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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Australia Phase 4 – Additional follow-up report

2019 Two-year follow-up – updated 2021

JT03490284

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2021 Additional Follow-Up Report

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Addendum to the Summary and Conclusions by the Working Group on Bribery

Introduction¹

1. In December 2017, the Working Group on Bribery (WGB or Working Group) adopted its Phase 4 report, which evaluated and made recommendations on Australia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation).² On 11 December 2019, the WGB assessed the level of implementation by Australia of its Phase 4 recommendations, based on a progress report by the country.³

2. In December 2021, Australia presented a report to the WGB, providing information on the progress made in implementing Phase 4 recommendations 1(a), 2(b), 3, 4(a), 4(b), 5(a), and 6(b). In light of the information provided, the Working Group considers that recommendation 2(b) should be deemed fully implemented and converted into a follow-up issue, and recommendation 5(a) should be deemed partially implemented. The status of other Phase 4 recommendations remains unchanged. The Working Group invites Australia to report back in one year (i.e. by December 2022) on recommendations 5(a) and 6(b), as well as the legislative status of the adoption of the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 (CLACCC Bill).

¹ The evaluation team for this Phase 4 additional written follow-up evaluation of Australia was composed of lead examiners from Canada (**Mr. Mark Scrivens**, Senior Counsel, Department of Justice) and Korea (**Mr. Jinhee Lee**, National Prosecutor, International Criminal Affairs Division, Ministry of Justice), as well as members of the OECD Anti-Corruption Division (Ms. Elisabeth Danon and Ms. Alejandra Tadeu, Legal Analysts). See [Phase 4 Procedures](#) paragraph 60 concerning 'Updates to the written follow-up report'.

² Australia, Phase 4 Monitoring Report: <https://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf>.

³ Australia, Phase 4 Two-Year Follow-Up Report: <https://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>.

3. The Working Group's summary and conclusions on the Phase 4 recommendations for which the level of implementation has been reassessed are presented below. They should be read in conjunction with the report prepared by Australia, annexed to the present document. They constitute an addendum to the Summary and Conclusions adopted by the WGB in December 2019.

Regarding the investigation and prosecution of foreign bribery:

- **Recommendation 2(b)** – *Fully implemented*: The budget for the Commonwealth Director of Public Prosecution (CDPP) sharply increased in the 2018-2019 term and there was a considerable surplus for the 2020-2021 term, which the CDPP decided to retain. The increase in the number of foreign bribery cases being prosecuted since the 2019 written follow-up, from two to five, suggests that the CDPP is currently adequately resourced. However, considering that the *ad hoc* funding model remains in place, and the importance of appropriately resourcing prosecution, this recommendation will be converted into a follow-up issue, and the Working Group will continue monitoring the CDPP's budget, to ensure that the agency is adequately funded to prosecute foreign bribery cases.

Regarding the liability of legal persons:

- **Recommendation 5(a)** – *Partially implemented*: At the time of the additional follow up (December 2021), foreign bribery proceedings are being pursued or considered against legal persons in three cases, which constitutes a positive development from the sole prosecution ongoing in December 2019. At the time, the WGB had also welcomed the reintroduction before Parliament of the CLACCC Bill, after lapsing in early 2019. This bill, which aims to introduce a deferred prosecution agreement scheme and a new offence for legal persons of failure to prevent foreign bribery, has yet to be passed by the Australian Parliament and the Working Group is concerned the Bill may lapse once again due to the upcoming federal election in 2022.

2019 – Summary and Conclusions by the Working Group on Bribery

Summary of findings⁴

1. In December 2019, Australia submitted its Phase 4 written follow-up report to the OECD Working Group on Bribery (Working Group). The report outlined Australia's efforts to implement the 13 recommendations and to address the follow-up issues identified during its [Phase 4 evaluation](#) in December 2017. In light of the information provided, the Working Group concludes that Australia fully implemented 6 recommendations, partially implemented 3 recommendations, and did not implement 4 recommendations. The Working Group considers that Australia has deployed efforts to address a number of Phase 4 recommendations, notably to enhance detection of foreign bribery. In particular, the adoption of a law to enhance protection of private sector whistleblowers is a significant accomplishment, which the Working Group hopes will contribute to eradicate retaliation against individuals reporting foreign bribery suspicions. Measures have also been taken to increase reporting by key government agencies, some of which have started to bear fruit, although guidance on laundering proceeds of bribes has yet to be developed. Whilst retaining the multi-agency approach to investigations, the Fraud and Anti-Corruption Centre (FAC Centre) model for investigations has now matured into a specialised team that is funded with AUD 25.9 million over four years solely for foreign bribery investigations. The Working Group also welcomes the publication of the Best Practice Guideline on corporate self-reporting, as well as initiatives to pursue its engagement with the private sector.

2. On the other hand, the Working Group is concerned about the continued low level of foreign bribery enforcement in Australia given the size of Australia's economy and the high-risk regions and sectors in which its companies operate. In total, since the entry into force of Australia's foreign bribery legislation 20 years ago, 2 corporate entities and 6 individuals have been sanctioned in 2 cases. Since Phase 4, the status of foreign bribery enforcement is as follows:

- 1 foreign bribery case has been concluded, resulting in the sentencing of 1 natural person to 2.5 years of imprisonment, with 2 years suspended;
- Prosecutions are ongoing in 2 cases, compared with 1 ongoing and 1 finalised prosecution at Phase 4;
- 8 cases are currently under investigation involving 31 persons, compared to 19 cases under

⁴ The evaluation team for this Phase 4 two-year written follow-up evaluation of Australia was composed of lead examiners from **Canada** (*Mr. Mark Scrivens*, Senior Counsel, Department of Justice of Canada, and *Mr. Ray Moos*, Inspector, Royal Canadian Mounted Police) and **Korea** (*Mr. Seongjin Park*, Public Prosecutor, Ministry of Justice of the Republic of Korea) as well as members of the **OECD Anti-Corruption Division** (*Ms. Elisabeth Danon* and *Ms. Alejandra Tadeu*, Legal Analysts). See [Phase 4 Procedures](#), paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

investigation in Phase 4. Out of the 8 cases, 5 were active in Phase 4, 2 are new cases, and 1 was returned to active investigation from the Commonwealth Director of Public Prosecution (CDPP);

- Out of the 19 matters under investigation in Phase 4, 11 have been concluded without prosecution, 5 remain active, 2 are being prosecuted, and 1 other matter has been referred to the CDPP by the Australian Federal Police (AFP); and
- 49 allegations, including 24 that have emerged since Phase 4, have been concluded at the evaluation or investigation stage without prosecution.

3. At the time of Phase 4, in 2017, the Working Group welcomed increased foreign bribery enforcement efforts by Australia; it nevertheless noted that “Australia must continue to increase its level of enforcement of foreign bribery and related offences against individuals and companies” and “anticipate[d] that enforcement will further increase by the time of Australia’s two-year written follow-up report.”⁵ Measures noted in Phase 4 to improve Australia’s institutional framework to investigate and prosecute foreign bribery have yet to translate into meaningful progress. On corporate liability, the Working Group finds Australia’s low level of cases against legal persons very concerning and hopes that Australia will address its long-standing challenges in attributing wrongdoing to corporate entities. Two resolutions against companies were concluded in one case in 2011, but not one legal person has been sanctioned for foreign bribery or a related offence since. One company is currently under prosecution. The Working Group is hopeful that the increased budget and new staff dedicated to the investigation of foreign bribery within the AFP will yield positive results and encourages Australia to ensure appropriate funding for foreign bribery prosecutions by the CDPP.

4. In November 2018, the Securrency/Note Printing Australia (NPA) case was concluded, following the sentencing of the last individual prosecuted in this case. In total, from 2011 to 2018, five persons were sanctioned under the foreign bribery offence, including Securrency and NPA, both of which pleaded guilty in 2011. However, the case was subject to suppression orders as it was ongoing, which precluded the Working Group from properly assessing it in previous phases of evaluation.⁶ This case concerned bribery of foreign public officials in several countries to secure contracts to produce bank notes for Securrency and NPA, both subsidiaries of the Reserve Bank of Australia. The companies and nine of their former executives and sales agents were charged with foreign bribery, conspiracy to commit foreign bribery, and/or false accounting. In previous phases of evaluation, the Working Group found troubling that the case had been subject to suppression orders.⁷ Following its conclusion, the suppression orders were lifted and, therefore, the Working Group had in the present review the opportunity for the first time to closely examine its outcome, which raises serious questions regarding Australia’s record in efficiently pursuing and sanctioning foreign bribery. In particular:

- After charges were laid, “the CDPP was unable to pursue the prosecution against four accused persons whose trials were permanently stayed following unlawful compulsory examinations conducted by the Australian Crime Commission.”⁸
- The five individuals prosecuted pleaded guilty and received prison sentences, all of which were effectively suspended for the entire time imposed. ⁹ Securrency’s former Chief Executive Officer received a 2.5 years’ imprisonment sentence but did not serve time in

⁵ Phase 4 report, Executive Summary.

⁶ The suppression orders in the Securrency/NPA case were lifted in November 2018.

⁷ Phase 3 Written Follow-Up, para. 2: “[t]he Working Group noted that suppression orders which prevented a full discussion of the Securrency/NPA case at the time of Phase 3 remain in place. In addition, a new suppression order was issued in June 2014 raising further questions for the Group. The existence of these suppression orders continues to prevent in-depth discussion in the WGB of Convention-related issues in the Securrency/NPA case.”

⁸ www.cdpp.gov.au/case-reports/securrency-and-note-printing-australia-foreign-bribery-prosecutions-finalised.

⁹ One person was convicted for foreign bribery and false accounting and two persons were convicted for false accounting.

custody, as he was released on the condition of good behaviour for a period of 2.5 years. None of the five individuals received a pecuniary sentence.¹⁰

- The two companies that pleaded guilty in 2011 were respectively sentenced to fines totalling AUD 480 000 (approx. USD 505 000)¹¹ for Securrency and AUD 450 000 (approx. USD 468 000) for NPA.¹² Considering that the estimated amount of the bribes paid was AUD 7 million (USD 7.21 million) and that the value of the contracts surpassed AUD 100 million (USD 103 million), these amounts seem remarkably low. Confiscation was imposed jointly on the two companies in a pecuniary order amounting to AUD 21 666 482 (approximately USD 22 316 000).
- Even though the pecuniary penalty order imposed on the legal persons was the largest ever in Australia, the overall amount of the sanctions imposed on natural and legal persons in this case appears insufficient, and raised serious doubts as to Australia's ability to impose effective, proportionate and dissuasive criminal penalties in practice. However, the statutory maximum penalty was substantially increased and currently consists of the greater of AUD \$21 million, three times the value of the benefit obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence, or 10% of annual turnover of the company during a 12 month period ending at the end of the month in which the conduct constituting the offence occurred (if the value of the benefit cannot be ascertained).

5. The Working Group's summary and conclusions with respect to specific Phase 4 recommendations are presented below. They should be read in conjunction with the report prepared by Australia.

