, with the first meeting of the Forum not being held until 28 July 2017, and the next meeting not planned until October 2017. The agenda and other papers considered by the Forum at their first meeting<sup>14</sup> and minutes from that meeting<sup>15</sup> were made available on the government OGP website.

Interviews with PM&C suggest that, in part, the delay in establishing the Forum was due to a more extensive form of consultation and selection process than was originally envisaged.<sup>16</sup> Most civil society representatives interviewed for this report commented favourably on the consultation process leading up to establishment of the Forum, subject to the concerns that further steps could have been taken to increase awareness of the process.<sup>17</sup>

The Open Government Forum which has been formed under this commitment largely replicates the composition of the Interim Working Group established as part of the development of the national action plan, with some additional government and civil society members. Some individuals interviewed indicated that the establishment of the Forum gave rise to many of the same concerns as the establishment and operation of the Interim Working Group – namely that awareness of the development of the Forum was limited, as established it fails to reflect a broad range of interests, particularly those not directly concerned with open government in itself rather than broader community needs, and that its ability to influence government decision making and to increase public awareness of the OGP process is therefore limited.

Although the Forum has no formal authority to influence implementation of the national action plan, its membership includes high-level representatives, including at the Deputy Secretary level,<sup>18</sup> from the government agencies most directly responsible for implementing the commitments. The responsibility for increasing public awareness remains largely with the non-government members of the Forum, even though they have been appointed in their individual capacities rather than as representatives of any organisation or range of interests. Most people interviewed commented favourably on the individuals, both from government and non-government, who are members of the Forum and the range of expertise and interests they represented. According to a CSO stakeholder interviewed, the frequency and duration of meetings, however, as well as questions over the resources available to support the work of the Forum, may limit its capacity to achieve its broader objectives of raising awareness and ensuring the ambition of current and future commitments.<sup>19</sup>

Milestone 14.3: was not started during the period under review.

### **Early Results (if any)**

The delay in establishing the Forum has meant that there is limited evidence of its influence so far. Some government agencies interviewed for this report commented on the role of the Interim Working Group in influencing implementation of other commitments. In particular, the Interim Working Group's guidance for agencies, which was also adopted by the Forum in its first meeting,<sup>20</sup> has influenced the scope of consultation engaged in as part of other commitments under the national action plan, or as helping to raise awareness of the OGP process within government. In interviews in preparing this report, most representatives from agencies responsible for implementing commitments indicated that they had seen the guidelines or otherwise were aware of the ongoing role of the Interim Working Group (now the Forum).

## Next Steps

The Forum, apart from being an important element of Australia's commitments to OGP, promises to fulfil an important role in bringing together government and civil society. The functions and operation of the Forum should continue to develop as it meets over the remainder of this action plan cycle and begins work on the next action plan. While that development need not be reflected in a commitment in the next action plan, consideration could be given to:

- Enhancing the ability of non-government members of the Forum to increase awareness of open government initiatives and benefits and to reflect a broader range of interests in the OGP process. This could be achieved by involving Forum members in consultation or collaborative processes being engaged in by government agencies under both existing commitments and other developments.
- Developing a greater role for the Forum in coordinating open government efforts, either as reflected in the national action plan or more generally, including:
  - Identifying opportunities and potential benefits of increased cooperation or coordination between government agencies and civil society groups in fulfilling existing commitments;
  - Representation on other consultation forums or coordination bodies within government.
- Clarifying the role of government representatives of the Forum in raising awareness of open government initiatives beyond the individual commitments in question, including bringing together views from other government departments that are not directly represented on the Forum.
- Developing links with open government initiatives by State and Territory Governments, perhaps by convening an annual meeting between Forum members and representatives from those governments.
- Working with government at the federal, state and local levels to raise the capacity of civil society groups to engage on open government initiatives.

