

## Transparency and accountability in business

### Commitment 1.1: **Improve whistle-blower protections\*** in the tax and corporate sectors

We will improve whistle-blower protections for people who disclose information about **tax misconduct** to the Australian Taxation Office. We will also consult on other reform options to **strengthen and harmonise** whistle-blower protections in the corporate sector with those in the public sector.

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

The revelation that Austrade continued to deal with a foreign business, Pearls Group – despite it being identified as a ‘Ponzi scheme’ and Austrade insiders warning that it could collapse, costing millions of people their savings: [http://www.abc.net.au/news/2016-02-26/pearls-group-over-\\$100m-from-scam-tracked-to-australia/7199358](http://www.abc.net.au/news/2016-02-26/pearls-group-over-$100m-from-scam-tracked-to-australia/7199358) – indicates that whistle-blower protections or not, those responsible for running government departments can choose to ignore the warnings they receive. The first step in enhancing confidence in the system is to impose penalties on department heads who do not investigate and, in effect, ignore warnings of this nature.

It must also be noted that the continued concentration of media in the hands of fewer people as this graphic demonstrates: <http://www.gizmodo.com.au/2016/01/infographic-who-owns-what-media-in-australia/> means that the number of outlets for the revelations made by whistle-blowers is also shrinking, especially when the information whistle-blowers have is detrimental to one or more of these few media owners who are concurrently involved in other activities such as mining.

This concentration in media ownership also results in the quality of journalists and journalism being affected by the views held by those owners and could result in journalists either ignoring whistle-blowers or being unwilling to work with them as they may legitimately fear for their livelihoods, should they attempt to write an article based on that information if the revelations potentially threaten the profits or reputation of their employer.

One solution to this, before desperately needed whistle-blower protections can be contemplated, is to make it an offence to attempt to identify or investigate the source of a disclosure – with very narrow and well-defined exemptions where absolutely necessary.

There is, however, one obvious way to circumvent the need for people to potentially risk their livelihoods and mental and physical well-being by revealing corruption, fraud, etc., via an act of whistle-blowing. That would be to open all government records to scrutiny. To use the argument readily used to justify government surveillance of the public: if the government and its departments and offices are doing nothing wrong, why would there be any objection to this level of public surveillance?

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## Commitment 1.2: Beneficial Ownership

We will consult with the corporate sector, non-government organisations and the public on a beneficial ownership register for companies.

Australia will work to improve transparency of information on [beneficial ownership and control of companies](#) available to [competent authorities](#).

If the government is genuinely interested in enabling transparency and accountability to the public, it will make it easy for the public to identify which organisations attract taxpayer funds and who benefits from those decisions. Since the government has used the 2016 Census to create a unique SLK identifier to link information generated by and about individuals - ostensibly for the greater good - it would only be fitting that the available unique identifiers for Australian business entities (i.e. their ABN/ACN) were also added to existing open datasets to provide a similar means of linking those datasets.

When the ABN/ACN of each business is included in the register it would allow matching of tenders, grants and political donations with businesses and also with the programme in the federal budget under which that grant or tender is administered. This should not be limited to Federal but must apply at State and local government levels. For real transparency all three levels of government must report tenders and grants along with their budgets so that there is a full online system identifying:

- where Australian government money is spent;
- which programme receives the money;
- which organisation receives the money – including those set up by members of political parties, specifically to take advantage of insider knowledge and skills. For example: Parakeelia: <http://www.smh.com.au/federal-politics/federal-election-2016/parakeelia-rented-liberal-partys-2013-campaign-headquarters-20160620-gpn0f9>
- and any political donations they have given to local, State or Federal political parties directly, or via entities they have been set up to receive them.

