

Steering Committee Australian Open Government Partnership Network

These comments are submitted on behalf of the Steering Committee of the Australian Open Government Partnership Network.

We support the drafting suggestions and comments lodged by Dr Ken Coghill.

The purpose of the End of Term Report is to report on performance, and to inform the OGP Independent Review Mechanism and others of the government perspective on results of the 2016-2018 plan, consultation during implementation and lessons learned.

A report that provides a complete history and a thorough assessment of Australia's OGP experience over the last two years would and should be a valuable guide to improving future OGP reform processes.

However this draft report fails to deliver.

It overstates what has been accomplished, omits mention or glosses over shortcomings and problems encountered, makes little of the detailed observations in the Independent Review report by Daniel Stewart earlier this year, and draws few general lessons from the experience in the development and management of implementation of the plan.

The draft focuses on ticking as many boxes as possible from those listed in the [OGP Participation and Co-creation Standards](#) but fails to mention aspects of performance where Australian practice does not measure up.

Some of the comments below were made in earlier submissions on the [Government's Mid Term Self Assessment](#) and the [IRM Independent Assessment](#), and in [our report](#) on agency performance earlier this year.

Overstated accomplishments

From Introduction and background

"Australia has taken great strides to improve transparency, accountability and public engagement over the course of this Action Plan cycle...."

From Conclusion, Other initiatives, Next Steps

"The commitments contained in Australia's National Action Plan 2016-18 demonstrates Australia's commitment to a government that is open transparent, accountable, and engaging. With the majority of milestones now completed, the results and impacts for each commitment show strengthened and improved transparency and accountability in business, the availability of open data and the digital transformation of government services, access to government information, integrity in the public sector, and public participation and engagement."

Comment

Progress on commitments that the Independent Mid Term Review earlier this year characterised as poorly designed, not transformative and lacking in ambition, has been modest at best.

The IRM report states "None of the commitments in the (2016-2018) 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."

Given that in many instances the commitment was to consider options or review, not to concrete or specific outcomes, the claim that "the majority of the Plan's commitments are either on track or now

completed" is misleading. As is the characterisation of progress as "Substantial" particularly in these cases

1.2: Beneficial ownership transparency

3.1: Information management and access laws for the 21st century

4.3: Open contracting

There are no outcomes or results evident at the end of 2018 from these commitments. Or from others where the government can point to steps that hopefully represent movement in the right direction:

1.1 Improve whistle-blower protections in the tax and corporate sectors

1.4: Combating corporate crime

2.2: Build and maintain public trust to address concerns about data sharing and release

4.1: Confidence in the electoral system and political parties

4.2: National Integrity Framework

5.2: Enhance public participation in government decision making.

Even correctly categorising implementation of the commitment as "Limited" would border on exaggerated in these two cases:

1.3: Extractive industries transparency.

3.1: Information management and access laws for the 21st century.

(Nothing has been heard from the Attorney General or his department since August 2017 about what government has under consideration to deliver on this commitment .)

Shortcomings and problems

Some examples of matters not mentioned in the draft:

1. The absence of a mechanism for government-civil society dialogue until August 2016, when representations were acted upon to establish the Interim Working Group, limited progress towards a shared agenda and a joint government-civil society effort to finalise the plan.

2 As the National Action Plan made clear, the plan is the government's plan, informed by public consultation and inputs from the Interim Working Group. Some commitments were significantly improved during consultation and negotiation. Others throughout remained well short of what many outside government including the IRM regard as 'concrete and ambitious.' Civil Society members of the IWG in signing off on a final draft unsuccessfully made representations for further improvements in a number of commitments.

(From the OGP Standards:

"Commitment proposals are assessed by the multi-stakeholder forum through an open and transparent process. All parties have equal veto power over commitments included in the NAP.")

3. Public awareness of Australia's involvement in the OGP and the opportunity for public participation was low throughout. There were few signs of enthusiasm and support for the initiative from ministers. The absence of visible public leadership from government played into widespread scepticism that the government is serious about 'open government' reform.

No public meetings or events other than consultation meetings on possible commitments were organised. Targeted outreach, if it was undertaken, failed to substantially increase interest and participation levels. Attempts at public engagement at times were limited and rushed with deadlines that left little time for civil society input.

(From the OGP Standards

"The government holds at least two open meetings with civil society (one per year) on the implementation of the NAP."

"The government and/or multi-stakeholder forum conduct targeted outreach to relevant stakeholder groups to raise awareness of open government, the OGP and opportunities to get involved."

"The multi-stakeholder forum coordinates multiple face-to-face outreach and engagement events

around the country, which are open and accessible to any interested members of the public, civil society and other stakeholders to attend (e.g., at suitable times and locations)."