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<sup>1</sup> Open Government Partnership: Articles of Governance, June 2012 (Updated March 2014 and April 2015), Addendum C, p 19. [https://www.opengovpartnership.org/sites/default/files/attachments/OGP\\_Articles-Gov\\_Apr-21-2015.pdf](https://www.opengovpartnership.org/sites/default/files/attachments/OGP_Articles-Gov_Apr-21-2015.pdf)

Ken Coghill, Monash University and Accountability Round Table, Canberra, ACT, 28 July 2017; Kat Szuminska, Director, Open Australia Foundation<sup>2</sup> and member, Open Government Forum, Phone meeting, 11 September 2017; Open forum, Sydney, 22 August 2017; Open Forum, Melbourne, 24 August 2017; Anonymous, Open government advocate, phone meeting, 30 August 2017.

<sup>3</sup> The terms of reference for the forum are available at [https://ogpau.pmc.gov.au/sites/default/files/posts/2017/08/item\\_1c\\_-\\_open\\_government\\_forum\\_terms\\_of\\_reference.docx](https://ogpau.pmc.gov.au/sites/default/files/posts/2017/08/item_1c_-_open_government_forum_terms_of_reference.docx) (accessed 9/4/2018).

<sup>4</sup> See page 21.

<sup>5</sup> PM&C, 'Establishing Australia's first Multi-stakeholder Forum: Three ways to have your say', 1 May 2017, <https://ogpau.pmc.gov.au/2017/05/01/establishing-australias-first-multistakeholder-forum-three-ways-have-your-say>.

<sup>6</sup> Join the forum, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

<sup>7</sup> These criteria were made publicly available in the call for nominations: PM&C, Join Australia's first Open Government Forum, 8 June 2017, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

<sup>8</sup> Outcomes from Australia's first forum meeting, <https://ogpau.pmc.gov.au/2017/08/07/outcomes-australias-first-open-government-forum-meeting-28-july-2017>.

<sup>9</sup> The selection process included notice that each gender would make up at least 40 per cent of positions on the Forum, and Aboriginal and Torres Strait Islander people and young people were particularly encouraged to apply.

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<sup>10</sup> PM&C, *Australia's Open Government Forum*, available from PM&C, Join Australia's first Open Government Forum, 8 June 2017, at p 3, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

<sup>11</sup> The dashboard is available on the home page of the ogpau website: <https://ogpau.pmc.gov.au/>.

<sup>12</sup> Interview with PM&C, Canberra ACT, 8 September 2017.

<sup>13</sup> PM&C, *Australia's Open Government Forum*, available from PM&C, Join Australia's first Open Government Forum, 8<sup>th</sup> June 2017, at p 3, <https://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum>.

<sup>14</sup> First meeting of forum, <https://ogpau.pmc.gov.au/2017/07/21/first-meeting-australias-open-government-forum>

<sup>15</sup> Outcomes from first meeting, <https://ogpau.pmc.gov.au/2017/08/07/outcomes-australias-first-open-government-forum-meeting-28-july-2017>

<sup>16</sup> Interview with PM&C, Canberra ACT, 8 September 2017.

<sup>17</sup> Open forum, Sydney, 22 August 2017; Open Forum, Melbourne, 24 August 2017; Peter Timmins, Access to information advocate and Convener, Australian Open Government Partnership Network, Sydney NSW, 23 August 2017; Anonymous, Open Government advocate, Phone meeting, 30 August 2017; Beth Slatyer, Canberra Alliance for Participatory Democracy, Canberra ACT, 6 September 2017

<sup>18</sup> Membership includes Deputy Secretaries from PM&C, Attorney-General's Department, Department of Industry, Innovation and Science, and Department of Finance, Division head from Treasury, the Chief Digital Officer of the DTA, Chief Information Governance Officer from National Archives, and the Australian Information Commissioner.

<sup>19</sup> Peter Timmins, Access to information advocate and Convener, Australian Open Government Partnership Network, Sydney NSW, 23 August 2017; Anonymous, Open Government advocate, Phone meeting, 30 August 2017.