Some examples of this are:

- Free Enterprise Foundation;
- political party electorate-based forums and clubs allegedly extracting donations for access such as North Sydney Forum, Warringah Club, Wentworth Forum;
- Mark Arbib's alleged extraction of donations for access: <http://www.smh.com.au/news/national/anger-over-iemmas-lopsided-war-chest/2008/01/27/1201368945679.html>;
- Malcolm Turnbull's donation to his own party before the 2016 election: <http://www.news.com.au/national/federal-election/malcolm-turnbull-mocked-over-1-million-election-campaign-donation/news-story/c3d2d11701e1be8018c966df67fc229c> from which he stood to, and in fact has, benefit personally;

- and the fact that a report has revealed that “85% of privately raised political donations are not declared” [https://www.theguardian.com/australia-news/2016/nov/15/australias-political-donations-85-of-privately-raised-funds-not-declared?CMP=share\\_btn\\_tw](https://www.theguardian.com/australia-news/2016/nov/15/australias-political-donations-85-of-privately-raised-funds-not-declared?CMP=share_btn_tw)

The need for this register also implies that the current ASIC register cannot identify who is actually behind Australian entities. This being the case, it is unclear how it will be possible to reform political donations to exclude input from foreign individuals or entities, if the only requirement is that an ABN or Australian citizenship is held, when there is yet to be an effective registry put in place against which to match that information. It is also not clear how the government will implement a Beneficial Ownership Register that is open to public scrutiny if the ASIC register (from which it must derive much of the data) is sold to the private sector for management as is currently being tested: <http://www.governmentnews.com.au/2015/06/finance-pushes-ahead-with-asic-registry-outsourcing/>

Additionally, there is no indication of what will happen, should corruption be detected by ‘civil society’, once this data is made available. Although data on public sector contract procurement can help to expose corruption, and this data has been used by journalists and activist groups to expose corruption, unless there are severe penalties which cannot be avoided by either: the government in imposing them; or the guilty party, then the opening of data to ‘civil society’ is just a means to create a distraction without any tangible result.

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### Commitment 1.3: Natural Resource Transparency

We will work together to **enhance disclosure** of company payments and government revenues from oil, gas and mining.

Australia will **work towards compliance with** the Extractive Industries Transparency Initiative (EITI) standard and continue to support the application of EITI principles around the world.

Unless this includes the Australian government’s (and private Australian company’s) offshore extraction and the licence agreements that have been negotiated with neighbouring countries about resources that the Australian government (or a private company) is claiming (despite – in the case of Papua New Guinea - those resources being located under the sea bed at points much closer to PNG’s land than Australia’s) then it will not be effective in ensuring that the licence-holding country or company is adhering to the principles of the EITI and not disadvantaging another sovereign entity.

There is no explicit mention in any of the guidelines available on the EITI website <https://eiti.org/guidance> of the actions required of the extractive industry to prevent environmental pollution and destruction, or of the need for remedial restoration of the environment after extraction.

Why would Australia ‘support the application of EITI principles around the world’ while it only ‘work(s) towards compliance with the standard’? This implies that it will be proactive in enforcing its own claims on other country’s resources while delaying on ensuring the principles are adhered to on Australian land.

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## Open data and digital transformation

### Commitment 2.1: Release **high-value datasets** and **enable data-driven innovation**

We will work with the research, not-for-profit and private sectors to release **high-value public datasets** and drive social and economic outcomes.

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.

The government must make it possible for individuals to obtain the data held on them – in a format which they can understand - and give them the ability to opt in, not opt out, of their data being used in any way by any organisation to which the data was not originally given.

The ability to opt in gives individuals the locus of control in regard to the use of their data and ensures that the consent, either explicit or implicit, for the gathering and use of that data is not extended to purposes not envisaged or for which consent has not or cannot be sought.

Before researchers are granted access to the available datasets they must agree to abide by the principals set out in the 2016 OECD Research Ethics and New Forms of Data for Social and Economic Research Report: [http://www.keepeek.com/Digital-Asset-Management/oecd/science-and-technology/research-ethics-and-new-forms-of-data-for-social-and-economic-research\\_5jln7vnpxs32-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/science-and-technology/research-ethics-and-new-forms-of-data-for-social-and-economic-research_5jln7vnpxs32-en#page1), just as they are expected to abide by the guidelines outlined by human ethics committees at universities Australia wide.

