Open Government National Action Plan 2018-2020

Response by Electronic Frontiers Australia

Summary

The majority of the commitments under this second National Action Plan are unambitious, vague, devoid of metrics, and appear to be largely rebadged activities the government intended to perform as part of its regular business.

The government's performance under the first National Action Plan has undermined its credibility and commitment to the Open Government Partnership objectives and values. It has a lot of work to do to build trust and credibility with those members of civil society who engaged with the OGP process in good faith for the first National Action Plan.

This second plan does little to inspire confidence that things will be any different this time around.

Public Engagement

The outreach by the government has been lacklustre, which we can see from the lukewarm response from the general public to the draft Plan.

Members of EFA have questioned our participation in the process. Given the performance of the government with the first National Action Plan, serious concerns were raised about

whether the government was operating in good faith, and if our energies would not be better applied elsewhere.

We echo the concerns of the Australian Open Government Partnership Network that little has been achieved in achieving civic engagement in the process. Awareness of the initiative remains low, actual participation remains lower. The government does not appear to take its responsibilities under the Open Government Declaration seriously.

Review of the First Plan

The government's reporting of its progress on the first National Action Plan is misleading at best. The dashboard at https://ogpau.pmc.gov.au/ overstates progress made towards commitments, and underplays delays or failures.

Commitments are marked as "on track" overall even if the majority of the actions completed are of minor importance but other, more substantial commitments remain unmet. This appears designed to allow the government to report success by having a couple of meetings and sending some tweets while not delivering on commitments for legislation or similarly substantive outcomes. Issuing a press release about what government plans to do is not the same as actually doing it, yet the government is equating the two in its status reporting.

Examples of this misleading status reporting include:

1.1 Protecting whistleblowers

This section is listed as "on track" when the commitment to introduce legislation has missed the self-imposed deadline of 30 June 2018. This specific item is marked as merely delayed when it has been missed.

The protections for whistleblowers are vastly inadequate, and are completely undermined by the government's decision to prosecute Witness K and Bernard Collaery[1]. The government's attempts to try the case in secret further call into question its commitment to open government generally.

1.2 Beneficial Ownership Transparency

The item is listed as "on track" when the actual work has been delayed and there has been no update from government on this item for over a year.

---

[1]

http://www.abc.net.au/news/2018-06-28/witness-k-and-bernard-collaery-charged-intelligence-act-breach/9919268

1.3 Extractive Industries Transparency

Marked as delayed.

The step for Australia to apply for EITI Candidate Country status was due in June 2018 and has been missed. The publication of the first EITI report has not even been started.

2.1 Datasets and Innovation

Marked as on "on track" while the development of the High-Value Dataset Framework due by December 2017 is still delayed, and the public registry of non-sensitive datasets due by July 2018 has not even commenced.

2.2 Build Trust in Data Sharing

Listed as "on track" when the three of seven items are marked as delayed, and one item is listed as "ongoing" rather than something with a concrete outcome or deadline.

There has been little to no engagement with the public on this issue, and public trust in government regarding data sharing is lower than before the plan began.

2.3 Government Digital Transformation

The Digital Transformation Agency has yet another CEO, its fifth in as many years, including its rebranding from the Digital Transformation Office. The only thing that appears to be transforming is DTA's leadership team.

The Senate inquiry into digital delivery of government services[2] was scathing, and rightly so.

The "live dashboard" measuring performance of government services was a great idea, and would have been even better if the data feeds to it were actually live, as advertised, and if there was some indication of wider adoption. It appears, rather, that this was a promising experiment that was quickly abandoned during one of the DTA's many changes in scope and ambition.

---

[2] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/digitaldelivery/Report

3.1 Information management and access

The Office of the Australian Information Commissioner remains chronically underfunded.

The Attorney-General's Department (AGD) claims to have consulted widely, yet no one outside of government appears to have any idea what was discussed.

The submission to government in December 2017 was not informed by involvement from any of the peak civil society groups that EFA has been in contact with.