<sup>20</sup> *Interim Working Group guidance for agencies in implementing OGP commitments*, May 2017  
[https://ogpau.pmc.gov.au/sites/default/files/posts/2017/07/item\\_4a\\_-\\_guidance\\_in\\_implementing\\_commitments.docx](https://ogpau.pmc.gov.au/sites/default/files/posts/2017/07/item_4a_-_guidance_in_implementing_commitments.docx)

## 15. Enhance public participation in government decision making

### Commitment Text:

Australia will work towards improving public participation and engagement to enhance policy and service delivery outcomes for Australians.

We will do this by establishing a new Australian Government framework for public participation and engagement.

[...]

### Ambition:

To design and adopt a whole-of-government framework that embeds meaningful, open, public and multi-stakeholder participation into the business of policy development and service delivery.

### Milestones:

- 15.1 Undertake and publicly release a stocktake of current approaches to public participation to determine best practice activities (including international and domestic examples, user experience research, methodologies to encourage adoption, and relevant standards, such as IAP2 values).
- 15.2 Work with government agencies, the public and organisations outside of government to develop and implement a whole-of-government framework (with guidance / principles and potential public participation initiatives) for improving public participation and engagement across the Commonwealth.
- 15.3 Undertake pilot public participation initiatives, including working with the Digital Transformation Agency to more effectively use digital channels for engagement.
- 15.4 Review processes and iterate as necessary.

**Responsible institution:** Department of Industry, Innovation and Science

**Supporting institution(s):** Various

**Start date:** Late 2016

**End date:** July 2018

Editorial Note: This is a partial version of the commitment text. For the full commitment text, see the Australia National Action Plan available at [https://www.opengovpartnership.org/sites/default/files/Australia\\_NAP\\_2016-2018\\_0.pdf](https://www.opengovpartnership.org/sites/default/files/Australia_NAP_2016-2018_0.pdf)

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
15. Public participation in government decision-making			✓		✓	✓		✓			✓		No		✓		

## Context and Objectives

Consultation practices in the Commonwealth government in the past have varied widely between, and even within, agencies. The aim of this commitment is to design a best-practice framework for public consultation that could be widely adopted.

There are limited formal obligations on Commonwealth agencies to engage in public consultation or otherwise encourage public participation in development and implementation of government policy. The *Legislation Act 2003* requires ‘appropriate’ and ‘reasonably practicable’ consultation before legislative instruments – i.e. formal legal instruments made under authority of primary legislation which have a general rather than individual effect – are made.<sup>1</sup> The form of consultation is not spelled out, though there is reference to the extent the consultation draws on expertise, and provides opportunities for people likely to be affected. This is done for example through general notification through advertisement and an opportunity to make submissions or participate in public hearings. Any consultation has to be described in the explanatory statement accompanying registration of the instrument. However, inadequate or even a complete lack of consultation does not affect the validity or enforceability of the instrument.<sup>2</sup> Forms of public consultation are also expected in other circumstances, including in the preparation of regulatory impact statements as part of policy proposals with a measureable impact on business, community organisations or individuals,<sup>3</sup> or to comply with the Australian Government’s Digital Service Standard,<sup>4</sup> which applies to new, redesigned or high volume public-facing Government services. In addition to these general requirements, individual agencies may also have their own standards or guides to consultation. This means that, in practice, there are a variety of consultation approaches taken in developing policy and services.

In interviews for this report, the Department of Industry, Innovation and Science described the objectives of this commitment as increasing the understanding of the benefits of public participation within the public service, improving the capacity of agencies to engage in best practice consultation processes, and reducing the complexity involved in designing and implementing a consultation process.<sup>5</sup> Implementing the commitment will provide examples of the benefits different forms of participation have made to policy design and implementation, and identify, and make recommendations to reduce, the impediments to adoption of best practice public consultation practices within government agencies.

The Commitment is therefore relevant to the OGP value of civic participation. It also seeks to increase public information on consultation processes used across government, including at the State, Territory and local government levels, and is therefore relevant to access to information. However, the scope and steps to implementation of the commitment are not clearly set out in the commitment text. The extent to which the whole-of-government framework would go beyond existing requirements and guidance relating to consultation processes is not set out. Importantly, the process of adoption of the framework is also not clear. Discussions with the Department suggest that a best practice consultation framework will be developed and implemented within the Department to demonstrate its value and encourage wider adoption, rather than to seek to have adoption mandated.