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### Commitment 2.2: **Build and maintain public trust** to address concerns about data sharing

We will **develop an ongoing and collaborative conversation with the community** to build public trust around data sharing and integration.

Australia will actively engage with the community regarding how public data is being used to **provide more targeted and effective policy**, service delivery and program evaluation.

The government mishandling of the 2016 census has caused considerable damage to the trust the public had in the ABS with a number of missteps and mishaps such as:

- the announcement that the ABS would keep all census data - which was made with little media attention or publicity which a reasonable person would conclude was done in order to avoid the legitimate complaints and criticisms the public would have about this decision: <https://www.privacy.org.au/Campaigns/Census2016/>. This decision by the ABS was characterised by former statistician Bill McLennan as “without doubt [...] the most significant invasion of privacy ever perpetrated on Australians by the ABS” [https://independentaustralia.net/life/life-display/privacy-and-the-2016-census,9279?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=IA\\_Feed](https://independentaustralia.net/life/life-display/privacy-and-the-2016-census,9279?utm_source=rss&utm_medium=rss&utm_campaign=IA_Feed);
- the farcical decision, and subsequent operationalisation, to reject a highly successful paper-based census of the population to an online census website: <http://www.news.com.au/technology/online/census-australia-website-was-always-going-to-fail-radio-caller-claims/news-story/cee90ee8e39d1e111b8e09c940078bd1>;

- the heavy handed tactics used in enforcing compulsory participation;
- the repeated harassment of tardy members of the public who the ABS believed had failed to participate: [https://www.crikey.com.au/2016/09/08/panicked-census-bureaucrats-declare-census-crisis/?utm\\_content=buffer69e3c&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.crikey.com.au/2016/09/08/panicked-census-bureaucrats-declare-census-crisis/?utm_content=buffer69e3c&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)
- the authoritarian threats to impose heavy financial penalties on those who viewed their non-participation as that of conscientious objectors to the collection, retention – and the eventual linking of their data to other datasets held by government departments – without their consent: <http://www.news.com.au/finance/economy/australian-economy/census-boss-says-dont-panic-if-you-have-not-received-your-letter-yet/news-story/444c06d0489b22f5d5b13abe3ea2c120>

This compounded the opaque “consultation” with stakeholders who were presented with biased and potentially false information about the SLK encryption key to be used to protect their identity and which was subsequently shown to be readily broken, resulting in easy re-identification of individuals: <http://3583bytesready.net/2016/08/11/australian-census-slk-security/> and <http://www.computerworld.com.au/article/605013/why-year-census-might-still-privacy-nightmare/>

More recently the government has failed, once again, to bolster the public’s confidence with its low-key so-called consultations with stakeholders regarding the decision to participate in the Open Government Partnership and make personal data available to third parties without their consent. Despite this government decision again involving the personal data of individuals - which will be made available to researchers and potentially sold off to corporate entities - there was little publicity and scant information made available to the public. The government was careful to refer to the gatherings it held – in only a few capital cities – as ‘information sessions’ and ‘webinars’, rather than consultations and very few questions were taken or answered during the hour allotted. In fact the convener took up 40 minutes (see recording of Brisbane session) with a slide show of the Commitments and provided virtually no additional information to that which was presented in the original document: <https://ogpau.govspace.gov.au/outcomes-of-ogp-public-information-sessions/>

This does not bode well for the future unless the government intends to radically change the way it treats the general public and does, in fact, begin a regime of transparency in which the public can have confidence. The government must not only be transparent; it must be seen to be transparent.

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### Commitment 2.3: Digitally transform the delivery of government services

We will continue to invest in digital technologies to make government services simpler, faster and cheaper.

Australia will harness digital technologies to make it easier for the public to work and interact with government.

The increased use of digital technologies actually means, in a practical application, that the government intends to reduce the number and availability of frontline staff in favour of forcing the public to spend time on online form-filling, waiting in phone queues and/or

email-writing in an attempt to get answers and/or redress for issues created either by overstretched staff working in government departments eg: Centrelink or by failures and/or omissions and/or poor programming of the digital technology itself eg: MyGov, Census website.