Regarding detection of foreign bribery:

- ◆ *Recommendation 1 (a) – Partially implemented:* The Working Group commends Australia on actions taken to improve detection of foreign bribery through its money laundering system, including the Government's recent Bill on restrictions to cash payments. The Australian Transaction Reports and Analysis Centre (AUSTRAC) published one case study on money laundering predicated on foreign bribery but the information contained therein is very limited. AUSTRAC conducted targeted outreach to a selection of reporting entities that provide financial services but no particular guidance was provided in respect to incoming flows of foreign bribery proceeds in the real estate sector. No reporting obligations were introduced for non-financial entities.
- ◆ *Recommendation 1 (b) – Fully implemented:* The new protections for private sector whistleblowers constitute a significant development in Australia's legal framework. In particular, it is now clear that disclosures of the foreign bribery offence are covered under the whistleblower protections. The Working Group also views as very positive the elimination of the good faith requirement for the applicability of these protections. However, the private sector and public sector protections are still not fully aligned. This could be further considered in the course of implementing the recommendations from the Joint Parliamentary Committee on Corporations and Financial Services (JPCFCS) on whistleblower protections and the Moss Review (an independent review of the Public Interest Disclosure Act 2013). The Working Group will follow up on this point and the impact of the new protections in practice, in particular given the significant adverse effects that the whistleblowers in the Securrency/NPA case were subject to before the private sector reforms were enacted.¹³ As regards awareness-raising, the Australian Securities and Investments Committee's (ASIC) efforts to broadcast the legislative amendments appear to have been broad-reaching and efficient.

¹⁰ www.cdpp.gov.au/case-reports/securrency-and-note-printing-australia-foreign-bribery-prosecutions-finalised.

¹¹ All values in USD are calculated as per the average exchange rate as of July 2012.

¹² Under legislation in force at that time the maximum total fine that could have been imposed was AUD 990 000.

¹³ www.cdpp.gov.au/case-reports/securrency-and-note-printing-australia-foreign-bribery-prosecutions-finalised.

- ◆ *Recommendation 1 (c) – Fully implemented:* The Australian Taxation Office Guidelines were amended and currently include an explicit warning about the risk of tipping off taxpayers in the context of covert audits, in line with the Working Group’s recommendation.

Regarding the investigation and prosecution of foreign bribery:

2021 update: *Recommendation 2(b) – Fully implemented.*

- ◆ *Recommendation 2 (a) – Fully implemented:* The Working Group welcomes the significant increase in the AFP’s budget specifically allocated to foreign bribery investigations in June 2019, and the hiring of specialised, full-time new staff. However, the AFP has only referred three foreign bribery investigations to the CDPP for prosecution since Phase 4. In addition, the mandate of the FAC Centre, which was in charge of evaluating foreign bribery allegations since 2014, shifted to other offences in September 2019. As the point of entry for referrals, the FAC Centre helped streamline the evaluation phase of investigations, and its multidisciplinary team of experts ensured the solidity of referrals relayed for investigation. Australia reports that the additional budget has been allocated in part to fund the composition of a new team within the AFP in charge of evaluating foreign bribery allegations, with the intention of replicating the multi-disciplinary model of the FAC Centre. The Working Group will follow up on the adequacy of resources allocated to the investigation of foreign bribery.
- ◆ *Recommendation 2 (b) – Partially implemented:* The increase in the AFP’s resources and institutional developments did not translate into an increase in foreign bribery referrals to the CDPP for prosecution. The fact that the current number of prosecutions is low should not dismiss the importance of allocating sufficient resources within the CDPP to the prosecution of foreign bribery. Currently, the CDPP has the possibility to request additional budget from the Government if faced with an increase in foreign bribery cases. The Working Group questions whether the *ad hoc* funding model may constrain prosecutorial capacity, as a fixed budget is necessary to ensure that the CDPP can maintain its level of engagement in the pre-prosecution stage and the necessary expertise to handle prosecution of foreign bribery cases. Australia has nevertheless given assurances that this model currently does not create the aforementioned problems. In addition, the lack of transparency in budgetary allocation within the CDPP for foreign bribery prevents the Working Group from adequately assessing the sufficiency of the CDPP’s resources specifically allocated to foreign bribery.

Regarding international cooperation:

- ◆ *Recommendation 3 – Not implemented:* Australia has taken no steps to ensure that it can provide mutual legal assistance to Parties to the Convention that apply civil or administrative liability to legal persons for foreign bribery offences. However, Australia reports that its authorities are not aware of any instance where a foreign state has sought MLA for civil or administrative proceedings against a company for foreign bribery. More broadly, they are also not aware of any instance where this has prevented Australia providing assistance to a foreign state. According to Australian authorities, if a request of this nature were to be sought, they would work with their counterparts to explore opportunities for Australia to provide assistance in a manner that is consistent with its legal system.

Regarding sanctions and confiscation:

- ◆ *Recommendation 4 (a) – Partially implemented:* In Phase 4, the Working Group noted that, in its only concluded foreign bribery case at that time, practical considerations prevented confiscating proceeds derived from the bribe, and Australia did not confiscate an equivalent amount. Since then, Australia has not imposed confiscation in foreign bribery-related cases but, as the suppression orders on the Secrecy/NPA case were lifted in 2018, information on the confiscation imposed in 2011 to these two

companies came to light. A pecuniary penalty order was imposed on the two companies, which means that the matter was resolved by consent with the prosecution. Securrency and NPA paid a joint amount of AUD 21 666 482 (approximately USD 22 316 000). The Phase 3 Report noted that the value of pecuniary penalty orders is “generally equal to the value of the benefits a person derives from the offence”.¹⁴ Australia reports that this is how the confiscation amount was calculated in this case. The Working Group cannot verify this information because the pecuniary penalty order was not disclosed due to legal professional privilege. However, the Working Group notes that this amount appears very low, given that the amount of the contract was more than AUD 100 million (USD 103 million).

- ◆ *Recommendation 4 (b) – Not implemented:* Australia has taken no steps to issue guidelines to clarify procurement agencies’ discretion in relation to debarment of companies or individuals convicted of foreign bribery offences. Australia reports that this recommendation is currently under consideration.

Regarding the liability of legal persons:

2021 update: *Recommendation 5(a) – Partially implemented.*

- ◆ *Recommendation 5 (a) – Not implemented:* In Phase 4, despite several allegations of foreign bribery involving legal persons, criminal charges against companies had only been brought in the Securrency/NPA case. Following these resolutions, no further case has been concluded against a legal person for a foreign bribery or related offence. One prosecution against a legal person is ongoing, but this is insufficient to consider that Australia is proactively pursuing criminal charges against legal persons. The Working Group welcomes the reintroduction before Parliament of the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 (CLACCC), which had lapsed earlier this year. The bill aims to introduce a deferred prosecution agreement instrument (DPA) and a new offence of failure to prevent foreign bribery.
- ◆ *Recommendation 5 (b) – Fully implemented:* The Working Group welcomes the Best Practice Guideline on Self-Reporting of Foreign Bribery and Related Offending by Corporations (the Guideline), which was released on 20 December 2017, shortly after the adoption of Australia’s Phase 4 Report. The Guideline is a clear and comprehensive document which describes in some detail “the principles and processes law enforcement agencies will adopt following self-reporting by a company”.¹⁵ The Guideline provides for its own re-examination, should a DPA instrument be introduced, which should help ensure that it operates harmoniously with a potential DPA process. The Working Group also commends Australian law enforcement agencies on their efforts to raise awareness of the Guideline.
- ◆ *Recommendation 5 (c) – Fully implemented:* Although further monitoring will be needed, Australia has taken tangible measures to ensure companies know where to go to report knowledge or suspicion of foreign bribery, namely by having several agencies participate in awareness-raising activities.

Regarding engagement with the private sector:

- ◆ *Recommendation 6 (a) – Fully implemented:* Australia has taken a multi-agency approach to engage with the private sector, with numerous initiatives currently underway. The AFP has developed a public-private partnership (PPP) to increase dialogue and knowledge sharing with the private sector and thus strengthen the fight against foreign bribery. Tying this with recommendation 5(c), one of the expected outcomes of this PPP is to enhance companies’ knowledge of where to report foreign bribery.
- ◆ *Recommendation 6 (b) – Not implemented:* In Phase 4, the Working Group welcomed the introduction before Parliament of the CLACCC which, among other things, aimed to create a “failure to prevent

¹⁴ Para. 39.

¹⁵ <https://www.cdpp.gov.au/publications/best-practice-guideline-self-reporting-foreign-bribery-and-related-offending>.

foreign bribery” offence. It recommended that, should such an offence be introduced, Australia closely engage with the private sector to prepare guidance on the establishment and implementation of adequate compliance measures with regard to the new offence. The CLACCC lapsed in Parliament in July 2019, but was reintroduced on 2 December 2019. The Working Group notes that, following the reintroduction of the CLACCC, the Australian Government is engaging in a public consultation process for a draft guidance. However, this cannot be taken into account for the purposes of the present assessment, as the bill creating the offence of “failure to prevent” itself has yet to pass in Parliament.

Dissemination of the Phase 4 report¹⁶

6. The Attorney-General’s Department (AGD) website contains a link to reports on the OECD website, and the report is referenced on AUSTRADE’s website. The Parliament of Australia published a research paper on Australia’s implementation of the OECD Anti-Bribery Convention, including a summary of the Phase 4 evaluation, in August 2019. The report has been included in presentations by the AGD, ASIC and AFP. Australia does not report sharing the Phase 4 Report directly with relevant stakeholders, in particular those involved in the Phase 4 on-site visit.

Conclusions of the Working Group on Bribery

7. Based on these findings, the Working Group concludes that recommendations 1(b), 1(c), 2(a), 5(b), 5(c) and 6(a) have been fully implemented; recommendations 1(a), 2(b) and 4(a) have been partially implemented; and recommendations 3, 4(b), 5(a) and 6(b) have not been implemented. The Working Group invites Australia to report back in writing within two years (i.e. by December 2021) on outstanding recommendations 2(b), 4(a) and 5(a), as well as on the status of foreign bribery enforcement. As per the Phase 4 procedures (para. 60), Australia may also ask for additional recommendations to be re-assessed at that time. The Working Group will continue to monitor follow-up issues as case law and practice develop. Australia will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

¹⁶ The [Phase 4 procedures](#), para. 50, provide that “the evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation”.

Annex 1: 2021 Additional Written Follow-Up Report by Australia

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#).

Please submit completed answers to the Secretariat on or before: **5 November 2021**

Name of country:	Australia
Date of approval of Phase 4 evaluation report:	15 December 2017
Date of approval of Phase 4 two year follow-up report:	11 December 2019
Date of information:	5 November 2021, with additional information provided on 16 November 2021

PART I: RECOMMENDATIONS FOR ACTION

Regarding Part I, responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Text of recommendation 1 (a):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:

- a) Increase the potential for detecting foreign bribery through its Anti-Money Laundering system by:
 - i. Raising awareness of foreign bribery as a predicate offence for money laundering, including by providing additional guidance with case studies and typologies to reporting entities regarding the detection of foreign bribery predicated on money laundering (in particular, through the real estate sector) [Convention Article 7], and
 - ii. Taking appropriate steps to address the risk that the proceeds of foreign bribery will be laundered through the Australian real estate sector, in line with the FATF standards. These should include specific measures to ensure that the Australian financial system is not the sole gatekeeper for such transactions [Convention Article 7], and

Action taken as of the date of the follow-up report to implement this recommendation:

Publication of new money laundering risk assessments containing information about foreign bribery as predicate offence

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's financial intelligence unit, with regulatory responsibility for anti-money laundering (AML) and counter-terrorism

financing (CTF). AUSTRAC monitors financial transactions to identify money laundering, organised crime, tax evasion, welfare fraud, terrorism and other serious financial crime.