A framework which is adopted across government and does lead to adoption of best practice methods for public consultation and engagement could have a moderate potential impact in increasing public participation. However, the current range of informal requirements and guides relating to consultation and the lack of plans to require the adoption of any framework developed through this commitment could limit the framework in practice.

## Completion

Milestone 15.1 was not started during the implementation period under review. A working draft of the discover phase report was publicly released after the period of implementation under consideration, on 14 July 2017.<sup>6</sup> However, while this draft includes a discussion of the role of public participation, elements of community engagement, the role of technology and some initial hypotheses of what is limiting participation practices among government agencies, it does not include a stocktake of current practices and other elements including insights or themes of user experience research.

Interviews with the Department of Industry, Innovation and Science<sup>7</sup> indicate that this draft report and other work on the commitment has involved interviews with approximately 38 APS staff from 13 Commonwealth government agencies, as well as meetings with South Australian, Victorian and New South Wales government agencies. Outside of government, discussions were held with 36 people across 34 organisations in five different states and territories. A survey on engagement approaches, potential improvements and barriers to co-design was responded to by 13 government departments. A literature review of 67 sources was also publicly released on 10 August 2017. The extent and complexity of this research has delayed the release of the stocktake of current practices within the timetable set out in the commitment. Therefore, there was work done in undertaking the stocktake of current approaches for the purposes of Milestone 15.1 but the results of this work were not publicly available at the time of writing.

Milestone 15.2 saw limited completion during the implementation period under review. As indicated above, the draft report includes the initial elements of a framework for improving public participation and engagement based in part on interviews with government agencies and non-government bodies. The discover phase report was released in December 2017, along with a number of workshops and presentations.<sup>8</sup> This report will be commented on in the end-of-term report.

Milestones 15.3 and 15.4 were not started as they derive from milestone 15.2. However, the Department of Industry, Innovation and Science, in interviews for this report, also indicated that the design of the framework will inform development of a platform that digitally enables community engagement in policy, program and service design that was recently funded through the Department's Business Research and Innovation Initiative.<sup>9</sup> Two organisations were provided with nearly \$1 million each to develop proof of concept prototypes, which will be included as demonstrations for the framework process.<sup>10</sup> When developed, the platforms will contribute to milestone 3.

There are no early results for the implementation period under review.

## Next Steps

A framework which can be used to assist agencies improve public participation and engagement to enhance policy and service delivery outcomes is currently only at an early stage of development. The IRM researcher recommends that the extent to which there is whole-of-government support for such an initiative needs to be demonstrated through a greater public commitment to the process or further integration into whole-of-government processes. The process by which the framework will be evaluated and adopted beyond the Department of Industry, Innovation and Science could also be made clearer.

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<sup>1</sup> [Legislation Act 2003 \(Cth\) s 17.](#)

<sup>2</sup> [Legislation Act 2003 \(Cth\) s 19.](#)

<sup>3</sup> PM&C, *The Australian Government Guide to Regulation*, <https://www.pmc.gov.au/node/108777>.

<sup>4</sup> Digital Service Standard, <https://www.dta.gov.au/standard/>

<sup>5</sup> Interview with Department of Industry, Innovation and Science, Canberra ACT, 6 September 2017.

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<sup>6</sup> OGP framework project, <https://industry.gov.au/innovation/Pages/Open-Government-Partnership-Framework-project.aspx#>

<sup>7</sup> Department of Industry, Innovation and Science, Canberra ACT, 6 September 2017.

<sup>8</sup> The discover phase report is available at <https://www.industry.gov.au/innovation/Pages/Open-Government-Partnership-Framework-project.aspx#> (accessed 9/4/2018)

<sup>9</sup> Australian OGP Commitment Dashboard, Commitment 5.2, <https://ogpau.pmc.gov.au/commitment/52-enhancing-public-participation-government-decision-making> (accessed 9/4/2018).

