

10 May 2018

## TI AUSTRALIA SUBMISSION TO PRIME MINISTER AND CABINET OPEN GOVERNMENT FORUM REGARDING THE OPEN GOVERNMENT PARTNERSHIP NAP 2

**TI Australia is concerned that the current (April 2018) prospective priority themes and commitments for the OGP NAP2 does not adequately meet the OGP commitment to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.**

Transparency International Australia (TIA) welcomes the opportunity to provide additional input to Prime Minister and Cabinet and the Open Government Forum (OGF) members on issues for consideration by the OGF.

These comments assume that NAP1 commitments will continue to be pursued.

Please note, it is the view of TIA that far greater attention be given to first ensuring the NAP2 meets the principles and grand challenges of the OGP as a precursor to identifying potential priority themes for NAP2.

TIA recommends the following issues be addressed in the OGP NAP2

### Establishment of a federal anti-corruption agency

TIA has for several years called for the establishment of a well-resourced, independent, broad based national anti-corruption agency to promote integrity and investigate, expose and deter corruption. Such an agency must have investigative powers and the capacity to hold public hearings and report publicly on investigation findings. An anti-corruption commission must be empowered to refer criminal offences to the relevant Director of Public Prosecutions.

The establishment of such an authority would greatly assist in ensuring a coordinated and strategic approach to preventing and deterring corruption.

### Whistle-blower protection

Whistle-blower protection must remain in NAP2. The OGP update on government commitments does not accurately reflect the status of this NAP1 commitment or the effectiveness of the Treasury Laws Amendment Bill to meet the broader OGP principles and grand challenges.

The Treasury Laws Amendment (Enhancing Whistle-blower Protections) Bill 2017 that was introduced into the Senate on 7 December 2017, does not create a single whistle-blower protection regime. The evidence and report (including the additional and dissenting reports) of the Senate Economics Legislation Committee show that there are significant gaps, inconsistencies, substandard provisions and workability questions, including inconsistencies with the Parliamentary Joint Committee (PJC) recommendations, which have not been addressed.



Many of the PJC recommendations and major areas of reform are not yet dealt with, and the timeframe for consultation (May-July) does not reflect the PJC review and recommendations.

## Lobbyists, political donations and revolving doors

A commitment for greater oversight and disclosure of lobbyists, including industry associations is required to restore trust and mitigate the risks of both policy and political capture. A commitment to ensure real time disclosure of all political donations is required to strengthen trust in the political and democratic processes. A commitment to ensure greater oversight (and longer cooling off periods) of the movement of staff between industry and government, particularly with regard to licencing and contract approval authorities, and to address the 'revolving door' and 'culture of mateship' corruption risks, be addressed in NAP2.

## Procurement, open contracting and access to information

A commitment to strengthen procurement, including the issuing of licences and contracts in corruption prone sectors such as mining, construction, defence and infrastructure. Such a commitment would include implementation steps to mitigate the associated risks of conflict of interest, discretionary powers of licensing authorities, adequate due diligence into the integrity, character and track record of project proponents (including their overseas operations), and transparency and disclosure of contract terms. See the TI [Combatting Corruption in Mining Approvals: Australian Snapshot](#).

A strengthened commitment to open contracting, (including the open contracting data standard) and access to information and community consultation (and consent with regards to Indigenous Peoples) on large scale projects.

This is particularly relevant to **infrastructure** projects, recognising the significant commitment of budget expenditure on a range of major infrastructure projects. A NAP commitment could align Australia's Infrastructure procurement practices with the [Open Contracting Data Standard](#), the [CoST Standard for Infrastructure](#), and support and implementation of the [Clean Contracting Manifesto](#). A NAP2 commitment could help ensure these principles are applied to Public-Private Partnerships. A commitment to open and clean contracting in infrastructure is scalable to all public procurement, including in health, defence and education. It would assist in restoring trust in government and strengthen efficiency.

For further information see the TI [Integrity Pacts in Public Procurement Guidelines](#), and the [Open Contracting Partnership](#).

To progress the agenda of the G20 Anti-Corruption and Infrastructure Working Groups, Transparency International Australia is in discussion with the Attorney Generals Department, the Sherpa and Treasury. There is potential to engage State Governments (where the majority of infrastructure spending occurs), and a NAP 2 commitment to open contracting would save governments money and time, deliver better goods and services for citizens, prevent corruption, and to create a better business environment for all.

**Access to information** must ensure consistent **disclosure and transparency of contract terms and opportunities for civic participation prior to execution**. For example, in WA, State Agreements (between the State and the developer) has no public notification or transparency of the terms of the negotiation prior to execution and being ratified by the WA parliament. State agreements are binding, operate for the life of the project, and can only be changed by mutual agreement of both parties. There is no opportunity for public interest groups to have input into the terms of reference of the negotiation or to challenge the agreements through the courts.

This lack of transparency creates the potential for government to be unduly influenced by the developer.



## Beneficial Ownership and EITI

The need for a NAP2 commitment to develop a public register of beneficial ownership (including trusts) as part of an anti-corruption integrity system remains. Limited progress has been made on this in NAP1, as is the case with progress towards EITI candidacy. The findings of the TI Australia research [Combating Corruption in Mining Approvals: Australian Snapshot](#), confirms the corruption vulnerabilities that exist in Australia's mining licence and approvals regimes in QLD and WA. Understanding who the real beneficial owners of any project, including robust due diligence into the integrity, character and track record of the project proponent (including their overseas activities), is needed to strengthen Australia's integrity systems and commitments to open government.