Most real estate transactions pass through financial institutions that are regulated for AML/CTF purposes. Reportable transactions (those involving cash transfers of A\$10,000 or more, all international funds transfers, and any suspicious transactions) that pass through financial institutions provide authorities with some visibility of potential money laundering through real estate. This framework increases the resilience of Australia's real estate sector to criminal exploitation, including in relation to laundering the proceeds of foreign bribery.

AUSTRAC publishes risk assessments on an ongoing basis to support financial institutions and other reporting entities to better understand the money laundering risks they may face, including money laundering predicated on foreign bribery and other forms of corruption.

On 11 December 2020 AUSTRAC published a ML/TF [risk assessment of junket tour operations in Australia](#)¹⁷ which noted intelligence linking the criminal exploitation of junket tour operations with the purchase of real estate in Australia. The publication was accompanied by a [media release](#)¹⁸. This risk assessment raises awareness about the junket tour operations and casinos sectors' exposure and vulnerability to money laundering risk predicated on corruption on page 24 under 'Corruption', page 29 under 'Foreign Politically Exposed Persons' and on page 39 under 'Transactions with Higher-Risk Jurisdictions'.

On 25 June 2021 AUSTRAC published a ML/TF [risk assessment of the non-bank lending and financing sector](#)¹⁹, accompanied by a [media release](#)²⁰. This risk assessment provides guidance to the non-bank lending and financing sector about money laundering risk predicated on bribery and corruption involving politically exposed persons on page 26.

On 6 September 2021 AUSTRAC published four ML/TF risk assessments of Australia's banking sector, accompanied by a [media release](#)²¹. These risk assessments provide guidance on the sector's exposure to money laundering predicated on foreign bribery and corruption and include case studies on suspicious matter reports relating to the real estate sector:

1. [Australia's major banks risk assessment](#)²²

This risk assessment provides guidance to Australia's major banks on the ML/TF risks the subsector faces at the national level. Its primary aim is to assist major banks to identify and disrupt ML/TF risks to Australia's financial system and report suspected crimes to AUSTRAC. This assessment identifies a risk of money laundering predicated on foreign bribery on page 37.

2. [Australia's other domestic banks risk assessment](#)²³

¹⁷ <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/junket-tour-operations-australia-risk-assessment-2020>

¹⁸ <https://www.austrac.gov.au/news-and-media/media-release/junket-tour-operations-risk-assessment>

¹⁹ https://www.austrac.gov.au/sites/default/files/2021-06/AUSTRAC_RiskAssessment2021_NonBankLenders.pdf

²⁰ <https://www.austrac.gov.au/austrac-releases-non-bank-lending-and-financing-sector-risk-assessment>

²¹ <https://www.austrac.gov.au/news-and-media/media-release/austrac-releases-four-new-australian-banking-sector-risk-assessments>

²² https://www.austrac.gov.au/sites/default/files/2021-09/Major%20Banks%20ML_TF_Risk%20Assessment%202021.pdf

²³ https://www.austrac.gov.au/sites/default/files/2021-09/Other%20Domestic%20Banks_Risk%20Assessment_2021.pdf

This risk assessment provides guidance to other domestic banks on the ML/TF risks the subsector faces at the national level. Its primary aim is to assist the subsector to identify and disrupt ML/TF risks to Australia's financial system, and report suspected crimes to AUSTRAC. This assessment identifies a risk of money laundering predicated on foreign bribery on page 29.

3. [Foreign subsidiary banks in Australia risk assessment](#)²⁴

This risk assessment provides guidance to foreign subsidiary banks on the ML/TF risks the subsector faces at the national level. Its primary aim is to assist the subsector to identify and disrupt ML/TF risks to Australia's financial system, and report suspected crimes to AUSTRAC. This assessment identifies a risk of money laundering predicated on foreign bribery on page 35.

4. [Foreign bank branches in Australia risk assessment](#)²⁵

This risk assessment provides guidance to foreign bank branches in Australia on the ML/TF risks the subsector faces at the national level. Its primary aim is to assist the subsector to identify and disrupt ML/TF risks to Australia's financial system, and report suspected crimes to AUSTRAC. This assessment contains a case study on foreign bribery as a predicate offence on page 29. The case study outlines a suspicious matter report relating to a private banking customer who had bribed a foreign public official in exchange for real estate development opportunities. The risk assessment also provides guidance on politically exposed persons as an attractive target for bribery and corruption on page 36.

In December 2020 AUSTRAC launched a new quarterly newsletter, [InBrief](#)²⁶, of news and updates for industry, including links to new guidance material and resources. The four banking risk assessments were featured in Issue 4 published September 2021.

Passage of reforms to better target money laundering predicated on foreign bribery, including proceeds laundered through the real estate sector

The [Crimes Legislation Amendment \(Economic Disruption\) Act 2021 \(Cth\)](#)²⁷ (the Act) was passed by Parliament on 3 February 2021. The Act strengthened the money laundering offences in Division 400 of the *Criminal Code Act 1995* (Cth) to better enable law enforcement to target the increasingly complex methodologies employed by modern money laundering networks, including entities that launder the proceeds of foreign bribery.

Consistent with OECD Working Group on Bribery findings, a substantial amount of criminal proceeds globally are generated from foreign bribery. The strengthened offences ensure that money laundering syndicates and other persons, including those who seek to launder criminal proceeds through the real estate sector, cannot avoid criminal liability by remaining wilfully blind to the fact that funds were derived from bribery, by hiding evidence of bribery in foreign haven jurisdictions or by dealing with proceeds of bribery at an arm's-length.

Under the strengthened offences, it will not be necessary for law enforcement to obtain evidence of bribery from overseas jurisdictions in order to establish money laundering. Instead, liability will be established if, given the circumstances in which funds were dealt with in Australia, there is an irresistible inference that the funds were derived from crime generally.

²⁴ https://www.austrac.gov.au/sites/default/files/2021-10/AUSTRAC_RiskAssessment2021_Foreign%20Subsidiary%20Banks_web_v2.pdf

²⁵ https://www.austrac.gov.au/sites/default/files/2021-09/Foreign%20Bank%20Branches%20in%20Australia_Risk%20Assessment_2021.pdf

²⁶ <https://www.austrac.gov.au/news-and-media/inbrief>

²⁷ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6589

If no action has been taken to implement recommendation 1 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Australia's Phase 4 follow-up report adopted in December 2019 referenced the introduction of the *Currency (Restrictions on Use of Cash) Bill 2019* (Cth) (the Bill) into Parliament. On 3 December 2020 the Senate passed a motion to discontinue consideration of the Bill. The Australian Government will continue to assess the future of this Bill in light of the economic impact of the COVID 19 pandemic.

Text of recommendation 2 (b):

2. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Australia:

b) Continue to resource CDPP so it can effectively prosecute foreign bribery cases at the rate they are expected to be generated by AFP [Convention Article 5, 2009 Recommendation Annex I B)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Commonwealth Director of Public Prosecutions (CDPP) has provided the following advice in relation to resourcing considerations:

The CDPP continues to provide pre-brief advice to the AFP [Australian Federal Police] and other agencies such as ASIC [Australian Securities and Investments Commission] in respect of their foreign bribery and allied investigations. The CDPP currently has thirteen foreign bribery matters at various stages of proceeding in court. These include prosecutions under Operation Carambola, Operation Zurzach, Operation Trig, Operation Amber and Operation Telchar. The CDPP has had no difficulty in resourcing these matters. For example, the CDPP provides timely advice in the investigative stages of matters. Generally, once a brief of evidence is referred to the CDPP, more than one CDPP lawyer is assigned to work as part of a team in the assessment of the matter and this is also the case once a matter progresses to court. Counsel is also briefed in respect of these matters. The CDPP draws its lawyers from a dedicated Commercial, Financial and Corruption unit who have expertise in corruption and fraud-type matters. In short, the CDPP has been able to commit dedicated resources to the prosecution of foreign bribery and related matters and has not experienced any resourcing constraints. The CDPP does not foresee any difficulties in respect of resourcing.

If no action has been taken to implement recommendation 2 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3:

3. Regarding international cooperation, the Working Group recommends that Australia, to the fullest extent possible within its legal system, ensure that a broad range of MLA can be provided to Parties to the Convention that apply civil or administrative (and not criminal) liability to legal persons for foreign bribery [Convention Article 9.1].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

As previously reported in December 2019, Australia is not aware of any instance where Australia's

current MLA framework has prevented Australia from considering requests for assistance from a foreign state in civil or administrative matters.

Text of recommendation 4 (a):

4. Regarding sanctions and confiscation, the Working Group recommends that:

- a) Where appropriate, Australian authorities pursue confiscation of bribe payments and their proceeds [Convention Article 3.3], and

Action taken as of the date of the follow-up report to implement this recommendation:

Foreign bribery matters involving confiscation action

Since December 2019 Australia can report the following foreign bribery matter in which confiscation action under the *Proceeds of Crime Act 2002* (Cth) has commenced. Criminal and confiscation action proceedings for this matter are currently ongoing. The AFP-led Criminal Assets Confiscation Taskforce has several other foreign bribery matters in which confiscations proceedings are being considered.

Operation Carambola

An individual (Dennis Teen) who is an Australian property developer is accused of paying Malaysian government officials A\$4.75m in bribes to facilitate the purchase of a property development in Melbourne by the Malaysian government. The property was sold in 2013 to a Malaysian government-owned entity for A\$22.6m, inflated from A\$17.85m. The AFP commenced its investigation into the individual and his associated companies in 2015.

Update since December 2019: In July 2020, the individual was charged with foreign bribery offences as well as false accounting offences under Victorian (state) legislation. In August 2020, the Commissioner of the AFP obtained restraining orders over property including two real properties owned by the accused individual's wife, a company of which the accused's wife was the sole director and bank accounts held in the name of the accused and his wife. The value of these restrained assets is estimated to be approximately A\$1.6m. Further information is available in the [AFP media release](#)²⁸ issued 4 September 2020 on this matter.

Amendments clarifying the operation of the Proceeds of Crime Act 2002 (Cth) in relation to assets located offshore

Australia's asset confiscation regime allows law enforcement to pursue both non-conviction based and conviction based confiscation actions against individuals for a pecuniary penalty or directly in relation to the criminal proceeds or instruments themselves.

The [Crimes Legislation Amendment \(Economic Disruption\) Act 2021 \(Cth\)](#)²⁹ (the Act), passed by Parliament on 3 February 2021, also made extensive amendments to the *Proceeds of Crime Act 2002* (POCA), Australia's federal asset confiscation regime. These amendments enhanced the ability of law enforcement to restrain and confiscate the proceeds and instruments of crime, including the proceeds of foreign bribery, located both within Australia and overseas. The Act also limited the circumstances in which persons can buy back forfeited property and provided law enforcement with appropriate information gathering powers to ensure the money used to buy back such property is not derived from crime.