<sup>10</sup> DIIS, *Business Research and Innovation Initiative - Proof of concept grant recipients*, <https://www.business.gov.au/Assistance/Business-Research-and-Innovation-Initiative/Proof-of-concept-grant-recipients>.

## V. General Recommendations

Development of the next national action plan should seek to engage with a wider range of interests, and seek more ambitious commitments, in order to more fully engage the wider community in open government initiatives.

This section aims to inform development of the next action plan and guide completion of the current action plan. It is divided into two sections: 1) those civil society and government priorities identified while elaborating this report and 2) the recommendations of the IRM.

### 5.1 Stakeholder Priorities

Individuals and organisations interviewed for this report took a variety of views on the current action plan. Civil society groups, such as Publish what you Pay and Transparency International (TI), emphasised the importance of changes to beneficial ownership and extractive industries transparency, and were strongly in support of these commitments to be strengthened in the next action plan. TI and the Accountability Round Table emphasised the extension of whistleblower protections and development of a broad based federal body to investigate corruption. Many groups and individuals were highly critical of the level of resourcing being provided to open government concerns, and the resourcing of the Office of the Australian Information Commissioner in particular. They emphasised the importance of including an examination of resourcing levels in the commitment to reviewing information management and access laws for the 21<sup>st</sup> century. A number of individuals were critical of the support provided by the government to community groups and individuals to facilitate participation in open government reforms.

There were also various concerns raised about trying to include greater representation of disadvantaged groups and other community sectors and interests in the next action plan, both through participation in its development and as the subject of commitments.

### 5.2 IRM Recommendations

*Make decision-making structures within government more transparent*

Commitments such as the digital transformation of government services and improving the discoverability and accessibility of government data are intended in part to make it easier for those outside of government to navigate government structures. However, as comments by civil society and individuals on some of the commitments suggest, many of the internal governance and decision-making structures within and between government agencies remain opaque. The overlap between government data, information and records management extends to the roles and responsibilities of agencies such as the Digital Transformation Agency, Attorney-General's Department, National Archives of Australia and the Office of the Australian Information Commissioner. The responsibilities, deliberations and influence of internal groups such as the Secretaries Data Group, or the Internal Open Government Working group, are not clear.

Greater transparency over how decision making relating to open government commitments within and across government agencies is structured would make it easier for civil society groups to engage with government. It would also increase awareness of the degree of collaboration required within and between government agencies to achieve open government objectives.

*Increase civil society collaboration in decision-making structures and processes*

The commitments take a varied approach to collaboration with civil society groups, business or the community more generally. The work on enhancing public participation in government decision making (commitment 15) should be extended to set minimum

requirements for consultation for all national action plan commitments in the future. This should extend beyond making recommendations to government after releasing a consultation paper and inviting submissions. Greater accountability over the consultative process could also be provided for, with commitments including obligations to report back and provide feedback on the use made of submissions or other participation.

Developing an ongoing relationship through development and resourcing of multi-stakeholder forums enhances the ability to identify emerging issues, develop and prioritise reform or policy proposals, and monitor and evaluate their effectiveness over time. The establishment of the expert panel as provided in commitment 6 (enhancing public trust in use of government data) could be a priority, with a role in the establishment, monitoring and evaluation of other projects involving government data integration and sharing.

The role of the Open Government Forum is an example of this collaborative approach. It would be expected that the Forum would take on an increasing role in acting as a hub between the government agencies involved with open government initiatives and broader stakeholder networks. A similar collaborative approach could be taken in each of the areas reflected in the current national action plan, such as business regulation, data access and management, integrity processes, or others possibly reflected in future national action plans, with communities of practice or sub-forums developed.

Alternatively, a federated approach could be taken with individual or groups of government agencies developing collaborative forums, feeding back into the Open Government Forum, or forming a network to inform cross-agency cooperation. This could be extended to include the sub-national level governments, or to draw in agencies and stakeholders in a broader range of interests than are currently reflected in the open government commitments to date.