Rather than employing a sufficient number of adequately paid people to provide the services the public funds through its payment of income and other taxes, this proposal will, instead, employ a small number of highly paid, highly skilled, technical people. This ostensibly cost-cutting of the wages bill will likely increase as it becomes clear that the move to the online provision of services cannot be done adequately – as the banks discovered when they attempted to eliminate face-to-face customer transactions – and frontline staff have to be re-hired, with the consequential need for lengthy and expensive training to bring new staff up to a level of competency and proficiency.

In the meantime, the highly paid, highly skilled technical people will still fail to adequately protect the datasets which will be vulnerable to hackers, as evidenced by at least 14 attacks already carried out on the ABS: <https://www.theguardian.com/australia-news/2016/jul/29/australian-bureau-of-statistics-reports-14-data-breaches-since-2013>

Compounding these issues is the fact that a move to the online provision of services is exclusionary and discriminatory as there are and will always be people who are unable and/or unwilling to use digital technology either because they have not learned to use it and/or cannot afford to purchase or constantly update the necessary hardware to access it. Despite the unspoken assumption that, eventually, all those unable or unwilling to use the new technology will be dead, this is unrealistic.

Impoverished, remote groups with no or limited access to the necessary infrastructure or technology will be disadvantaged by the move to reduce or eliminate face-to-face provision of services, advice and information. Added to that is the shameful decision by the current government to purposely mitigate the National Broadband Network with its 'technology mix' of outdated copper, nodes and fibre rendering Australia 23<sup>rd</sup> out of 26 countries in 'broadband' speeds: <http://www.smh.com.au/business/consumer-affairs/australia-ranked-23rd-out-of-26-countries-when-it-comes-to-broadband-satisfaction-20161022-gs89nu.html> This means that remote areas will be poorly served in both access and ability to download and upload information well into the future, unless the government comes to its senses and returns to the original and visionary plan to lay Fibre To The Premises: [http://www.100positivepolicies.org.au/national\\_broadband\\_network](http://www.100positivepolicies.org.au/national_broadband_network).

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## Access to government information

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

We will ensure our [information access laws](#) are modern and appropriate for the digital information age.

Australia will consider options for reforms to the framework for managing and accessing government information, 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), as well as policies and practices relating to information access and management.

Any individual who has attempted to gain access to government information under the provision of the FOI Act has been charged hundreds of dollars only to receive multiple pages of redacted information. No reasonable explanation is given for these redactions and it appears that there are perverse incentives for public servants to do their utmost to obstruct FOI processes. To increase the public's confidence there needs to be a requirement to clearly document and explain the reasons for decisions; a culture of open decision-making; and shared responsibility for poor decisions.

To be successful in achieving the overall aim of this Commitment will require a whole-of-government approach which would appear to be virtually impossible. There are currently agencies excluded from compliance with the FOI Act and the security classification system will also need to be examined and modified to facilitate the much vaunted transparency the government would have us believe it wants to bring forth.

If this Commitment is undertaken at department level the policies and practices will be disparate, confusing and uncertain for both the staff tasked with carrying out the policies and procedures and members of the public attempting to gain access to information.

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### Commitment 3.2: Understand the use of Freedom of Information

We will work with states and territories to collect and publish **uniform data** on public use of freedom of information access rights in Australia.

Australia will develop uniform metrics to better measure and improve our understanding of the public's use of rights under freedom of information laws. (Freedom of information is used generally to cover legislated public access right to information schemes across all jurisdictions. For example, in New South Wales the relevant legislation is the Government Information (Public Access) Act 2009 (NSW).)

How does this benefit the public? The government and independent researchers may find it useful and interesting but there is no obvious way in which this will contribute to the transparency of government activities, decision-making or provide insight into the reasons for the eventual outcomes of requests for information. In fact, it seems more likely to be used to justify reducing freedom to access information, if this analysis should reveal that certain types of information are rarely sought or, more importantly, deemed 'safe' to hand over to the public.