The Act also reinforced that the POCA can be used to confiscate proceeds obtained through the avoidance, deferral or reduction of a debt, loss or liability, ensuring that the POCA can be used to

²⁸ <https://www.afp.gov.au/news-media/media-releases/16million-assets-restrained-connection-alleged-malaysian-official-bribery>

²⁹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6589

confiscate the benefit a person gains through the criminal evasion of import duties, excises or taxation, including where this is done through means of foreign bribery.

If no action has been taken to implement recommendation 4 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4 (b):

4. Regarding sanctions and confiscation, the Working Group recommends that:

b) Australian procuring agencies put in place transparent policies and guidelines on the exercise of their discretion on whether to debar companies or individuals convicted of foreign bribery [2009 Recommendation XI (i)].

Action taken as of the date of the follow-up report to implement this recommendation:

Development of new guidance by Department of Finance

On 16 February 2021 the Australian Government [responded](#)³⁰ to the Senate Economics References Committee report on foreign bribery, which had recommended the Government introduce a debarment framework that would ensure companies are required to disclose if they have been found guilty of foreign bribery offences and give agencies the power to preclude the tenderer from being awarded a contract (Recommendation 20).

The response noted that the Australian Government will consider developing additional guidance materials to ensure procuring officials have the necessary tools to consider issues relating to foreign bribery, including the use of existing provisions in the [Commonwealth Procurement Rules \(CPRs\)](#)³¹ to deal with these matters.

Consistent with the CPRs, procuring officials are able to determine eligibility criteria for a particular procurement and may request relevant information to assess the suitability of a potential supplier. Entities can also require information on any convictions from tenderers as part of the procurement process. Relevantly, paragraph 6.7 of the CPRs states that relevant entities must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe. This paragraph provides procuring officials with the discretion and flexibility to exclude tenderers for various unethical practices, including where the tenderer may have been convicted of a criminal offence.

Samples of procurement templates, which contain standard clauses consistent with this policy, are publicly available through the [Commonwealth Contracting Suite](#)³² on the Department of Finance website and templates can be accessed once users have created a free Commonwealth Contracting Suite User account.

Consistent with the Government response, the Department of Finance is currently developing guidance to assist procuring officials in undertaking appropriate due diligence in their procurement activities. The guidance will take into account the diverse range of goods and services procured by Australian Government entities under Australia's devolved procurement framework in which entities are responsible for managing individual procurement processes to meet their business needs, in accordance with the CPRs. The guidance will be made publicly available on the Department of Finance website and will support officials to exercise their existing discretion to exclude potential suppliers convicted of foreign bribery.

³⁰ <https://www.ag.gov.au/crime/publications/government-response-senate-economics-references-committee-report-foreign-bribery>

³¹ <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

³² <https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>

Policy and guidance relating to prohibited dealings in procurement

The Department of Foreign Affairs and Trade (DFAT) mandates the inclusion of prohibited dealings clauses in all DFAT procurement contracts and grant agreements to ensure suppliers providing goods and services are not:

- subject to sanctions or equivalent measures under Australia's sanctions legislation
- subject to sanctions under the World Bank's fraud and corruption policy, being those listed on the World Bank Listing of Ineligible Firms and Individuals
- owned, controlled by, acting on behalf of, or at the direction of others subject to such sanctions, or
- providing support, resources or assets to others subject to such sanctions.

The prohibited dealings clauses have been made available for use by other Commonwealth entities through the Department of Finance's [Commonwealth ClauseBank](#)³³, which includes pre-drafted contract terms that can be used within existing contract templates or in bespoke contracts by Commonwealth entities when appropriate. The ClauseBank guidance provides that prohibited dealings clauses should be included where an entity involved in the goods or services could be subject to sanctions under international or Australian law (for example, arrangements involving certain international suppliers).

While use of this clause is optional for entities other than DFAT, it is an offence under Australian sanctions law to directly, or indirectly, make an asset available to a designated person or entity (therefore meeting the policy intent is, in effect, mandatory).

Relevantly, in August 2021, the Australian Government [announced reforms to Australia's autonomous sanctions framework](#)³⁴ that would expand the framework to include serious corruption as a new thematic category for imposition of sanctions.

Updates to DFAT's procurement policy and guidelines

Consistent with the CPRs, the DFAT corporate procurement process continues to reserve the right to exclude any tenderer which has been convicted of, or is being investigated for, a criminal offence. Since December 2019, DFAT has introduced a new clause into complex official development assistance (ODA) procurements (over A\$500,000) requiring the tenderer to warrant that neither it nor any of its directors or partners or any other person who have powers of representation, decision or control have been convicted of any of the following offences during the last seven years: conspiracy relating to participation in a criminal organisation, corruption, bribery, fraud or money laundering. The revised version of the ODA procurement template is expected to be published in early 2022.

If no action has been taken to implement recommendation 4 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5 (a):

5. Regarding [the liability of legal persons](#), the Working Group recommends that Australia:

- a) Proactively pursue criminal charges against legal persons, where appropriate, for foreign bribery and related offences, such as false accounting, money laundering, fraud and tax evasion, including where an individual perpetrator pleads guilty; [Convention Articles 2 and 8, 2009 Recommendation VIII i)];

Action taken as of the date of the follow-up report to implement this recommendation:

³³ <https://www.finance.gov.au/government/procurement/clausebank/prohibited-dealings>

³⁴ <https://www.foreignminister.gov.au/minister/marise-payne/media-release/strengthening-australias-sanctions-laws>

Since December 2019 Australia can report three foreign bribery matters in which criminal charges have been pursued or considered against legal persons. Proceedings for these matters are currently ongoing.

Operation Telchar

In June 2018, the AFP charged the Jacobs Group (Australia) Pty Ltd (formerly known as Sinclair Knight Merz Pty Ltd) and six individuals with foreign bribery offences. Charges in relation to one accused individual were later discontinued.

Update since December 2019: Proceedings are currently ongoing.

Operation Zurzach

Update since December 2019: In February 2020, the AFP charged Getax Australia Pty Ltd with conspiracy to commit foreign bribery in respect of Nauruan foreign public officials.

Information about the third foreign bribery matter will be the subject of a separate report to the Working Group on Bribery. In addition, there are several other foreign bribery matters in which criminal action is being considered against legal persons.

Passage of reforms to better target money laundering predicated on foreign bribery, including money laundering by legal persons

As noted above under Recommendation 1(a), [the Crimes Legislation Amendment \(Economic Disruption\) Act 2021 \(Cth\)](#)³⁵ was passed by Parliament on 3 February 2021. These reforms include new money laundering offences that better target the behaviours of modern money laundering networks, including entities that launder the proceeds of foreign bribery. The new offences will better ensure that money laundering syndicates and other persons (including legal persons) cannot avoid criminal liability by remaining wilfully blind to the fact that funds were derived from bribery, by hiding evidence of bribery in foreign haven jurisdictions or by dealing with proceeds of bribery at an arm's-length.

If no action has been taken to implement recommendation 5 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6 (b):

6. Regarding engagement with the private sector, the Working Group recommends that Australia:

b) In the event that Australia enacts a 'failure to prevent' offence for companies, closely engage with the private sector to prepare guidance on the establishment and implementation of adequate compliance measures with regard to the new offence [2009 Recommendation i) and ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 6 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

On 2 December 2019, the Australian Government introduced the [Crimes Legislation Amendment \(Combating Corporate Crime\) Bill 2019 \(Cth\)](#)³⁶ (the Bill) into Parliament.

³⁵ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6589

³⁶ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246

On 17 March 2020, the Senate Legal and Constitutional Affairs Committee [reported on the Bill](#)³⁷ and recommended the Bill be passed. The Bill is currently awaiting debate in the Senate.

If passed, the Bill would introduce a new corporate offence for failing to prevent bribery of a foreign public official by an associate (such as an employee or agent of a body corporate). However, the offence will not apply if the body corporate can show it had in place adequate procedures designed to prevent foreign bribery by an associate. Accordingly, the new offence would not commence until six months after passage in order to allow businesses sufficient time to ensure they have adequate procedures in place.

Public consultation on draft Adequate Procedures Guidance

The Bill would require the Attorney-General to publish guidance on the steps that a body corporate can take to prevent an associate from bribing foreign public officials (Adequate Procedures Guidance). In November 2019, the Attorney-General's Department published [a consultation version of the draft Adequate Procedures Guidance](#)³⁸. This was followed by in-person consultations with private sector representatives, civil society and academia held in late 2019 and early 2020. [Seven written submissions](#)³⁹ on the consultation draft were received and published on 28 February 2020. A final version of the guidance, taking into account stakeholder feedback, will be published when the Bill passes.

Ongoing engagement with private sector to support proposed new corporate offence

The Attorney-General's Department (AGD) continues to engage closely with the private sector, including through Bribery Prevention Network (BPN) initiatives, in order to support implementation of the new corporate offence if the Bill is passed. The BPN, launched in October 2020, is a public-private partnership that brings together business, civil society, academia and government with the shared goal of supporting Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance. AGD and AFP are on the Steering Committee for the BPN.

The BPN offers a free, online portal of accessible, relevant and reliable resources, curated by Australia's leading anti-bribery experts (including AGD representatives) to support Australian business to manage foreign bribery and other corruption risks in domestic and international markets. The [website](#)⁴⁰ provides a prevention-focused collection of resources including key resources designed to support businesses in preparing for the introduction of the new corporate offence. These include:

- the Australian Government's draft Adequate Procedures Guidance
- ['Fighting Bribery in Business - A guide for risk, compliance and sustainability teams implementing adequate anti-bribery procedures'](#)⁴¹ and ['Are your anti-bribery procedures adequate? – Guidance for SMEs'](#)⁴² developed by Allens Linklaters and Global Compact Network Australia (published October 2021)

³⁷ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CombatingCorporateCrime/Report

³⁸ <https://www.ag.gov.au/crime/publications/draft-guidance-adequate-procedures-prevent-commission-foreign-bribery-consultation-paper>

³⁹ <https://www.ag.gov.au/crime/publications/submissions-received-relation-draft-guidance-adequate-procedures-prevent-commission-foreign-bribery>

⁴⁰ <https://briberyprevention.com/2021/10/11/video-risky-business-harnessing-culture-to-combat-corporate-crime/>

⁴¹ <https://unglobalcompact.org.au/wp-content/uploads/2021/09/UN-GCNA-Fighting-Bribery-in-Business-October-2021.pdf>

⁴² <https://globalcompact.at/wp-content/uploads/2021/10/UN-GCNA-Are-your-anti-bribery-procedures-adequate-October-2021.pdf>

- 'Introduction to Country Guides - A summary of bribery and corruption risks in Austrade jurisdictions' developed by Austrade (published August 2020)
- an [index of example anti-bribery and corruption policies](#)⁴³ drawn from top ASX listed companies (published March 2021), and
- [case studies](#)⁴⁴ on the importance of implementing adequate procedures to prevent bribery and corruption.