#### *Increase the ambition of the commitments*

None of the commitments in the national action plan have been assessed as potentially transformative. Many are not sufficiently specific to be able to confidently assess their potential, others are limited by not going as far as they could in pursuing the principles of open government. The next action plan commitments could be open to at least publicly evaluating ambitious transparency, participation or accountability goals. They should be more specific in committing to particular substantive outcomes. These could include a public beneficial interests register, establishing a federal anti-corruption agency, lobbying reform, or reinstating and augmenting the role and resourcing of the Office of the Australian Information Commissioner in reforming agency information management practices.

#### *Monitor and evaluate impact of open government initiatives*

Processes to monitor and evaluate the impact of implemented commitments should be explicitly included in the next action plan through any collaborative forums established to develop and implement the commitment. This would facilitate the role of the Open Government Forum in monitoring the implementation of commitments and developing priorities for future action plans.

#### *Broaden the range of stakeholders and interests reflected in the open government process*

The national action plan is focused on commitments to be implemented by Commonwealth executive agencies. However, many of the initiatives reflected in the commitments incorporate involvement of state and territory governments, either through their involvement in portals such as data.gov.au, or through collecting information across different levels of government, such as the commitment to understand the use of freedom of information (Commitment 9). Future commitments to further integrate government information portals, such as grants or digital services marketplaces, harmonising approaches across state and territory governments, such as whistleblower protection, or indeed

significant initiatives within individual states and territories should also be reflected in future action plans.

The range of interests reflected in developing future national action plans could be expanded to include groups not directly reflected in the current commitments, including groups representing indigenous, rural communities, disabled, elderly or otherwise politically or economically marginalised people. The diversity of the Open Government Forum and other collaborative groups established as part of open government processes could also be directly addressed in their design and practice.

*Increase the resources available to deliver and evaluate open government objectives*

Many of the current commitments are expected to be implemented within the existing operational budgets of the government agencies involved. Future commitments, particularly where they are ambitious and innovative, should reflect a transparent allocation of resources for their implementation. This should include facilitating contributions from civil society and other interested stakeholders through collaborative forms of engagement.

*Enhance awareness, and support, for open government initiatives*

Overall, the aims of increasing transparency, participation and accountability depend upon an awareness and support of open government initiatives, both within government and in the community. The willingness and capacity of civil society groups to participate in these initiatives and help drive reform is at least in part dependent on the perceived chance of effecting change due to the level of community and political support. All parties involved, therefore, have a responsibility to promote the open government process.

While there may be benefits from open government processes being politically neutral, the involvement of government and opposition ministers helps to promote the real benefits of open government initiatives. Rather than simply providing further opportunities to add to the competition for the attention of government, by reflecting genuinely collaborative processes open government initiatives can drive policy reform. Future action plans should, therefore, reflect a general commitment to open government principles and processes that goes beyond individual policy initiatives. This should include the commitment to specific, ambitious open government outcomes and a willingness to provide for greater accountability in their completion.

**Table 5.1: Five Key Recommendations**

<b>1</b>	<b>Broaden the range of stakeholders and interests reflected in the open government process at the Commonwealth level, including increasing civil society collaboration in government decision-making structures and processes. This should at least result in a new commitment topic for the next action plan.</b>
<b>2</b>	<b>Develop a whole-of-government approach to enhancing awareness and support for open government initiatives, including by monitoring, evaluating and publicising their impact.</b>
<b>3</b>	<b>Establish a collaborative multi-stakeholder forum to work on establishing a federal anti-corruption agency and lobbying and political donation reform initiatives.</b>

4	Detail a comprehensive review of information management practices within government agencies, including the role and resourcing of the Office of the Australian Information Commissioner.
5	Expand the role of the Open Government Forum to include consideration of open government initiatives at the state and territory level to enhance coordination between jurisdictions and to explore development of sub-national open government commitments.

## VI. Methodology and Sources

The IRM progress report is written by researchers based in each OGP-participating country. All IRM reports undergo a process of quality control to ensure that the highest standards of research and due diligence have been applied.

