

Open Contracting Partnership

Submission: Draft Australia OGP NAP 2

July 6 2018

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Introduction and general feedback

We welcome the opportunity to comment on the Draft Second Australian Open Government Partnership (OGP) National Action Plan (NAP).

Open Contracting Partnership is a global organisation supporting partners to open data about the planning, procurement & implementation of public contracts so that stakeholders can work together to improve procurement outcomes. OCP has worked with over 30 governments to include commitments around open contracting into their OGP National Action Plans.

We provide the following general comments on the draft NAP and suggestions for improvement:

- As we understand that unfinished commitments from the first NAP (such as beneficial ownership transparency) will continue and continue to be reported, it is important to state this clearly in the second NAP and to list those that are continuing. This is important for those coming into the process who otherwise will be unaware of the work that is ongoing, and to demonstrate the commitment to seeing the work through.
- Communications and engagement around open government requires sustained investment within and external to government to build a robust community of reformers and supporters that can deliver change in government practice. From our experience, it is important to invest in community building within government through events and networks, and to connect those efforts with a well-supported civil society community

outside of government. Building relationships and real dialogue and collaboration between these communities is what open government is all about.

- Part of opening up open government efforts is creating clear communications around the pathways for each commitment and opportunities for engagement (beyond the milestones to describe the work and processes that lead to the milestones). If done throughout, would be an important demonstration of good practice and meaningful engagement. The delivery of commitments in the OGP NAP should be demonstrating leadership in openness and engagement – and those leading them should be supported by PMC and/or the new engagement hub.
- We believe that ambitious commitments need to be additional to business as usual (i.e. would not have been done without the commitment), and aimed at delivering an outcome. We note that some of the commitments (notably Enhance transparency of political donations and funding, and Engage Australians in the Independent Review of the APS) appear to only commit to responding to or encouraging engagement in processes already underway. This seems to be neither additive nor aimed at an outcome.

To date in OGP discussions in Australia, open contracting has largely been seen as a technical process that is only about data. In fact, open contracting is:

- a policy approach that looks to make procurement processes open by design
- a globally recognised approach and standard to using open data to enable performance management by government, greater access to markets for diverse companies, and greater accountability to citizens; and
- a practical approach to engaging business, citizens and across government to ensure good outcomes from procurement and solve problems (for example, by engaging business around project pipelines, and citizens around spending in their local areas).

The open contracting approach is supportive of all of the current draft commitments and could be a driver of change in the following ways:

Draft Commitment	Open contracting contribution
<u>Strengthen the national anti-corruption framework</u>	Open contracting is globally recognised form of prevention for fraud, waste and corruption. Ensuring contracting data is in open data can help identify potential red flags for conflicts of interest or other risks in the contracting process.

<p><u>Enhance the transparency of political donations and funding</u></p>	<p>Increased transparency of political donations and funding can be linked to open data on government contracting to identify potential risks of political influence over contracting and of conflicts of interest.</p>
<p><u>Improve the sharing, use and reuse of public sector data</u></p>	<p>Structured, open data on government contracts enables the linking of information on planning, contracting, delivery and outcomes for government and others to understand the full project and contract lifecycle. As contracting is devolved to departments and agencies, moving to an open data system makes sense to modernise the public sector, drive innovation and collaboration, and get a whole of government view.</p>
<p><u>Improve public service practices using place-centred approaches</u></p>	<p>In a place-centred approaches, the public and local business and civil society groups need access to relevant information about government activities, opportunities and investment in their context. Open contracting approaches could contribute to effective engagement with local communities including planning for government investment to ensure they are addressing relevant needs, as well as providing accessible information on opportunities and spending (including grants and contracts) in a local area.</p>
<p><u>Enhance state and territory participation in the Open Government Partnership</u></p>	<p>All governments in Australia spend a significant amount of their budget on procurement or through government contracts. They share common challenges around competition and SME access to markets, ensuring quality outcomes, and oversight and analysis of devolved procurement. Large scale infrastructure projects often rely on co-investment between Federal and State Governments, and are of great public interest. There is significant opportunity for collaboration between state, territory and federal governments around open processes around large scale infrastructure projects and using open contracting approaches and open data to better track outcomes in procurement.</p>
<p><u>Enhance public engagement skills in the public service</u></p>	<p>The open contracting approach relies on public engagement skills – to ensure that projects are planned with community input, that businesses understand the pipeline of possible projects they could contribute to, and to support monitoring and delivery. There is significant potential to include an open contracting engagement pilot in the roadmap or hub.</p>

<p><u>Engage Australians in the Independent Review of the Australian Public Service</u></p>	<p>The review will be addressing how well the APS currently manages procurement and contracting as a core function, in a context of rapidly changing expectations and technology.</p>
<p><u>Expand open contracting and due diligence in procurement</u></p>	<p>This commitment is a welcome and important step in enabling government, business and citizens access Australia’s Federal procurement data in a useful format.</p>

We encourage the Government to consider the broader contribution of open contracting approaches beyond the important and valuable use of open data. We are able to provide further information to any official or agency interested in learning more about open contracting approaches.