On 7 October 2021, the BPN and University of Queensland Trust, Ethics and Governance Alliance co-hosted [a webinar](#)⁴⁵ for private sector representatives about the role of organisational culture in preventing foreign bribery and promoting responsible business conduct. As part of the webinar, an AGD representative provided an overview of adequate procedures and their relationship with corporate culture.

⁴³ https://briberyprevention.com/wp-content/uploads/2021/04/Index-of-Example-ABC-Policies_BPN_March-2021.pdf

⁴⁴ <https://briberyprevention.com/case-studies/>

⁴⁵ <https://briberyprevention.com/2021/10/11/video-risky-business-harnessing-culture-to-combat-corporate-crime/>

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments. Please include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

Text of issue for follow-up 7 (b):

7. The Working Group will follow-up on:

- b) Whether AUSTRADE, in the course of its trade facilitation role, effectively detects and reports foreign bribery suspicions that involve client companies to AFP;

All Australian public service officials located overseas are required to report any suspicions of foreign bribery involving Australian individuals or companies to the relevant DFAT Head of Mission (High Commissioner/Ambassador) and the AFP. This requirement is reflected in paragraph 8.5.3 in the Australian Public Service Commission's '[Values and Code of Conduct in Practice](#)'⁴⁶ guidance under 'Reporting inappropriate behaviour'. Reports of suspected foreign bribery made to DFAT are provided to the Transnational Crime Section, which is DFAT's point of coordination for all allegations of extra-territorial offending involving Australian individuals or companies. Since October 2019, DFAT's Transnational Crime Section has referred six matters of suspected foreign bribery involving Australian individuals, companies or their subsidiaries to the AFP.

Text of issue for follow-up 7 (d):

7. The Working Group will follow-up on:

- d) Australia's ongoing review and monitoring of the defence for facilitation payments, including any recommendations that come out of the ongoing Senate Inquiry Into Foreign Bribery;

The Senate Economics Reference Committee in its report on foreign bribery recommended that the facilitation payment defence currently provided in section 70.4 of the *Criminal Code Act 1995* (Cth) (Criminal Code) be abolished over a transition period, to enable companies and individuals to adjust their business practices and procedures to comply with the law as amended by the *Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019* (Cth). The [Government response](#)⁴⁷ to the Committee's report was published on 16 February 2021. The Government noted this recommendation.

The Government's response noted that the facilitation payment defence is narrow in its operation. Under the Criminal Code, a facilitation payment is a payment of minor value provided in return for securing a minor, routine government action. Such a payment must be appropriately documented. Facilitation payments are distinguished from bribes in that they cannot be made to secure any decision to award or continue business, or any decision related to the terms of new or existing business. They may be made solely to secure or expedite a routine government action that would ordinarily be due to the person making the payment.

The AFP has confirmed that the facilitation payment defence has not been an impediment to the enforcement of the foreign bribery offence. However, Australian Government agencies including the Attorney-General's Department (AGD) continues to raise awareness of the risks of making facilitation payments and to [strongly discourage their use](#)⁴⁸.

Relevantly, in November 2021 the Bribery Prevention Network, of which the AFP and AGD are Steering

⁴⁶ <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice>

⁴⁷ <https://www.ag.gov.au/system/files/2021-02/government-response-to-the-senate-economics-references-committee-report-on-foreign-bribery.pdf>

⁴⁸ <https://www.ag.gov.au/crime/foreign-bribery/facilitation-payments>

Committee members, published a [case study on the risks of making facilitation payments](#)⁴⁹ in response to private sector feedback. The case study outlines the steps businesses should take to educate their employees about how to refuse requests for such payments.

Text of issue for follow-up 7 (e):

7. The Working Group will follow-up on:

- e) The steps that Australia has taken to address the recommendations made by the Committee with respect to whistleblowers in both the public and private sectors;

Updates relating to strengthening public sector whistleblower protections including closer alignment with private sector whistleblower protections

In December 2020, the [Australian Government responded to the Moss Review](#)⁵⁰ by agreeing in part or in principle to 30 of the 33 recommendations contained in the Moss Review. This included increasing protections provided to disclosers and witnesses involved in the disclosure investigation, enhancing the ability of the Commonwealth Ombudsman and Inspector-General of Intelligence and Security to independently oversee how agencies handle disclosures, and focusing the *Public Interest Disclosure Act 2013* (PID Act) on more serious wrongdoing.

The Government response to the Moss Review also agreed to consider reforms to the PID Act that went beyond the Moss Review recommendations, including to consider aligning the PID Act with the private sector whistleblowing schemes by:

- adopting the more expansive definition of ‘detriment’ from the *Corporations Act 2001* (Cth) (Corporations Act)
- reversing the onus of proof to make it easier for people who suffer detriment to obtain relief, and
- enabling persons to seek relief where a person under a duty to protect them from detriment has failed in their duty.

The Government response to recommendation 1 of the Moss Review also agreed that the Government would undertake a review of the PID Act at the same time as the revised tax and corporate sector whistleblower laws. This is consistent with the separate [Government response](#)⁵¹ to recommendation 12.11 of the Parliamentary Joint Committee on Corporations and Financial Services Whistleblower Report. The private sector scheme is legislated to be reviewed after 1 July 2024. This will provide an opportunity to identify any other appropriate alignments that can be made between the public and private sector schemes. The Government is currently working to implement the reforms agreed to in the Moss Review, as well as the further reforms and improvements to the public sector whistleblowing scheme.

Updates relating to private sector whistleblower protections

ASIC is responsible for administering the corporate and financial sector whistleblower protection regime under the Corporations Act. Since December 2019, ASIC has issued:

- an article on the reforms in the Association of Superannuation Funds of Australia’s [Superfunds publication](#)⁵²

⁴⁹ <https://briberyprevention.com/case-studies/facilitation-payments/>

⁵⁰ <https://www.ag.gov.au/system/files/2020-12/government-response-to-the-review-of-the-public-interest-disclosure-act-2013.pdf>

⁵¹ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Government_Response

⁵² <https://asic.gov.au/about-asic/news-centre/articles/support-and-protections-for-whistleblowers/>

- Regulatory Guide 270 '[Whistleblower Policies](#)'⁵³, which contains guidance and good practice tips for companies on establishing and implementing a whistleblower policy and program
- new ASIC information sheets to explain company auditor and officer obligations under the new whistleblower regime:
 - ASIC Information Sheet 246 '[Company auditor obligations under the whistleblower protection provisions](#)'⁵⁴
 - ASIC Information Sheet 247 '[Company officer obligations under the whistleblower protection provisions](#)'⁵⁵, and
- [Media release 21-267MR](#)⁵⁶ to remind Australian CEOs of the whistleblower policy requirement and to alert Australian CEOs to shortcomings ASIC identified in its 2020 review of whistleblower policies.

ASIC has also continued to speak about the enhanced whistleblower protection regime at academic conferences and industry events, delivered presentations to financial services firms, and engaged with stakeholders across the corporate, legal, academic, public, and regulatory sectors on the regime.

Text of issue for follow-up 7 (f):

7. The Working Group will follow-up on:

- f) Investigations into foreign bribery allegations to verify whether the increased foreign bribery capacity is working in practice;

Update on the AFP's increased foreign bribery capacity

The AFP has implemented a number of changes in recent years to enhance its operational model and provide more specialised support for foreign bribery investigations. These include the following measures:

- recruitment of an ex-prosecutor from the CDPP to provide specialised and dedicated support to AFP's fraud and corruption investigations
- implementation of a new strategy for briefing external counsel, which has resulted in the AFP obtaining high quality legal advice from the private bar in relation to available charges and possible non-trial resolutions for corporate suspects
- greater use of predictive analytics and data specialists, which can also be used to support the CDPP during the prosecution phase
- changes to AFP's operating model to ensure stronger focus on geographic operations and specialised investigation commands, and
- the establishment of the Corporate Crime and Foreign Bribery Team (CCFBT) in October 2021, which will provide multi-disciplinary support for foreign bribery investigations and support implementation of the *Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019* (Cth) if passed.

These operational changes have had a positive effect on AFP's foreign bribery investigations and are expected to reduce the length of time taken to investigate foreign bribery matters. Since December

⁵³ <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-270-whistleblower-policies/>. This was accompanied by a media release <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-308mr-asic-gives-guidance-on-companies-whistleblower-policies-and-relief-to-small-not-for-profits/>

⁵⁴ <https://asic.gov.au/for-finance-professionals/company-auditors/your-ongoing-obligations-as-a-registered-company-auditor/company-auditor-obligations-under-the-whistleblower-protection-provisions/>

⁵⁵ <https://asic.gov.au/for-business/running-a-company/company-officeholder-duties/company-officer-obligations-under-the-whistleblower-protection-provisions/>

⁵⁶ <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-267mr-asic-calls-on-australian-ceos-to-review-whistleblower-policies/>

2019, the AFP has opened five new foreign bribery related investigations. The AFP has also brought a number of investigations to a conclusion, including through the commencement of proceedings. As at November 2021, the AFP has 16 ongoing foreign bribery investigations, including those matters currently before the courts.

In addition to the case updates included under recommendations 4(a) and 5(a), the AFP can report additional updates in relation to the following foreign bribery matters:

Operation Regatta

In September 2018, the AFP charged the director of Australian company Radiance International Pty Ltd with conspiracy to commit foreign bribery. The charges related to conduct that was alleged to have taken place between January 2015 and 2018 in connection with contracts concerning the export of phosphate from Nauru and imports of diesel fuel into Nauru. The scheme included at least five alleged instances of bribery including a payment of more than A\$100,000 worth of bribes.

Update since December 2019: In February 2020, the individual pleaded guilty to two charges of causing bribes to be paid to foreign public officials. In August 2020, the individual was sentenced to a custodial sentence of 2 years and 6 months to be served by way of an Intensive Corrections Order, with an additional condition of 400 hours of community service. Further information is available in the [AFP media release](#)⁵⁷ issued 27 August 2020 and in the published [CDPP case study](#)⁵⁸.

Operation Trig

In November 2011, the AFP received a report from Australian-registered company Leighton Holdings Limited about alleged improper payments made by Singapore registered operating entity Leighton Offshore Pty Ltd, regarding two contracts with Iraq Crude Oil Export in 2010 and 2011. Operation Trig commenced as a result of the information received from Leighton Holdings Limited. The investigation revealed two contracts for the development and installation of onshore and offshore oil pipelines designed to increase the capacity of Iraq's crude oil export.

Update since December 2019: Two individuals have been arrested and a third individual is the subject of an arrest warrant. The first individual (Russell Waugh) was arrested in November 2020 on two charges of foreign bribery, one charge of falsifying books and one charge of knowingly providing misleading information. The second individual (David Savage) was arrested in January 2021 on one charge of knowingly providing misleading information. The third individual is the subject of an arrest warrant issued in November 2020. Further information is available in the following AFP media releases:

- [AFP media release 18 November 2020](#)⁵⁹
- [AFP media release 11 January 2021](#)⁶⁰

Operation Amber

Following the self-report by Leighton Holdings Limited (see Operation Trig) AFP commenced a related investigation in July 2014 concerning allegations of foreign bribery related to a contract for a project in Tanzania in 2009 and 2010.