Analysis of progress on OGP action plans is a combination of interviews, desk research, and feedback from nongovernmental stakeholder meetings. The IRM report builds on the findings of the government's own self-assessment report and any other assessments of progress put out by civil society, the private sector, or international organizations.

Each IRM researcher carries out stakeholder meetings to ensure an accurate portrayal of events. Given budgetary and calendar constraints, the IRM cannot consult all interested or affected parties. Consequently, the IRM strives for methodological transparency and therefore, where possible, makes public the process of stakeholder engagement in research (detailed later in this section.) Some contexts require anonymity of interviewees and the IRM reserves the right to remove personal identifying information of these participants. Due to the necessary limitations of the method, the IRM strongly encourages commentary on public drafts of each report.

Each report undergoes a four-step review and quality-control process:

1. **Staff review:** IRM staff reviews the report for grammar, readability, content, and adherence to IRM methodology.
2. **International Experts Panel (IEP) review:** IEP reviews the content of the report for rigorous evidence to support findings, evaluates the extent to which the action plan applies OGP values, and provides technical recommendations for improving the implementation of commitments and realization of OGP values through the action plan as a whole. (See below for IEP membership.)
3. **Prepublication review:** Government and select civil society organizations are invited to provide comments on content of the draft IRM report.
4. **Public comment period:** The public is invited to provide comments on the content of the draft IRM report.

This review process, including the procedure for incorporating comments received, is outlined in greater detail in Section III of the Procedures Manual.<sup>1</sup>

### Interviews and Focus Groups

Each IRM researcher is required to hold at least one public information-gathering event. Researchers should make a genuine effort to invite stakeholders outside of the "usual suspects" list of invitees already participating in existing processes. Supplementary means may be needed to gather the inputs of stakeholders in a more meaningful way (e.g., online surveys, written responses, follow-up interviews). Additionally, researchers perform specific interviews with responsible agencies when the commitments require more information than is provided in the self-assessment or is accessible online.

There were three open invitation events held in Canberra as the capital city and where most Commonwealth departments are located, and the largest cities of Sydney and Melbourne. The IRM researcher advertised each event through email and social media, including distribution to the email lists of the Australian Open Government Network and the Department of PM&C's Open Government Partnership mailing list.

- Open forum, Sydney, 22 August 2017. Nine attendees including representatives from the Human Rights Law Centre, Australian Open Government Network, Internet Australia and NSW Information and Privacy Commission.

- Open Forum, Melbourne, 24 August 2017. 11 attendees including representatives from Transparency International Australia, Accountability Round Table, Australian Citizens Against Corruption, Australian for War Powers Reform.
- Open Forum, Canberra, 29 August 2017. 10 attendees.

Meetings with individuals and civil society representatives:

- Ken Coghill, Monash University and Accountability Round Table, Canberra, ACT, 28 July 2017
- Peter Timmins, Access to information advocate and Convener, Australian Open Government Partnership Network, Sydney NSW, 23 August 2017
- Cameron Shorter, Open Source advocate,<sup>2</sup> Sydney NSW, 23 August 2017
- Mel Flanagan, Director Nook Studios,<sup>3</sup> Sydney NSW, 23 August 2017
- Jessie Cato, National Coordinator, Publish What You Pay Australia,<sup>4</sup> Melbourne VIC, 24 August 2017
- Associate Professor Johan Lidberg, Monash University, Melbourne VIC, 25 August 2017
- Professor AJ Brown, Griffith University and Director, Transparency International, Phone meeting, 1 September 2017
- Anonymous, Open Government advocate, Phone meeting, 30 August 2017
- Beth Slatyer, Canberra Alliance for Participatory Democracy, Canberra ACT, 6 September 2017
- Greg Thompson, Board Member, Transparency International Australia, Phone meeting, 5 September 2017
- Kat Szuminska, Director, Open Australia Foundation<sup>5</sup> and member, Open Government Forum, Phone meeting, 11 September 2017
- Chris Snow, Canberra Alliance for Participatory Democracy, Phone meeting, 18 August 2017