4 . When public participation did take place, no information or feedback was provided to those who made submissions, suggestions or comments or explanation offered on why the suggestion was rejected.

(From the OGP Standards:

"The public, civil society and other relevant stakeholders should be provided with timely information about all aspects of the national OGP process, including feedback on how their inputs are taken into account."

"The government publishes an overview of public and civil society contributions, and the government's response, on the national OGP website/webpage."

"The multi-stakeholder forum publishes, via the national OGP website/webpage, its reasoning behind the selection of commitments in the NAP, including justifications for commitment proposals not adopted.")

5. The minister responsible for OGP co-ordination did not meet with the Interim Working group, its successor the Open Government Forum, or the Civil Society Co-chair, and met once in August at our request with representatives of this network. No reply was received to a note left with the Minister raising issues for attention.

(From the OGP Standards:

"Government provides members of civil society, through the national multi-stakeholder forum or otherwise, with regular (i.e. at least biannual) opportunities to meet with the responsible minister to review progress, the government self-assessment and IRM reports.")

6. Regardless of the list in the draft of the materials published on the PMC website, public information about the development of the plan and implementation of commitments was always difficult to find. The search function on the website is inadequate. Important information in papers and minutes of meetings of the Open Government Forum posted in pdf packages as such was not made more accessible on the website in other ways. In the website's current iteration, progress reporting on commitments in the 2016-2018 plan can only be found with difficulty. Few agencies drew stakeholders' attention on their website or by other means to the OGP initiative and the scope for open government reform in areas relevant to their operation.

7. Some lead agencies adopted a 'business as usual' approach to public engagement as they took action to implement a commitment for which they are responsible, inviting the public and stakeholders to lodge a submission in response to a published report or discussion paper, but not engaging further. The Interim Working Group issued guidance on this in May 2017, encouraging each lead agency to adopt an open, inclusive and collaborative approach to implementation of a commitment. The IWG and PM&C provided suggestions about good practice that were not adopted by some agencies. The Department of Industry Innovation and Science the lead agency on Commitment 5.2 published a report on the first phase of its implementation of the commitment, based on research across the public service. The report, 'How might the APS better use public participation to improve policy development and service delivery?' asserts that Commonwealth agencies lag local and state governments in recognising the value of engagement and public participation: "The APS is less active in respect of engagement and participation with the community due to a lack of: confidence in the potential benefits to decision making from such activities relative to the time and cost involved, a lack of awareness of the practices that are available, and capability to execute such activities in an effective way." Experience in seeking to work with some agencies on implementation of OGP commitments bears these findings out.)

8 The National Action Plan (page 62) recognised the link between the OGP initiative and the Sustainable Development Goals in the following terms but nothing has been heard since:

"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.”

9. Continuity has been a problem in advancing the open government cause. For example, 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 learning. Since December 2015, six 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 four times.

Independent review report and Lessons Learned

Each lead agency report on the current status of a commitment includes a 'Lessons Learned' section.

Most relate simply to government process.

Few-Industry on Commitment 5.2 is one exception- take a broader perspective of what could and should be done better next time.

The draft (Conclusion, Other initiatives, Next Steps, page 76) includes only one overall lesson: "The lessons learned and challenges encountered with respect to developing and implementing each commitment under the National Action Plan 2016-18, highlights the importance of consulting early and widely. A key lesson for many of the commitments was that early engagement between government and civil society led to better results and awareness. This has been taken into account in the development of the next National Action Plan for 2018-20 and in the appointment of members for the Open Government Forum."

Even this is unfortunate.

Partnership involves more than consultation. It requires a commitment to work together, to solve problems, make choices, produce results. Consultation is necessary but not sufficient as the guidelines issued to agencies in May 2017 make clear. The Thodey inquiry into the APS has identified as a goal for the public service as "a trusting and respectful partnership between the Australian Public Service and the people of Australia."

The draft refers to 'Key Recommendations' in the [report by Daniel Stewart](#) on Mid Term progress earlier this year. One positive outcome from those recommendations is the commitment in the 2018-2020 plan that seeks to involve the states and territories in the OGP journey.

There are many other suggestions for improvement in the Stewart report (Page 100). By implication these are lessons the reviewer considered should be learnt from experience with the first plan.

It would be a major disappointment if government can only come up with 'early and wide consultation' as the one overall lesson from the OGP initiative so far.

Peter Timmins
Interim Convener
Australian Open Government Partnership Network
www.opengovernment.org.au

.....

There are over 130 members in the Network.

In addition to individual members, organisations involved include Transparency International Australia, Accountability Roundtable, 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, Publish What You Pay Australia, Public Interest Advocacy Center and Community Council for Australia.

.....