Update since December 2019: In February 2021, the AFP laid an additional foreign bribery charge on

⁵⁷ <https://www.afp.gov.au/news-media/media-releases/man-convicted-part-foreign-bribery-investigation>

⁵⁸ <https://www.cdpp.gov.au/case-reports/bhojani-convicted-nauru-bribery-case>

⁵⁹ <https://www.afp.gov.au/news-media/media-releases/brisbane-man-arrested-two-international-warrants-issued-foreign-bribery>

⁶⁰ <https://www.afp.gov.au/news-media/media-releases/second-man-arrested-foreign-bribery-investigation>

an individual (Russell Waugh). Further information is available in the [AFP media release](#) issued 23 February 2021⁶¹.

Publication of new AFP cooperation guidance for companies

To ensure greater clarity and transparency in respect of incentivising self-reporting and cooperation from companies, in November 2021 the AFP published additional guidance on [self-reporting corporate misconduct](#)⁶² including new guidance on best practice corporate cooperation ([Corporate Cooperation Guidance](#)⁶³).

The new Corporate Cooperation Guidance is intended to further an understanding of how the public interest factor of cooperation at the investigation stage might be assessed by the AFP.

It includes guidance on:

- self-reporting by a corporation
- the relevance of a corporation's approach to internal investigations
- the importance of independent investigation by AFP and of verifying information provided by a corporation
- preserving and providing material to investigating agencies
- dealing with witnesses and individuals
- the relevance of a corporation's approach to legal professional privilege, and
- cooperation in related investigations and proceedings.

Text of issue for follow-up 7 (g):

7. The Working Group will follow-up on:

- g) Whether there are any specific issues impacting on CDPP's ability to prove intent;

The CDPP has provided the following advice in relating to its ability to prove intent:

Whilst proving intent may be difficult in some cases - for example where the evidence of intent is largely circumstantial - the CDPP does not consider that there are any specific issues impacting upon the CDPP's ability to prove intent in foreign bribery offences based on the current legislative framework.

Text of issue for follow-up 7 (i):

7. The Working Group will follow-up on:

- i) Whether external auditors who discover indications of a possible illegal act of bribery are reporting the discovery to management and, as appropriate, to corporate monitoring bodies;

From 1 November 2019 to 21 October 2021, ASIC received one report from an external auditor relating to a possible act of foreign bribery and related offences by Australian companies. In the same period ASIC received over 1500 reports from external auditors under section 311 of the *Corporations Act 2001* (Cth) but none of the other reports related to bribery.

Text of issue for follow-up 7 (j):

7. The Working Group will follow-up on:

⁶¹ <https://www.afp.gov.au/news-media/media-releases/update-additional-foreign-bribery-charge-brisbane-man>

⁶² <https://www.afp.gov.au/companies-self-reporting-and-cooperating>

⁶³ <https://www.afp.gov.au/sites/default/files/PDF/AFPCorporateCooperationGuidance.pdf>

j) Sanctions and confiscation in foreign bribery cases;
<p>Australia can report the following sanctions and confiscation action in foreign bribery cases since December 2019:</p> <ul style="list-style-type: none"> • In Operation Carambola, the AFP restrained A\$1.6million in assets (see response to Recommendation 4(a)). • Operation Regatta concluded with the conviction of an individual for foreign bribery with a custodial sentence of 2 years and 6 months to be served by way of an Intensive Corrections Order, and an additional condition of 400 hours of community service (see response to follow-up issue 7(f)).

<p>Text of issue for follow-up 7 (k): 7. The Working Group will follow-up on:</p> <p style="text-align: center;">k) Australia’s enforcement of foreign bribery cases that may be politically sensitive; and</p>
<p>Neither the CDPP nor any other Commonwealth Government agency has sought suppression orders in relation to any foreign bribery matters in the period since the prosecutions of Securrency and Note Printing Australia concluded in November 2018. To the extent that non-publication or suppression orders have been made in foreign bribery prosecutions or proceeds of crime proceedings, the relevant applications have generally been made by individuals facing prosecution to ensure these individuals receive a fair trial.</p>

<p>Text of issue for follow-up 7 (l): 7. The Working Group will follow-up on:</p> <p style="text-align: center;">l) Australia’s enforcement of false accounting offences related to foreign bribery.</p>
<p>Since December 2019, Australia has enforced false accounting offences against three individuals in relation to two foreign bribery matters:</p> <ul style="list-style-type: none"> • In Operation Carambola, an individual (Dennis Teen) was charged with false accounting offences in addition to foreign bribery offences (see response to Recommendation 4(a)). • In Operation Trig, two individuals were charged with offences under the <i>Corporations Act 2001</i> (Cth) relating to the falsification of books and records and/or the provision of false information (see response to follow-up issue 7(f)).

AUSTRALIA'S ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE SINCE DECEMBER 2019

Name of country: Australia

Date of approval of Phase 4 evaluation report: 15 December 2017

Date of approval of Phase 4 two-year follow-up report: 11 December 2019

Date of information: 5 November 2021

CASE	NEW OR ONGOING SINCE DECEMBER 2019?	PARTIES	DESCRIPTION (including dates of alleged acts)	UPDATES SINCE 2019
Operation TELCHAR	Ongoing	Jacobs Group (Australia) Pty Ltd (formerly known as Sinclair Knight Merz Pty Ltd) and six individuals	In June 2018, the AFP charged the Jacobs Group (Australia) Pty Ltd (formerly known as Sinclair Knight Merz Pty Ltd) and six individuals with foreign bribery offences. Charges against one of the individuals were later discontinued.	
Op ZURZACH	New	Getax Australia Pty Ltd	Between May 2007 and December 2012, Getax Australia Pty Ltd is alleged to have conspired with others to bribe foreign public officials in the Republic of Nauru.	In February 2020, the AFP charged Getax Australia Pty Ltd with foreign bribery. Proceedings are ongoing.

<p>Operation TRIG</p>	<p>Ongoing</p>	<p>Three individuals: Russell Waugh, David Savage</p>	<p>In November 2011, the AFP received a report from Australian-registered company Leighton Holdings Limited about alleged improper payments made by Singapore registered operating entity Leighton Offshore Pte Ltd, regarding two contracts with Iraq Crude Oil Export in 2010 and 2011. Operation Trig commenced as a result of the information received from Leighton Holdings Limited. The investigation revealed two contracts for the development and installation of onshore and offshore oil pipelines designed to increase the capacity of Iraq’s crude oil export.</p>	<p>Investigation is ongoing.</p> <p>Russell John Waugh has been charged with:</p> <ul style="list-style-type: none"> • two charges of conspiring to engage in foreign bribery contrary to the Criminal Code • one charge of falsification of books relating to the affairs of the corporation, contrary to the <i>Corporations Act 2001</i> (Cth) (Corporations Act), and • one charge of providing misleading information relating to the affairs of the corporation, contrary to the Corporations Act. <p>David Savage has been charged with:</p> <ul style="list-style-type: none"> • two charges of providing misleading information to a director of a corporation that related to the affairs of the corporation, contrary to the Corporations Act. <p>An arrest warrant was issued in November 2020 in respect of a third individual.</p> <p>AFP media release 18 November 2020⁶⁴</p> <p>AFP media release 11 January 2021⁶⁵</p>
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⁶⁴ <https://www.afp.gov.au/news-media/media-releases/brisbane-man-arrested-two-international-warrants-issued-foreign-bribery>

⁶⁵ <https://www.afp.gov.au/news-media/media-releases/second-man-arrested-foreign-bribery-investigation>

Operation AMBER	Ongoing	One individual: Russell Waugh	Following the self-report by Leighton Holdings Limited AFP commenced a related investigation in July 2014 concerning allegations of foreign bribery related to a contract for a project in Tanzania in 2009 and 2010. The investigation identified approx. USD \$4 million in suspicious payments.	In February 2021, Russell Waugh was charged with one further charge of conspiring to commit foreign bribery. AFP media release 23 February 2021 ⁶⁶
Operation REGATTA	Ongoing and now concluded	One individual (director of Radiance International Pty Ltd)	In September 2018, the AFP charged the director of Australian company Radiance International Pty Ltd with conspiracy to commit foreign bribery. The charges related to conduct that was alleged to have taken place between January 2015 and 2018 in connection with contracts concerning the export of phosphate from Nauru and imports of diesel fuel into Nauru. The scheme included at least five alleged instances of bribery including a payment of more than A\$100,000 worth of bribes.	In February 2020, the individual pleaded guilty to two charges of causing bribes to be paid to foreign public officials between August 2015 and June 2017. In August 2020, the individual was sentenced to a custodial sentence of 2 years and 6 months to be served by way of an Intensive Corrections Order, with an additional condition of 400 hours of community service. AFP media release 27 August 2020 ⁶⁷ CDPP case study ⁶⁸
Operation CARAMBOLA	Ongoing	One individual: Dennis Teen	Dennis Teen, an Australian property developer, was accused of paying Malaysian government officials A\$4.75m in bribes to facilitate the purchase of a property development in Melbourne by the Malaysian government. The property	One individual (the accused, Dennis Teen) was charged with foreign bribery offences and state (Victoria) false accounting offences in July 2020. In August 2020 the Commissioner of the AFP obtained restraining orders over property including two

⁶⁶ <https://www.afp.gov.au/news-media/media-releases/update-additional-foreign-bribery-charge-brisbane-man>

⁶⁷ <https://www.afp.gov.au/news-media/media-releases/man-convicted-part-foreign-bribery-investigation>

⁶⁸ <https://www.cdpp.gov.au/case-reports/bhojani-convicted-nauru-bribery-case>

			<p>was sold in 2013 to a Malaysian government-owned entity for A\$22.6m, inflated from A\$17.85m. The AFP commenced its investigation into Teen and his associated companies in 2015.</p>	<p>real properties owned by the accused's wife, a company of which the accused's wife was the sole director and bank accounts held in the name of the accused and his wife. The value of these restrained assets is estimated to be approximately A\$1.6 million.</p> <p>AFP media release 4 September 2020⁶⁹</p>
Lifese prosecution	Concluded at Phase 4	<p>Lifese Pty Ltd (company) Three individuals (including two company directors)</p>	<p>In September 2017, 3 individuals were convicted by the NSW Supreme Court of conspiracy to bribe an Iraqi foreign public official to secure infrastructure contracts for their company Lifese Pty Ltd. All 3 individuals pleaded guilty. At the time of Australia's Phase 4 follow-up, Australia reported that 3 natural persons were convicted of conspiracy to bribe a foreign public official and that all three persons were sentenced to four years' imprisonment with a fixed non-parole period of two years, and two natural persons (the directors) were fined A\$250,000 each.</p>	<p>On appeal the 2 directors of Lifese were sentenced to imprisonment for 3 years and 4 months with a fixed non-parole period of 1 year and 8 months and fined A\$250,000</p>

⁶⁹ <https://www.afp.gov.au/news-media/media-releases/16million-assets-restrained-connection-alleged-malaysian-official-bribery>

Annex 2: 2019 Two-year Written Follow-Up Report by Australia

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 55-67).

Please submit completed answers to the Secretariat on or before: **22 October 2019**.