Meetings with Government representatives:

- NSW Information Commissioner, Sydney NSW, 23 August 2017 (commitment 9)
- Office of the Australian Information Commissioner, Sydney NSW, 23 August 2017 (commitments 5, 6 and 8).
- Department of Industry, Innovation and Science, Canberra ACT, 6 September 2017 (commitment 15)
- Department of Prime Minister and Cabinet, Canberra ACT, 7 September 2017 (commitments 5 and 6)
- Department of Industry, Innovation and Science, Canberra ACT, 8 September 2017 (commitment 3)
- Department of Prime Minister and Cabinet, Canberra ACT, 8 September 2017 (commitment 14)
- Attorney General's Department, Canberra ACT, 8 September 2017 (commitments 4, 8 and 12)
- Department of Finance, Canberra ACT, 12 September 2017 (commitments 10, 11 and 13)

- National Archives of Australia, Canberra ACT, 14 September 2017 (commitment 10)
- Treasury Department, Canberra ACT, 14 September 2017 (commitments 1 and 2)
- Department of Prime Minister and Cabinet, Canberra ACT, 15 September 2017 (commitment 10)
- Department of the Environment and Energy, Canberra ACT, 21 September 2017 (commitment 10)

### About the Independent Reporting Mechanism

The IRM is a key means by which government, civil society, and the private sector can track government development and implementation of OGP action plans on an annual basis. The design of research and quality control of such reports is carried out by the International Experts Panel, comprised of experts in transparency, participation, accountability, and social science research methods.

The current membership of the International Experts Panel is

- César Cruz-Rubio
- Mary Francoli
- Brendan Halloran
- Jeff Lovitt
- Fredline M'Cormack-Hale
- Showers Mawowa
- Juanita Olaya
- Quentin Reed
- Rick Snell
- Jean-Patrick Villeneuve

A small staff based in Washington, DC, shepherds reports through the IRM process in close coordination with the researchers. Questions and comments about this report can be directed to the staff at [irm@opengovpartnership.org](mailto:irm@opengovpartnership.org)

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<sup>1</sup> IRM Procedures Manual, V.3, <https://www.opengovpartnership.org/documents/irm-procedures-manual>

<sup>2</sup> Blog, <http://cameronshorter.blogspot.com.au/>.

<sup>3</sup> Nook Studios, <http://nookstudios.com/our-mob/>.

<sup>4</sup> Publish What You Pay, <http://www.publishwhatyoupay.org/members/australia/>.

<sup>5</sup> Open Australia Foundation, <https://www.openaustraliafoundation.org.au/>.

## VII. Eligibility Requirements Annex

The OGP Support Unit collates eligibility criteria on an annual basis. These scores are presented below.<sup>1</sup> When appropriate, the IRM reports will discuss the context surrounding progress or regress on specific criteria in the Country Context section.

In September 2012, OGP officially encouraged governments to adopt ambitious commitments that relate to eligibility.

**Table 7.1: Eligibility Annex for Australia**

Criteria	2011	Current	Change	Explanation
Budget Transparency	ND	ND	No change	4 = Executive's Budget Proposal and Audit Report published 2 = One of two published 0 = Neither published
Access to Information	4	4	No change	4 = Access to information (ATI) Law 3 = Constitutional ATI provision 1 = Draft ATI law 0 = No ATI law
Asset Declaration	4	4	No change	4 = Asset disclosure law, data public 2 = Asset disclosure law, no public data 0 = No law
Citizen Engagement (Raw score)	4 (10.00)	4 (10.00)	No change	<i>EIU Citizen Engagement Index</i> raw score: 1 > 0 2 > 2.5 3 > 5 4 > 7.5
<b>Total / Possible (Percent)</b>	12/12 (100%)	12/12 (100%)	No change	75% of possible points to be eligible

<sup>1</sup> For more information, see <http://www.opengovpartnership.org/how-it-works/eligibility-criteria>.