Feedback on specific commitments

Please find below our comments on specific draft commitments.

Commitment: Improve the sharing, use and reuse of public sector data

We welcome the commitment to improving the sharing, use and reuse of public sector data, and the desire to establish a clear legislative framework to support this.

It is important to look at how this relates to existing institutions and mandates. For example, how will the National Data Commissioner post relate to the functions of the National Information and Privacy Commissioner? If the only change is in the form of information, it would be worth considering how the data responsibilities could be integrated into the existing institutions as an update that recognised changing technology.

It may be worthwhile undertaking the planned consultation around potential institutional arrangements and approaches before appointing a National Data Commissioner, in order to keep the shape of institutional arrangements open through a genuine consultation.

Commitment: Improving public service practices using place-centred approaches

It will be important to think about the links between place-centred approaches and the complementary approaches on sharing public sector data, state and territory participation, and public engagement.

In a place-centred approaches, the public and local business and civil society groups need access to relevant information about government activities, opportunities and investment in their context. In particular, information about service providers, who government is contracting in local areas, why, when and how. This will ensure there is visibility of service delivery obligations and compliance, and allow for communities to contribute to assessment and monitoring of quality and value. Opening up data, providing easy to understand information about processes and the pipeline of projects in local areas, will give smaller businesses early opportunity to engage and apply directly or seek to collaborate with larger businesses.

Commitment: Enhance State and Territory Participation in the Open Government Partnership (led by Info and Privacy Commissioner NSW)

We strongly welcome this commitment and the leadership of the Information and Privacy Commission NSW.

We believe that this commitment can be made more ambitious by committing to develop a pipeline of pilot projects (ranging from small to large) during this NAP or for inclusion in NAP 3 that reflect leadership from states and territories, or are collaborations between states and/or territories and the Federal Government. We believe there are some excellent opportunities for collaboration between state and federal governments under a number of proposed commitments including the open contracting and place-centered approaches commitments.

We would be willing to work with the Information and Privacy Commission NSW and others to support identification and design of relevant open contracting pilots at the state level, and explore collaborations between federal and state governments, for example around applying open contracting to large scale infrastructure projects.

Commitment: Enhance public engagement skills in the public service

It is good to see this commitment emerge as a result of the work by Department of Industry over the course of NAP 1.

This commitment could be strengthened by committing to ensure that current and future NAP commitments (and NAP processes) are used as projects to demonstrate the value and potential of public engagement. The hub could include NAP commitments into its work as pilot projects or

as part of the roadmap. It may also require an articulation of the approach to public engagement the Government is committed to in the OGP process, so that all commitment leads understand how they are expected to share knowledge and improve engagement and communications.

We would also welcome the inclusion of an open contracting pilot project into the engagement hub or the roadmap. A pilot project could be included to support social or sustainable procurement objectives (such as Aboriginal organisations) and help the government engage in local areas around different topics and themes.

For example, a pilot project could explore how to make procurement processes clearer and assist small businesses and the public in navigating procurement pathways to enable greater participation. Through improved procurement engagement, the outcomes would be: meaningful engagement and inclusion; greater connection between the public service and community; on the ground support and collaborations with the right people to deliver policy priorities; empowering and supporting local services and economies; building trust and confidence in government and positive relationships and networks.

The pilot will help small businesses, community and social service providers, and civil society be part of a process, making it easier to work with government, knowledge share with the public service and build capacity and capabilities, and enable collaboration on research, engagement, communications, and service design and other projects.

Commitment: Expand open contracting and due diligence in procurement

We strongly welcome this commitment as a next step in the Government's commitment to open contracting principles, as expressed in NAP 1. We propose a revised title to better reflect the substance of the commitment: "Introduce open contracting and improve due diligence in procurement".

We propose revising the language around the public problem and the contribution to the public problem to make it clearer and provide purpose and context beyond the past process around open contracting. We have proposed language to Department of Finance for their consideration and endorsement.

We have also suggested revisions to the milestones to ensure they adequately represent the work required to deliver the commitment, also under discussion with the Department of Finance.

Our proposed revised text for this commitment is attached separately for your information.

Contacts

Please feel free to contact us regarding any part of our submission or for further discussion.

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