Name of country: Australia

Date of approval of Phase 4 evaluation report: 19 December 2017

Date of information: 31 October 2019, with additional information on 11 November

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 1 (a):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:

- a) Increase the potential for detecting foreign bribery through its Anti-Money Laundering system by:
 - iii. Raising awareness of foreign bribery as a predicate offence for money laundering, including by providing additional guidance with case studies and typologies to reporting entities regarding the detection of foreign bribery predicated on money laundering (in particular, through the real estate sector) [Convention Article 7], and
 - iv. Taking appropriate steps to address the risk that the proceeds of foreign bribery will be laundered through the Australian real estate sector, in line with the FATF standards. These should include specific measures to ensure that the Australian financial system is not the sole gatekeeper for such transactions [Convention Article 7], and

Action taken as of the date of the follow-up report to implement this recommendation:

AUSTRAC's online case studies

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's financial intelligence unit, with regulatory responsibility for AML/CTF. AUSTRAC monitors financial transactions to identify money laundering, organised crime, tax evasion, welfare fraud and terrorism and other serious financial

crime. Further information about AUSTRAC is available on its [website](#)⁷⁰.

AUSTRAC released [new case studies](#)⁷¹ in 2019 to assist reporting entities to understand indicators of money laundering, including bribery as a predicate offence. One of the cases related to identifying a complex international money-laundering scheme by individuals wanted by Chinese authorities on bribery and corruption charges. The [case study](#)⁷² is available on the AUSTRAC website.

Cash Payment Limit reforms

The Australian Government has introduced the [Currency \(Restrictions on the Use of Cash\) Bill 2019](#)⁷³ into Parliament which proposes to establish an economy-wide cash payment limit of \$10,000 for payments made or accepted by businesses for goods or services. Transactions equal to, or in excess of this amount will need to be made using the electronic payment system or by cheque. Once implemented, the economy-wide cash payment limit will reduce the ability for individuals to launder the proceeds of foreign bribery through the Australian real estate sector as they will no longer be able to purchase property or pay for any part of property in large sums of cash.

The amount of this limit is consistent with the monetary threshold for reporting under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) threshold transaction reporting regime and supports the Government's efforts in the AML/CTF sector.

To give effect to this limit, this Bill will establish new offences for entities that make or accept cash payments that equal or exceed the cash payment limit. The proposed maximum penalty for the strict liability offences in the Bill is 60 penalty units (\$12,600) for individuals and 300 penalty units (\$63,000) for corporations. The proposed maximum penalty for the recklessness-based offences in the Bill are 120 penalty units (\$25,200) or imprisonment for 2 years or both for individuals, and 600 penalty units (\$126,000) for corporations. It is intended that these penalties will serve as an effective deterrent in order to change existing practices that have facilitated participation in black economy and particularly the use of cash payments to conceal income and criminal activity.

Regulation of the real estate sector under the AML/CTF regime

The Australian Government is committed to robust anti-money laundering and counter-terrorism financing (AML/CTF) laws to ensure that Australia's financial system is hardened against criminals and terrorists.

As noted in the Phase 4 Evaluation Report, a Statutory Review of Australia's AML/CTF regime was finalised in 2016. The Statutory Review recommended that a cost-benefit analysis be conducted on the options for regulating additional high-risk entities such as lawyers, accountants, trust and company service providers, high value dealers and real estate agents.

The cost-benefit analysis was completed in June 2017 and is under consideration by the Government in the context of broader reforms to the AML/CTF regime.

Fintel Alliance

AUSTRAC launched Fintel Alliance in 2017. Fintel Alliance is a world first public-private partnership bringing together government, industry, academia and international partners for the purpose of harnessing a new and collaborative approach to combatting and disrupting serious financial crime, including bribery and corruption.

Membership of Fintel Alliance has expanded to twenty-five partners from the private sector and government agencies. Fintel Alliance partners include major banks, remittance service providers and

⁷⁰ <https://www.austrac.gov.au/about-us>

⁷¹ <https://www.austrac.gov.au/indicators-financial-crime-case-studies>

⁷² The study is available at: <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/austrac-links-australian-assets-suspects-wanted-crimes-china>

⁷³ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6418

gambling operators, as well as law enforcement and security agencies from Australia and overseas. Fintel Alliance is integral in equipping industry to be the first line of defence against criminal exploitation by sharing financial intelligence, risk models and insights to reduce criminal activity.

Fintel Alliance partners work together at AUSTRAC's offices, sharing and analysing financial intelligence to investigate and disrupt criminal activity. The Operations Hub is a physical space where partners exchange and analyse financial intelligence face-to-face in close to real time, combining data with tracking tools and best practice methodologies from their organisations.

Since Phase 4, Fintel Alliance partners have investigated foreign bribery and corruption, and risks associated with foreign politically exposed persons. This has involved the identification of suspicious financial transactions, and this information has been passed on to law enforcement agencies for investigation. AUSTRAC and Fintel Alliance have also been developing a program of collaboration with international counterparts in the South-East Asian region. This program has led to intelligence exchanges relating to international bribery and corruption.

Further information about Fintel Alliance is available on the AUSTRAC website⁷⁴.

AUSTRAC international engagement

AUSTRAC has engaged with financial intelligence units in neighbouring jurisdictions to examine incoming funds that could involve corruption proceeds entering the Australian economy, including the real estate sector.

AUSTRAC, through the South-East Asia Financial Intelligence Consultative Group (FICG), collaborated with partner financial intelligence units on a 2019 regional assessment of the money laundering threats and typologies related to corruption. One of the assessment's aims is to speed up information exchange to maximise asset recovery related to corruption cases. The assessment is currently being finalised.

The FICG is the operational arm of the Counter-Terrorism Financing Summit, which consists of the heads of intelligence from jurisdictions comprising the Association of Southeast Asian Nations, as well as Australia and New Zealand. It is co-chaired by Australia and Indonesia. The 5th Counter Terrorism Financing Summit will be held on 12-14 November 2019 in the Philippines. The FICG will come together at this Summit to report on progress made towards achieving outcomes that were set out in the Bangkok Communique adopted at the preceding 4th Counter Terrorism Financing Summit, which was held in Thailand in November 2018. The FICG's report at the 5th Summit will include a report on the outcomes of the regional assessment of the money laundering threats and typologies related to corruption. A public version of the report will be made available.

Additional comments about Recommendation 1(a)

In assessing Australia's progress against Recommendation 1(a), it should be noted that in the last two years the Government has also given priority to a number of other important anti-corruption initiatives. For example, in December 2018, the Government announced it would establish a Commonwealth Integrity Commission (CIC) to strengthen integrity arrangements across the federal public sector. This is a significant piece of reform that will establish a centralised and specialist centre for the investigation of corruption in the Commonwealth public sector. Australia is in the process of developing this legislation. Furthermore, in December 2017 the Australian Government established a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry which produced a final report in February 2019. The Australian Government is continuing to undertake necessary reforms in response to the 76 recommendations made in the final report, including expanding the Federal Court's jurisdiction in relation to corporate crime (including foreign bribery matters). Other reforms discussed elsewhere in this document, such as strengthening protections for corporate sector whistleblowers, have also been prioritised during the past two year period.

We also note the Government was in caretaker mode from 11 April 2019 upon the dissolution of the 45th Parliament of Australia, until 18 May 2019 when a federal election was held.

If no action has been taken to implement recommendation 1 (a), please specify in the space

⁷⁴ <https://www.austrac.gov.au/about-us/fintel-alliance>

below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The above action has been taken to implement recommendation 1 (a).

Text of recommendation 1 (b):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:

- b) Enhance its whistleblower protections by:
 - i. Enacting legislation that provides clear, comprehensive, protections for whistleblowers across the private sector that align (where appropriate) with the protections for public sector whistleblowers in the PIDA. When enacting this legislation, Australia should consider seriously the recommendations made by the September 2017 Report of the Joint Parliamentary Committee on Corporations and Financial Services [2009 Recommendation IX (iii)], and
 - ii. Raising awareness of any new legislation to ensure that employees in all sectors are fully apprised of the new regime [2009 Recommendation IX iii)].

Action taken as of the date of the follow-up report to implement this recommendation:

Recommendation 1(b)(i)

The Government responded to the recommendations of the September 2017 Report of the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS Report) in April 2019. Many of the recommendations in the PJCCFS Report that concerned private sector whistleblowers were implemented by the Government through the [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019](#)⁷⁵, which passed the Australian Parliament on 19 February 2019 and received Royal Assent on 12 March 2019 (recommendations relating to public sector whistleblowers are discussed further below).

Following the enactment of this statute, on 1 July 2019, the whistleblower protections in Part 9.4AAA the *Corporations Act 2001* (Corporations Act) were expanded to provide greater protections for whistleblowers who report misconduct about companies, company officers and company employees. The corporate sector whistleblower protection regime now:

- includes in the definition of whistleblower both current and former employees, officers, and contractors, as well as their spouses, dependants, and other relatives, and anonymous disclosures;
- extends the protections to whistleblower reports that allege misconduct, an improper state of affairs or circumstances, breach of the law, or danger to the public or financial system (though a report *solely* about a personal work-related grievance is not covered by the protections). This includes reports of any alleged breach of a Commonwealth offence punishable by imprisonment of 12 months or more by any company, company officer, or company employee, and therefore includes alleged breaches of the foreign bribery offence in section 70.2 of the schedule to the Commonwealth *Criminal Code Act 1995* (Criminal Code);
- contains civil penalty provisions, and in addition to the pre-existing criminal offences, for causing or threatening detriment to (or victimising) a whistleblower and for breaching a whistleblower's confidentiality;
- gives protections for whistleblowers in limited circumstances if they disclose to a journalist or parliamentarian after they have reported certain concerns to relevant regulatory authorities, namely the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA). The concerns that are covered are concerns about:
 - substantial and imminent danger to the health or safety of one or more people or to the natural environment; or

⁷⁵ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1120

- matters in the public interest (whistleblowers must wait 90 days after first reporting their concerns for public interest disclosures)
- provides whistleblowers with easier access to compensation and remedies if they suffer detriment, including reversal of onus of proof and protections from costs orders unless a court finds the claim to be vexatious or the whistleblower acted unreasonably; and
- requires all public companies, large proprietary companies, and corporate trustees of registrable superannuation entities to have a whistleblower policy from 1 January 2020.

Recommendation 1(b)(ii)

ASIC is responsible for administering the amended corporate sector whistleblower protection regime in the Corporations Act.

On 1 July 2019, to coincide with the commencement of the legislative amendments, ASIC issued a media release [Release 19-164MR](#)⁷⁶ to raise awareness of the reforms and also released revised ASIC information sheets and website information to explain the new legislative rights and protections to whistleblowers and potential whistleblowers in companies and not-for-profit organisations. This included:

- [ASIC Information Sheet 238](#)⁷⁷ ‘Whistleblower rights and protections’;
- [ASIC Information Sheet 239](#)⁷⁸ ‘How ASIC handles whistleblower reports’;
- Updates to ASIC’s [Whistleblowing](#)⁷⁹ website;
- [Summary of the protections for corporate sector whistleblowers](#)⁸⁰ including a brief comparison with the previous regime;
- [Information for not-for-profit organisations](#)⁸¹ that are now subject to the corporate sector whistleblower protection regime;

ASIC also promoted this material on social media.