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### Commitment 3.3: Improve the discoverability and accessibility of government data and information

We will make it easier for the public to find and use government data and information through central portals and digital platforms.

Australia will establish platforms and tools to improve the discoverability and accessibility of government information and public data.

Published government transparency information must be in one place, not spread across blogs and obscure pages; where those who want to track government operations have to spend hours searching for the information. For example, the Labor government announced in 2013 that it was joining the Open Government initiative on an obscure departmental

blog: <http://www.finance.gov.au/blog/2013/05/22/australia-joins-open-government-partnership/>. It was not until November 2015 that the Coalition government announced it had signed up to the initiative and, again, publicity for this decision was not garnered in order to transparently inform those most likely to be adversely affected by the decision. These are not positive signals from either the Labor party or the Coalition indicating neither the former nor current government's willingness to be transparent to the public. What occurred between the hasty Coalition announcement in November 2015, the silence that occurred after this announcement – which was blamed on the election earlier this year – and today cannot legitimately be called a 'year-long consultation' as it has been sporadic at best. A very small number of 'civil society' representatives have been allowed to contribute, and the original timeframe for submissions was unacceptably short at 14 days. Indeed, this timeframe was only extended by a further week after complaints from the public.

One of the main frustrations for those aware of the National Action Plan is a lack of transparency in linking the Commitments it contains to input gleaned from civil society. This brings into question the claim that the plan is a product of 'co-creation'; which is a cornerstone of membership of the OGP. It seems plausible that these policy changes were decided upon prior to the consultation and that the Open Government Partnership plays no real role in either their inception or their implementation. It is hard to make a legitimate case that Australia's membership of the Open Government Partnership has played a role in improving transparency and accountability as it is not clear from the draft National Action Plan how things would differ without it.

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## Integrity in the public sector

### Commitment 4.1: Confidence in the electoral system and political parties

We will work 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](#).

#### a) Conduct of 2016 election

Those seeking office must be compelled to divulge their business interests, tax records, donations to organisations, membership of lobby or special interest groups and affiliations with NGOs and other corporate entities. Legal or financial problems which are stipulated as leading to the exclusion of individuals from seeking office must be divulged and investigated to ensure that those standing for election do not participate in the process of governing when they are ineligible such as Bob Day's known risk of bankruptcy <https://www.theguardian.com/world/2016/oct/27/family-first-senator-bob-days-companies-owe-total-of-378m> and Rod Culleton being found guilty of a crime attracting a jail term of more than one year: <http://www.news.com.au/national/politics/one-nation-senator-rod-culleton-arrested-after-police-issue-a-warrant/news-story/4dc5bd54b595fa3edcd35c69f8a01753>

Once in office the same obligations should be met in real-time, together with the publication of official diaries detailing date, time and length of meetings of any type – with individuals and groups named – so that the public can determine whether the decisions they

make are potentially affected by vested interests of the decision-maker and/or their associates in the public or private sectors.

Upon election members of both houses must immediately comply with the requirement to abandon dual citizenships, and this must be officially verified before they are allowed to take their seat.

b) Use of technology in elections

This implies the use of electronic voting which is, by no means, a direction any democratic country should take. It is only necessary to contemplate the fraught results of US elections since the introduction of computer-based voting to recognise that the opportunity for manipulation, obstruction and invalidation of votes in a 'black box' system with no transparency, oversight or ability to challenge the outcome, is not conducive to public confidence in the democratic process.

c) Donations to political parties and other political entities

As this Commitment seeks to exclude foreign individuals and entities from donating to Australian political parties, adding ABN/ACNs to the AEC donations data is necessary for its implementation. As political parties will seek to circumvent this, there must also be thought given on how to prevent the parties from establishing 'legitimate' Australian entities to funnel foreign donations. One way to manage this would be to make banks open their data to scrutiny so that transactions from overseas entities could be traced from their source to the receiver.

