

OPEN GOVERNMENT AND RIGHTS TO INFORMATION

PURPOSE

To ensure Australia maintains important reforms aimed at ensuring effective citizen access to official information, including:

- fully embracing the international Open Government Partnership (OGP), and
- recommitting to an effective federal right to information (RTI) regime including supporting the Office of the Australian Information Commissioner.

THE PROBLEM

Public access to official information, and open and transparent government more generally, are vital for preventing corruption from taking hold – and for uncovering it when it does. Corruption thrives where the community and the media do not have access to official information about how government is functioning.¹ For example, corruption is made difficult, if not impossible, when:

- Citizens can gain access to official records of meetings between public decision-makers and those who stand to benefit from their decisions;
- Persons engaged benefiting from corruption cannot use secret or ‘shell’ companies to hide or transfer their gains, because beneficial ownership information is collected and accessible;
- Business and the public have rights to reasons and information regarding government procurement decisions and other high risk areas for corruption.

Australian governments have been progressive in adopting freedom of information (FOI) and rights to information (RTI) regimes since the 1980s, as well as embracing new information technology as a tool of government engagement and openness. Australia has also committed to open data and information policies through the G20.

However, much needs to be done to maintain this commitment. In 2014, the Australian Government moved to de-fund and abolish the Office of the Australian Information Commissioner, the cornerstone of an effective FOI regime at federal level. In 2013, the Australian Government committed to join the international Open Government Partnership, but it took until November 2015 for it to commence the development of its national action plan. Action on key issues is vital for ensuring that access to information plays its role in Australian anti-corruption.

HISTORY AND PREVIOUS RECOMMENDATIONS

Access to Information: The Commonwealth and all state governments were early adopters of freedom of information (FOI) legislation in the 1980s, as part of their integrity systems. Since the early 2000s, governments have also increased the effectiveness of these regimes through stronger ‘rights to information’ (RTI) and increasing the enforceability of information rights through independent information commissioners.

More recently, FOI has come to be seen as part of a broader whole-of-government strategic information policy. This approach addressed the life cycle of government information and interconnects strategically with other relevant public policies. In such a strategic environment, governments adopt a 'push' model, proactively releasing government information without the need to make a freedom of information request. Citizens have a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access. FOI thus becomes a 'pull' application of last resort.

In 2010, the Federal Government established the Office of the Australian Information Commissioner (OAIC) to be responsible for freedom of information, privacy, and information policy functions. The OAIC oversees the operation of the Commonwealth Freedom of Information Act and reviews FOI decisions made by agencies and ministers.²

However, in 2014 the Federal Government withdrew funding and introduced legislation to abolish the OAIC and reassign its functions to other agencies and departments.³ The legislation failed to pass the Parliament, and is unlikely to do so, leaving the OAIC 'in limbo' and the regime in jeopardy.⁴ Abolition of the Office of Australian Information Commissioner and dispersal of its functions between agencies and departments risks fragmentation of access to information rights and tools, which have historically been crucial in preventing and exposing corruption.

More generally, all governments need to continue to move to more proactive disclosure of information (e.g. agency publication of gift registers), greater use of informal access, and modernisation of FOI and RTI rules to cover all digital information.

Open Government: Australian governments have also joined international trends, embracing new information technology as a tool of government engagement and openness, such as seen in 2009-2010 through the Australian Government's Gov 2.0 taskforce.⁵

In 2015, the Australian Government established the Digital Transformation Office along similar lines to the UK Digital Service Office to lead, guide and improve on-line service delivery. The Turnbull government also moved this office and responsibility for public data policy to the Department of Prime Minister & Cabinet, and appointed a Minister for Digital Government. A Public Data Policy Statement in December 2015 identified government-held data sets as a national resource and foreshadowed a new emphasis on release of anonymised data to help transform the growth of the economy, service delivery and policy outcomes.⁶

