

Public Data Branch  
Department of the Prime Minister and Cabinet  
PO Box 6500  
Canberra ACT 2600

31 October 2016

Dear Public Data Branch,

I provide the below submission as feedback on the draft Open Government National Action Plan.

I authorise its publication online.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'J Warren', with a long horizontal flourish extending to the right.

Justin Warren  
Managing Director  
PivotNine Pty Ltd

# Comments on the Draft Open Government National Action Plan

These comments relate to the consultation draft of the Open Government National Action Plan published online at <http://ogpau.govspace.gov.au/have-your-say-on-australias-first-open-government-national-action-plan/>.

## Commitment 1.1

Commitment 1.1 states as its objective: *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.*

This broad objective is not reflected in the milestones listed in the Plan for this commitment. Instead, these commitments appear to entirely focus on the area of tax. Corruption, waste, fraud, and misconduct may relate to many areas of corporate operations not related to tax. To focus entirely on tax would appear to leave the majority of potential wrongdoing uncovered by any changes to legislation.

Whistle-blower protections should extend to those covering any form of corporate wrongdoing, not merely those relating to tax.

## Commitment 1.2

A beneficial ownership registry already exists in the form of ASIC's corporate database. This database should be publicly available and searchable, free of charge.

Instead, the government appears to be attempting to privatise this public resource (<https://www.theguardian.com/australia-news/2016/aug/29/privatising-asic-database-not-a-done-deal-coalition-says>) which is in direct opposition to this commitment.

Privatising this monopoly asset, and to simultaneously be looking at recreating a new registry of the same kind of information seems astonishingly wasteful. The search fees of \$52.2 million per year (as per the above linked article) seems tiny in comparison to other forms of government spending, such as on a national non-binding plebiscite.

Further, the ambition stated in this commitment does not appear to align with the **public accountability** aspect of the Relevance stated for this commitment. It appears focused on making this information available to "competent authorities" instead, when surely this information is already available to competent authorities? If it is not, how are those authorities able to fulfil their functions today?

## Commitment 1.3

It is not clear to me why disclosure of company payments and government revenues should be limited to the extractive industries. Surely if this is a good idea then it should relate to all industries equally?

What is particularly special about extractive industries that it requires a special commitment for transparency and accountability? Is there a particular issue with transparency and accountability in this industry today?

## Commitment 2.2

This commitment entirely ignores the privacy impacts of data collection and data sharing.

The assertion that "*effective policy responses require investment in joined-up data that can provide a strong evidence-base for policy decisions*" is made without—somewhat ironically—evidence that existing evidence bases are used for policy decisions. More data does not magically make for better analysis, nor does evidence based on a larger dataset inevitably lead to better policy. Policy makers are already free to ignore research data when creating policy today, and frequently do.

The negative impacts of increased data collection and integration are far too often hand-waved away in the pursuit of nebulous benefits. The benefits to individuals of maintaining privacy in an era of continuous monitoring are seemingly never evaluated.

The posture of this commitment is in stark contrast to that of other commitments to transparency from corporations and governments. Why is it that individuals are expected to provide near unlimited information to government, often legally compelled or required to receive services, while corporations and government itself is able to justify continued privacy and secrecy from the public?

Shouldn't government prioritise transparency of powerful organisations over invading individual privacy?

Where is the commitment to maintaining individual privacy? Where is the commitment to obtaining individual consent for the use of my personal, private information?

The Bill to amend the *Privacy Act 1988* recently introduced by the government is atrociously bad law. If an amendment must be made, how about making it an offence to release a dataset that enables personal information to be re-identified?

What about introducing a penalty for disclosing information that should have been kept private? What about providing a mechanism for individuals whose private information is disclosed without authorisation to receive financial compensation from the government entity that breached their trust? What about, quite frankly, placing the burden of keeping information safe on those who insist on collecting this information?

The posture of government, and other entities quite frankly, should be to not collect information they cannot immediately justify a need for. Other people's personal information should be a liability, not just an asset, and the incentive structures should be configured to encourage collectors to keep this information safe.

## Commitment 2.3

This commitment appears to largely relate to providing the barest of minimums of IT project and procurement information to the public. This is hardly ambitious, as this information should already exist.

Putting a programme manager's Red-Amber-Green dashboard on a website is trivial, and as someone who has seen more than their fair share of these dashboards, provides little to no actual insight into what's actually going on.

