

## **Australia's OGP National Action Plan; Commitment 3.1**

### **Resourcing of the OAIC**

#### **Submission to the Attorney-General's Department**

As discussed at our meeting last week, I forward to you some material I on the issues of the resourcing of the OAIC and its effect on its performance (-. <https://www.accountabilityrt.org/freedom-of-information-not-so-free-now-part-2-art-and-the-audit-of-the-implementation-of-the-freedom-of-information-act-1982/> - a link to the copy of the Accountability Round Table (ART) submissions to the Auditor-General prepared by an ART Committee including 2 retired Auditors-General).

Detailed financial information was limited but it will be seen that the resourcing of the FOI activities was significantly reduced when it was decided that it would be abolished. (See, in particular, the information in para 2.6 of the first submission comparing the OAIC Reports for 2013-4 and 2014-5; cf 2012-3, <https://www.ag.gov.au/Publications/Budgets/Budget2012-13/Pages/PortfolioBudgetStatements201213.aspx> ; alternative link [2012](#))). Since 2014-15 the funding provided has not been materially increased – even when it was decided in 2016 that the functions that had been passed on to the Ombudsman and the Attorney- General's Department in anticipation of the abolition of the OAIC would be returned to it.

I also attach a chronology of relevant events

[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/BudgetReview201617/Office-AIC#\\_ftn14](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201617/Office-AIC#_ftn14)

and an analysis of the history by Professor Mulgan as at September 2015

<http://www.canberratimes.com.au/national/public-service/the-slow-death-of-the-office-of-the-australian-information-commissioner-20150826-gj81dl.html>

ART is now considering the content of its proposed submission addressing the task identified in Milestone 1 – the better understanding how the “current information frameworks operate in practice and identifying issues that need to be considered”.

The task would have been much simpler if we had had an OAIC that had been adequately resourced to discharge all its statutory functions since 1 July 2014 as originally intended. For, in that situation, this review could focus on The Hawke Report recommendations and the information that would have been collected by the OAIC in discharging all its statutory function since that Report. I refer to the statement in the 2013 Hawke Report covering letter to the Attorney-General about the impact the OAIC:

“Until this framework was put in place, open government tended to be thought of simply through the FOI prism; that was useful but limited. Your announcement (here referring to the then Government's announcement in 2013 that Australia would join the Open Government Partnership) reflects the Government's decision to champion open government and what that means.

In essence, the Review found the recent reforms to be working well and having had a favourable impact in accordance with their intent. It has engaged more senior people in the process and triggered a cultural change across the Australian Public Service although there is

still some way to go on this aspect. Further effort, driven from the top will be required to embed a practice where compliance with the FOI act is not simply perceived as a legal obligation, it becomes an essential part of open and transparent government.”

The honouring of the recent commitment in the NAP to adequately resource the OAIC to address its statutory functions would have enabled that situation to be restored. You indicated that your understanding is that the commitment has been honoured. We cannot find any evidence in the Budget Papers supporting that conclusion. Is it addressed somewhere else?

Bearing in mind that the stated budgetary saving in abolishing the OAIC in 2014 was going to be a little over \$2.5 million per annum, and its centrality to our OGP commitments, it is difficult to understand why no increase was made on this occasion - unless the amount involved was so small that it was overlooked by everyone because the focus of attention and debate was on the big items? Or is reliance being placed on some other provision for funding in the Budget (e.g. for where there has been an oversight, or a contingency or error) or are there other sources to enable the modest sums needed in this instance to be provided once they are sorted out in the present implementation process of the NAP?

Whatever may be the present situation, we must not lose sight of the reality that the quality of the FOI system is at the heart of the objectives of the OGP. As its Articles of Governance state (p3),

“OGP participating governments are expected to uphold the values and principles articulated in the open government declaration and to consistently and continually advance open governance for the well-being of their citizens”

Unfortunately, our actions in and since the 2014 – 15 Budget have taken us back to where the FOI system was before the OAIC was introduced. As a result, for some three years as a participating nation in the OGP, we will be seen to have rejected the key objective of the OGP.

If these issues are not appropriately addressed in our implementation of our first National Action Plan, that failure will be what is remembered regardless of how impressive the quality of the implementation of any of the other Commitments may be.

I submit that it is critical that we establish at the outset of the implementation of Milestone 1, as a matter of urgency and in accordance with commitment 5.2, -,

- whether additional adequate provision has been made (and where it is) and, if it has not,
- how best to ensure that it is made.



Tim Smith

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