In 2011, the *Open Government Partnership* (OGP) was established by world leaders from Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom and the United States, as a multilateral initiative to promote transparency, increase civic participation, fight corruption, and harness new technologies to make government more open, effective, and accountable. Membership of the OGP requires governments to demonstrate a minimum level of commitment to open government principles in four key areas: Fiscal Transparency, Access to Information, Income and Asset Disclosures, and Citizen Engagement.⁷

In 2013, the Australian Government announced its intention to join the OGP.⁸ However, Australia failed to meet expectations that it would take the next step and develop its first open government action plan, in consultation with civil society, by June 2015.⁹

A consultation process for developing the first national action plan was finally announced on 17 November 2015.¹⁰ However, much needs to be done to realise the potential of this Partnership:

- The Australian Government has already indicated that its first action plan will focus on two of the OGP's five 'grand challenges': *Improving Public Services*, and *More Effectively Managing Public Resources* – with no public consultation on the other challenges, especially ***Increasing Public Integrity*** ('measures that address corruption and public ethics, access to information, campaign finance reform, and media and civil society freedom').

Many of the potential transparency gains from the OGP are cross-cutting issues that affect integrity in other sectors, other nations and multiple levels of government. In several

countries, including the UK, 'open government' has been used to establish registers of beneficial ownership of companies, lifting the veil on secret companies; while others have introduced FOI measures for the first time, improved budget transparency, tracked sub-national revenue transfers, implemented the Extractive Industries Transparency Initiative or developed comprehensive national anti-corruption plans.

- A multi-stakeholder oversight group, including civil society, is needed to ensure ongoing commitment to fulfilling the obligations of the OGP.

Experience elsewhere suggests an advisory body or stakeholder group can enhance the partnership and add value. The role of civil society in the OGP is critical, not just to ensure membership by Australia, but because the initiative is chaired equally between government and civil society in each country. In several countries, the relevant TI Chapter officially convenes the civil society component of the steering committee. TI Australia is committed to supporting an effective steering committee and OGP implementation in Australia.

TI AUSTRALIA'S POSITION

The Australian Government should ensure a full commitment to participation in the **Open Government Partnership** by:

- Committing to use open government reforms to meet the challenge of **increasing public integrity** in its national action plan, as an important element in increasing transparency and lowering corruption in Australia – and in particular by implementing the Extractive Industries Transparency Initiative, ensuring greater transparency in public procurement, and committing to a public register of corporate beneficial owners; and
- Commence consultations with civil society on its national action plan, including establishment a partnership with civil society organisations to co-chair the OGP steering committee.

The Australian Government should also **renew its full support** for a strong access to information regime by **withdrawing legislation** to abolish the Office of the Australian Information Commissioner, **re-instating funding** for the OAIC to fulfill its mandate in relation to freedom of information, privacy, and information policy, and ensuring continuing appointments of Australian Information Commissioners with full powers.

¹ TI 2003, Global Corruption Report, *Access to Information*
http://www.transparency.org/research/gcr/gcr_access_to_information.

² <http://www.oaic.gov.au/home/about-us>

³ http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5350

⁴ See <http://www.theguardian.com/politics/2015/sep/30/politicians-hypocritical-on-freedom-of-information-says-former-commissioner>.

⁵ <http://gov2.net.au/>

⁶ See <http://www.dpmc.gov.au/pmc/about-pmc/core-priorities/public-data-branch-within-dpmc/public-data-policy-statement>; <http://www.dpmc.gov.au/pmc/publication/australian-government-public-data-policy-statement>

⁷ As at June 2015, 65 countries were participants in the OGP: <http://www.opengovpartnership.org>

⁸ <http://www.opengovpartnership.org/country/australia>

⁹ http://www.opengovpartnership.org/sites/default/files/attachments/OGP_ODD_AUS.pdf

¹⁰ See <http://ogpau.govspace.gov.au/national-action-plan/>. The Mandarin, 18 November 2015:
<http://www.themandarin.com.au/57015-turnbull-signs-australia-open-government-partnership/?pgnc=1>.