4.1 Confidence in the electoral system

Marked as "on track", even though all tasks are actually delayed.

4.3 Open Contracting

Marked as complete, yet the inquiry into government procurement spending highlighted that the government doesn't know how much money it spends on consultants, contractors, and labour hire companies.[3]

There was no reference to "open contracting" in the amended version of the Commonwealth Procurement Rules (CPRs) which came into operation on 1 January 2018.

Little to no engagement with the public.

---

[3]
https://www.afr.com/business/accounting/government-flying-blind-on-consultant-contractor-use-grattan-institute-20180220-h0wdj6

Second National Action Plan

We provide brief comments on the proposed milestones below.

Firstly, however, we note that ideas with the strongest support during the consultation process appear to have been significantly watered down into whatever government work was already occurring that could plausibly be called the same thing, and that has been turned into the commitment under this Plan.

In some cases, the intent of the supported idea has been co-opted into something with completely different meaning. For example, regarding an Information Publication Scheme, the original idea was to promote the publication of information about government and its operation by default rather than relying on requests such as those under Freedom of Information. Instead, the proposals put forward by the government are for default publication or sharing of information about individuals, including those that would currently be prohibited from occurring.

Strengthen the national anti-corruption framework

The proposal was for an independent, national anti-corruption agency. The commitments here do not reflect what was discussed.

The government making a response to the Senate does not involve the public. How does this milestone relate to public participation in the process?

"Civic engagement in ongoing review of the national integrity framework" is not a verifiable deliverable. What will actually be delivered here?

How does "implementing the government's response to the Report of the Senate Select Committee on a National Integrity" involve the public? How will the government engage with civil society to achieve this milestone? What does this milestone even mean?

Enhance transparency of political donations

This commitment does not reflect the proposal (with strong support) that sought real-time reporting of campaign donations, and a cap on donations.

All of the milestones are "considering recommendations" but do not involve concrete outcomes.

Civil society involvement is not listed against any milestones.

This commitment is merely existing government work rebadged to appear as commitments under OGP.

Improve the sharing, use, and reuse of public data

The commitments here completely mis-characterise what was proposed and have been co-opted to support the government's existing agenda.

Once again, the majority of the milestones are standard government actions for implementing its intended policy and are not specifically related to the Open Government processes. Only one of them involves public consultation.

Improve public service practices using place-centred approaches

None of these milestones involve public participation. We cannot fathom how this commitment aligns to the OGP values of transparency, civic participation and public accountability.

Once again this appears to be work the government was going to do anyway dressed up to look like an OGP commitment. What was proposed has been watered down until it matched work that was already occurring rather than taking on the ambition of the proposal made during the NAP2 consultation process.

Enhance state/territory participation in OGP

Despite the flowery language about 'engagement' and 'frameworks' the only tangible outcome of this commitment is that the Information and Privacy Commission NSW will run a survey.

This is the lowest of low bars. To say this is unambitious is to understate the situation considerably.

Putting this forward as a serious commitment insults all those who have attempted to engage with the OGP process in good faith thus far.

Enhance public engagement skills in the public sector

This commitment is vague. It seems to consist of developing a process for developing other processes.

This is an unambitious proposal. The desired outcomes that *might* be achievable using the process for process sounds appealing, but those outcomes are not actually included in the commitment.

A concrete outcome that proves the usefulness of the process for process would make a more suitable and ambitious target.

Engage Australians in the Independent Review of the APS

This is more rebadging of already-planned government work as an OGP commitment.

The report delivered to government would have been delivered irrespective of the OGP process.

Ongoing consultation with the public is not a verifiable deliverable.

Expand open contracting and due diligence in procurement

The government's performance under commitment 4.3 in the first National Action Plan was sub-par. It will need to do much better this time around.

The first milestone should specific which datasets will be published as OCDS-compliant. "An additional AusTender dataset" is vague, and sounds unambitious.

"Review use of OCDS-compliant dataset" is vague. How can stakeholders determine if this milestone has been met?

"Implement additional measures (if required)" is not a verifiable deliverable.