This focus on 'digital transformation' as an unalloyed good thing is perplexing. Automating a bad process with a computer doesn't make it better.

## Commitment 3.1

This commitment is vague. It appears to concentrate on creating options for a model of a framework. What even is that? A plan to maybe come up with an option for a plan, one day, perhaps?

This commitment should instead provide more concrete milestones.

Any amendment to the *Freedom of Information Act 1982* (FOI Act) should consider:

- ensuring that oversight functions are adequately funded as part of the legislation. Existing arrangements can be undermined by governments opposed to transparency by de-funding the offices charged with oversight.
- entities who abuse the FOI Act by being overly restrictive in their redactions or demands for processing payments should suffer sanctions.

Information that should have been published already should not require an FOI processing charge to be made available, and entities that require one should be penalised and the charges refunded in full, plus a percentage for wasting the requester's time.

Entities that are found to have redacted information from documents released under the FOI Act for which there was no good reason to redact it should be penalised.

The posture of government is currently too much in favour of individual data being fair game for collection and disclosure while government itself is frequently secretive and obstructionist.

## Commitment 3.2

While I applaud the general principles here, I urge caution when designing the metrics to be measured. What gets measured gets managed, and this can lead to perverse incentives.

When designing the metrics, take the time to consider how a perverse or obstructionist actor may choose to interpret them. For example, frequently useful information should not actually require a request under the FOI Act for it to be published, it should simply be readily available. However, a change to greater transparency may see a drop in the number of FOI requests. Is that good, or bad?

## Commitment 3.3

I am curious about the use of the term 'public data'. It appears to refer to datasets collected and managed by the government, but this is misleading. The information in many of these datasets is supplied by individuals. Data supplied by me in the course of accessing government services is still mine, it is not public. I have not consented to it being used for purposes other than that of obtaining government services.

A bias towards making collected data public has already caused some embarrassment to Data.gov.au with the release of Medicare Benefits Scheme and Pharmaceutical Benefits Schedule data that was able to be re-identified (<http://www.abc.net.au/news/2016-09-29/medicare-pbs-dataset-pulled-over-encryption-concerns/7888686>) (see my earlier comments on Commitment 2.2).

Greater consideration should be given towards how individual consent is managed, particularly with regard to the requirements of the *Privacy Act 1988*. I should not be required to consent to an unlimited number of unspecified research projects as a condition of accessing government services. I should not have to submit to the Panopticon in order to pay my taxes.

## Commitment 4.1

The most important aspect of this commitment is that of donations to political parties. Technology used for casting, scrutinising, or counting votes is a distraction.

Disclosure of donations to political parties should be made in real time so that they can be scrutinised as they happen. Disclosure months after the fact is neither reasonable, nor necessary. Listed corporations are subject to continuous disclosure requirements, so why not political parties?

Disclosure of political donations should be published in machine readable format so that they can be readily analysed by any interested parties, the better to hold political parties to account.

Anyone using an ABN has to file a Business Activity Statement with the Australian Tax Office every 3 months, so I don't see why political donations can't be tracked as least as frequently. Given the importance of elections in a democracy, more frequent disclosure of donations does not seem unreasonable.

Those departing political office should also be legally prevented from taking up a position with an entity they were responsible for overseeing. There have been too many instances of Ministers leaving office and immediately taking up a paid position at corporations with whom they had, or were likely to have had, official dealings while in office. The current code-of-conduct system is too easily exploited by those who have neither honour nor shame.

The *Corporations Act 2001* section 307C and the APES 110 Code of Ethics for Professional Accountants could be used to inform a legal requirement to guard against conflicts of interest when leaving public office.

## Commitment 4.2

The National Integrity Framework is an overly complex, toothless arrangement that appears aimed at cynically avoiding the creation of a federal Independent Commission Against Corruption similar to the state-based NSW ICAC.

There is no credible reason not to have a federal ICAC with similar powers to that of the NSW ICAC, but with jurisdiction that covers all aspects of the federal government.

Instead of mucking about with a complex array of inter-related entities, create a single, independent Commission. Or explain to the Australian people why this is a bad idea, because I can't see one other than fear that existing practices might be found to be corrupt.

“If you have nothing to hide, you have nothing to fear.”