## Anti-Money laundering

The NAP2 include a commitment to Extending Australia's anti-money laundering regulation (AML/CTF) to non-financial business and professions, including real estate agents, lawyers, accountants, and legally operated trust accounts, in response to Australia's status as an attractive destination for money laundering.

The Australian **property market** is highly exposed to the risk of money laundering and illicit financial flows potentially gained through criminal activity, as outlined in a TI report [Doors Wide Open](#).

The 'gatekeepers' - non-financial entities - including real estate agents, accountants, and lawyers, are not required under current regulations to submit a **suspicious transaction report**.

Imposing a requirement to implement customer **due diligence procedures** and a risk-based approach, has the potential to enhance visibility of the real owners, including beneficial ownership of trust accounts, and company and trust structures established for both Australian and international clients. The establishment of a public beneficial ownership register in Australia will assist and is overdue.

An additional NAP2 commitment to include a commitment to address money laundering through **luxury goods** by including implementation steps to ensure due diligence by vendors of luxury goods, to mitigate the risks of money used for the purchase of luxury goods is not from the proceeds of crime. See [Tainted Treasures](#).

## Combating corruption and protecting human rights

All forms of corruption must be ended to secure the basic rights of all people and ensure a world where everyone can live in dignity. Corruption is a cross-cutting phenomenon which does not happen in isolation of other global concerns. Corruption in the public and private spheres and its proceeds are not confined within national borders, nor is its impact on human rights.

Corruption damages the legitimacy of leaders, and a loss of public support and trust for state and government institutions. Corruptions impacts on the ability of the state to protect and fulfil its human right obligations both in Australia and abroad.

A NAP 2 commitment to adopt a **human rights based** approach to combatting corruption would demonstrate an open and comprehensive strategy to promote effective institutions, appropriate laws, good governance, and the participation of all effective concerned stakeholders.

A NAP 2 commitment to develop a National Action Plan in support of Australia's endorsement of the United Nations Guiding Principles (UNGPs) on Business and Human rights is required.

The UN Working Group strongly encourages all States to develop, enact and update a national action plan on business and human rights as part of the State responsibility to disseminate and implement the Guiding Principles on



Business and Human Rights. They have developed [guidance](#). While Australia has made a commitment to develop a National Action Plan, little progress has been made. Including this in the OGP NAP2 could facilitate action.

Further, Australia could commit to supporting the **Global Magnitsky Act** (December 2016) - which imposes visa bans and assets freezes on human rights violators from around the world. Australia could make greater use of the **Commonwealth's Autonomous Sanctions** regime to impose sanctions on human rights violators and corrupt individuals in countries in which such crimes have been well documented. In February 2017, the United Kingdom passed a Magnitsky Amendment to their Criminal Finances Act, allowing the government to freeze assets of human rights violators from around the world. In October 2017, Canada introduced a similar Act.

## Responsible Business Conduct and the SDG's

The NAP2 include a commitment to responsible business conduct which promotes and calls for effective implementation of both the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (UNGP). Australia has failed to commit to developing a UNGP NAP, and the OECD Guidelines for Multinational Enterprises Australian National Contact Point does not function effectively, as confirmed in an [independent review](#). This would support greater awareness of the nexus between corruption and human rights and steps taken towards meeting SDG targets, particularly SDG 16 (peace, justice and strong institutions) and SDG 17 (partnership for the goals). Effective, accountable and transparent institutions and integrity systems at a national, regional and global level are critical to combat corruption and bribery in all forms including: illicit financial flows, money laundering, and tax evasion.

The 2030 Agenda for sustainable development recognises the corrosive effects of corruption.

Australia must actively contribute to the effective implementation of the SDG's to ensure targets are reached and the impacts of corruption in both developed and developing countries are identified, mitigated and where appropriate 'stolen assets' recovered. To achieve this effective, accountable and transparent integrity systems are needed. Inclusive, participatory and representative decision-making is essential, and strategic partnerships with governments, business and civil society at a national, regional and global level will assist in meeting SDG targets.

TIA made a recent [submission](#) on the SDGs in Australia.

## Social and Environmental Impact Assessment (SEIA) verification and disclosure

The NAP2 to include a specific commitment on independent verification of social and environmental impact assessments particularly with regards to large scale infrastructure, construction and extractives projects. It would include timely disclosure of the SEIA and opportunities for community consultation and response.

## Corruption in Sport

The past decade has seen the business of sport become a target for corruption. There are multiple entry points for corruption related to major sporting events. These include the selection process for bids and the related canvassing, the courting of international delegates and the use of high-priced consultants for global bidding. There are also corruption risks during the awarding process and related bribery risks. Finally, the planning and hosting of events and the attendant large-scale procurement and construction risks put local organising committees and relevant authorities



under intense pressure to provide the required infrastructure and logistics on time. We need a transparent process from the pre-bidding phase to the closing ceremony and far beyond<sup>1</sup>.

The NAP 2 should include a commitment to address the known corruption vulnerabilities in the bidding, awarding and planning of major sporting events.

END

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<sup>1</sup> [https://www.transparency.org/whatwedo/publication/global\\_corruption\\_report\\_sport](https://www.transparency.org/whatwedo/publication/global_corruption_report_sport)