A system aimed at providing financial transparency would be designed to allow the public to determine how money moves through the system as well as how taxes are being used to fund government programs and allow them to see where their taxes - and the money from other sources - are being spent. It is also vital that those seeking office are compelled to divulge their business interests, tax records, donations to organisations, membership of lobby/special interest groups, affiliations with NGOs.

"Dark money" donations and splitting of large donations to comply with the limits stipulated before a declaration is made must be eliminated if the public is to have confidence in the integrity of the system. The revelations made in a report published on 15 November 2016 indicate that the current system is a failure and must be overhauled: [https://www.theguardian.com/australia-news/2016/nov/15/australias-political-donations-85-of-privately-raised-funds-not-declared?CMP=share\\_btn\\_tw](https://www.theguardian.com/australia-news/2016/nov/15/australias-political-donations-85-of-privately-raised-funds-not-declared?CMP=share_btn_tw)

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**Commitment 4.2: National Integrity Framework**

We will collaborate with the corporate sector, non-government organisations and the public to **strengthen** our national anti-corruption and integrity framework.

Australia will strengthen our ability to prevent, detect and respond to bribery and corruption. As part of this, we will regularly review the jurisdiction and capabilities of the Australian Commission for Law Enforcement

Integrity (ACLEI) and the Australian Federal Police's Fraud and Anti-Corruption Centre to ensure they can focus on protecting Commonwealth agencies from risks of corruption.

The public has no reason to be confident that 'strengthening' the national anti-corruption and integrity framework will have any effect when Andrew Robb has been allowed to accept a consultancy with the Chinese company Landbridge Group, which has a 99 year lease on the port of Darwin. If that conflict is not blatant enough, it has occurred only two months after his retirement from government as Trade Minister. This clearly contravenes parliamentary rules, yet he has not even been censured, let alone penalised for this breach: <https://www.theguardian.com/australia-news/2016/oct/31/andrew-robb-did-not-tell-prime-minister-about-role-with-chinese-company>

One has to question the validity of the government's commitment to this point in light of what is being done to NSW ICAC <http://www.abc.net.au/news/2016-11-16/former-minister-slams-icac-as-government-passes-overhaul/8031498>.

It is vital that not only is there a viable, fully funded and staffed ICAC at state and territory government level but that a Federal ICAC is established, if this Commitment is to be viewed as anything other than lip service to the ideal of rooting out, punishing and, as far as it is possible, eliminating corruption and establishing confidence in the integrity of the system.

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#### Commitment 4.3: Open Contracting

We will undertake a public review of the Australian Government's compliance with the [Open Contracting Data Standard](#).

Australia will review compliance with the Open Contracting Data Standard and continue to support the Open Contracting Global Principles.

No comment possible.

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### Public participation and engagement

#### Commitment 5.1: Delivery of Australia's Open Government National Action Plan

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

Australia will establish a permanent dialogue mechanism with civil society, which includes a multi-stakeholder forum. The multi-stakeholder forum will 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.

As 'civil society' effectively means 'all other entities outside government' how will members of the general public become 'stakeholders' and have their voices and opinions heard and seriously considered? The government has already failed on this account as the members of the Interim Working Group it established did not include an individual who could be identified simply as a 'member of the general public'. In fact, the members comprising the IWG consisted of President-elect of the Law Council of Australia, an Associate Professor at

Monash, and a representative of the Uniting Church, together with three people who are members of groups that appear to have been established specifically to take advantage of the Open Government initiative (Ms Maree Adshead, Mr Peter Timmins and Ms Katherine Szuminska): <http://ogpau.govspace.gov.au/announcing-the-members-of-the-interim-working-group-for-australias-ogp-national-action-plan/>

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#### Commitment 5.2: Enhance public participation in government decision making

We will work together to **improve public participation in government decision-making** for **better policy development** and **service delivery outcomes**.

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

Improving public participation in government decision-making has not yet been advanced in any tangible way. See 5.1.

\* Words and phrases in green are ones which do not convey a shared and universal meaning and should have been clarified via a Glossary of terms to avoid misinterpretation which will, no doubt, be evident in the variety of responses elicited by this document and its fuzzy wording.