On 1 July 2019, ASIC Commissioner John Price published an [article](#)⁸² in the Australian Institute of Company Directors journal on the reforms.

On 7 August 2019, ASIC issued [Consultation Paper 321](#)⁸³ ‘Whistleblower policies’ for the purpose of consulting on proposed regulatory guidance for companies that must have whistleblower policies in place from 1 January 2020 as required by the above reforms. ASIC expects to issue finalised regulatory guidance on whistleblower policies in November 2019.

On 7 August 2019, ASIC Executive Director Warren Day delivered a speech to the conference for

⁷⁶<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-164mr-new-regime-for-corporate-whistleblower-protections-commences-today/>

⁷⁷ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-rights-and-protections/>

⁷⁸<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>

⁷⁹ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>

⁸⁰<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/protections-for-corporate-sector-whistleblowers/>

⁸¹ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-protections-for-not-for-profit-organisations/>

⁸²<https://aicd.companydirectors.com.au/membership/company-director-magazine/2019-back-editions/july/regulator>

⁸³<https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-321-whistleblower-policies/>

the [Whistling While They Work 2⁸⁴](#) research project on ASIC's work to implement the reforms, how ASIC handles whistleblower reports and ASIC's proposed regulatory guidance on whistleblower policies.

ASIC has also delivered presentations on the legislative amendments to financial services firms and professional services firms, and their employees, and engaged with other stakeholders across the corporate, legal, academic, public, and regulatory sectors on the regime.

ASIC is currently in the process of releasing updated videos on the whistleblower protections on its website and its YouTube channel.

In November and December 2019, ASIC plans further promotions to public companies and large private companies on the upcoming legislative requirement to have a whistleblower policy in place and on associated regulatory guidance that ASIC intends to issue. This timing will ensure that these promotions will take place before the requirement formally commences on 1 January 2020.

With respect to whistleblower protections that apply in the public sector, the Government is separately considering its response to the 2016 independent review of the *Public Interest Disclosure Act 2013* (PID Act) undertaken by Mr Philip Moss AM (Moss Review). The Government intends to respond to the recommendations in the PJCCFS Report in relation to the PID Act at the same time as it implements the Government response to the Moss Review. Following the enactment of any reforms to the PID Act, awareness raising activities will be undertaken to ensure that employees in the public sector are appraised of the effect of the reforms. Relevantly, sections 62 and 63 of the PID Act provide that the functions of the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security in relation to the PID Act include conducting educational and awareness raising programs.

If no action has been taken to implement recommendation 1 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 1(b) has been implemented insofar as it relates to whistleblower protections in the corporate sector.

Text of recommendation 1 (c):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:

c) Clarify existing guidance to tax auditors to minimise the risk of tipping off taxpayers regarding ongoing and future foreign bribery investigations when interviewing taxpayers and third parties to verify whether tax deductions have been taken for bribe payments [2009 Recommendation III (iii)].

Action taken as of the date of the follow-up report to implement this recommendation:

Guidance issued by the Australian Tax Office (ATO) for ATO tax auditors, modified on 21 March 2019, draw heavily on the [OECD \(2013\) Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors⁸⁵](#) (the Handbook) in providing advice on record keeping and audit techniques where bribery is suspected.

The guidelines state that the ATO auditors are required to consult ATO's approach to information gathering when conducting interviews. They give the auditors scope to determine the appropriateness of interview techniques and question construction depending on the circumstances of each case. Notably, ATO auditors take specific measures in covert audits to ensure that the risk of tip-offs is mitigated. The guidelines now also give a specific warning to auditors on the risk of tipping off

⁸⁴ <https://www.whistlingwhiletheywork.edu.au/>

⁸⁵ https://read.oecd-ilibrary.org/taxation/bribery-and-corruption-awareness-handbook-for-tax-examiners-and-tax-auditors_9789264205376-en#page1

taxpayers in bribery investigations. In this respect, the guidelines state:

Interviewing

The access manual also provides guidance to tax officers when undertaking formal interviews.

Where there is a risk that evidence regarding ongoing and future bribery investigations may be destroyed, tax officers should minimise the risk of tipping off taxpayers of such investigations when conducting interviews with taxpayers or third parties.

The following information provides further guidance in respect to interviewing techniques.

...

- **Interview techniques**

Special attention should be given to interview techniques. It is important that the tax officers always maintain control of the interview and even more so when he has suspicion of bribes. Tax officers should establish the pace and direction of the interview. It is also important to continually assess whether the taxpayer is leading to pertinent information or providing little useful information.

- **Question construction**

When interviewing a taxpayer, four types of questions can be asked: open-ended, closed, probing and leading questions. It will be up to the tax officer to decide which type of questions are the most appropriate in order to detect bribes.

...

[Emphasis added]

For completeness, it is noted that the Handbook states that tax examiners should conduct further inquiries “where it is necessary and does not compromise a possible criminal case”. Consistent with the Handbook, pursuant to broader ATO policy, criminal investigators instruct ATO auditors to cease any inquiries or activities that could compromise the criminal investigation, and this includes situations where audit inquiries could tip off the taxpayer.

If no action has been taken to implement recommendation 1 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 1(c) has been implemented.

Text of recommendation 2 (a):

2. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Australia:

- a) Continue to resource AFP effectively to ensure it can continue its foreign bribery enforcement efforts [Convention Article 5, 2009 Recommendation Annex I B)], and

Action taken as of the date of the follow-up report to implement this recommendation:

The Australian Federal Police (AFP) under the auspices of Operation Integra has continued to focus on its high priority work in preventing, detecting, disrupting and investigating foreign bribery allegations. In countering foreign bribery, 19 investigators, four forensic accountants and six criminal assets litigators are specifically funded by government to investigate instances of foreign bribery. This funding totalling \$25.9 million over four years (ceasing in June 2023) follows on from a Confiscated Assets Account (CAA) funded initiative that commenced in June 2016 which established dedicated foreign bribery investigation teams in Sydney, Melbourne and Perth.

This increase in funding and four year commitment on the part of the Australian Government attests to the priority afforded to effectively counter foreign bribery. This Government investment also anticipates

future legislative improvement, with key reforms potentially including a failure to prevent corporate offences and the potential introduction of a deferred prosecution agreement scheme.

Examples of key reforms and initiatives in countering foreign bribery under Operation Integra include:

- a pilot program utilising predictive analytics, artificial intelligence and machine learning has been implemented to better review, analyse and interrogate large, complex data sets that are typical of foreign bribery investigations. Use of this innovative technology has seen a reduction in the need for investigators to manually examine documents, and in some cases, has reduced the data sets for review by up to 98%;
- the augmentation of the AFP's Advanced Foreign Bribery Investigations program held annually which gathers subject matter experts, law enforcement and prosecution practitioners, with members of the media, civil society and the private sector to develop better capacities and capabilities for foreign bribery prevention, detection, disruption and investigation;
- recognising the importance of prioritising serious financial crime as an enabler of more serious organised crime, Operation Integra has broadened the remit of the foreign bribery Panel of Experts so that advice and expertise can be provided across a range of serious financial crime types;
- based on the success of the AFP-hosted Fraud and Anti-Corruption Centre (FAC Centre) – a multi-agency collaborative approach to foreign bribery and other serious financial crimes – Operation Integra has adopted this partnership model with those with a foreign bribery remit to focus on countering foreign bribery and in supporting investigational outcomes;
 - with a funding injection by Government, the FAC Centre transitioned in October 2019, with the AFP code-named Operation Ashiba leveraging from these collaborative arrangements to focus on countering fraud against the Commonwealth.
- the AFP led public private partnership on foreign bribery outreach (further discussed under recommendation 6 (a)).

If no action has been taken to implement recommendation 2 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 2 (a) has been implemented.

Text of recommendation 2 (b):

2. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Australia:

- b) Continue to resource CDPP so it can effectively prosecute foreign bribery cases at the rate they are expected to be generated by AFP [Convention Article 5, 2009 Recommendation Annex I B)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Commonwealth Director of Public Prosecutions (CDPP) maintains a dedicated group of lawyers in its Commercial, Financial and Corruption national practice group responsible for the provision of pre-brief advice, assessment of briefs of evidence and the prosecution of corporate crime, including foreign bribery. Resourcing in this practice group is currently adequate and is monitored depending on need, for example, partner agencies' projections of referrals of briefs of evidence to the CDPP. The CDPP also has implemented a Foreign Bribery Focus Group, consisting of a number of lawyers who share learnings, law reform and developments concerning this crime type.

The CDPP is able to approach Government for specific funding in the event of an unexpected increase in foreign bribery cases that impacts on its resourcing. The Government is committed to ensuring that the CDPP remains adequately resourced at all times. In November 2018, for example, the Government announced that an additional \$41.6 million will be provided to the CDPP over eight years to support the

CDPP to undertake further prosecutions of corporate crime.

If no action has been taken to implement recommendation 2 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 2 (b) has been implemented.

Text of recommendation 3:

3. Regarding international cooperation, the Working Group recommends that Australia, to the fullest extent possible within its legal system, ensure that a broad range of MLA can be provided to Parties to the Convention that apply civil or administrative (and not criminal) liability to legal persons for foreign bribery [Convention Article 9.1].

Action taken as of the date of the follow-up report to implement this recommendation:

Australia is committed to working together with its international partners to counter foreign bribery, including through mutual legal assistance arrangements. If a foreign state sought to make a request relating to civil or administrative proceedings, Australian authorities would work with their counterparts to explore opportunities for Australia to provide assistance in a manner that is consistent with its legal system.

Australia can make or receive mutual assistance requests to/from any country on the basis of reciprocity, and has entered into bilateral mutual assistance treaties with 29 countries. Australia's mutual assistance regime is consistent with the 2013 G20 High-level principles on Mutual Legal Assistance.

Section 3 of the *Mutual Assistance in Criminal Matters Act 1987* defines a "serious offence" as "an offence the maximum penalty for which is ... (c) a fine exceeding 300 penalty units" [AUD63,000]. Australia can provide mutual legal assistance for foreign bribery offences that meet this threshold.

Australia is not aware of any instance where this has prevented Australia from considering requests for assistance from a foreign state in civil or administrative matters.

Australia can provide assistance in proceeds of crime matters (which may be civil in nature) under the *Mutual Assistance in Criminal Matters Act* and Australia's bilateral agreements with other countries.

Beyond Australia's existing ability to facilitate assistance for cases that meet this threshold, Australia will continue to consider this recommendation, but is not currently considering any additional steps to make changes to the mutual assistance regime specifically in relation to foreign bribery.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The above action has been taken in relation to recommendation 3.

Text of recommendation 4 (a):

4. Regarding sanctions and confiscation, the Working Group recommends that:

- a) Where appropriate, Australian authorities pursue confiscation of bribe payments and their proceeds [Convention Article 3.3], and

Action taken as of the date of the follow-up report to implement this recommendation:

The Australian Federal Police (AFP) has the primary function of instituting confiscation proceedings. As a matter of course in investigations, the AFP considers relevant proceeds of crime mechanisms that may be employed either post-conviction or civilly.

In November 2018, Victoria's Supreme Court lifted suppression orders relating to criminal proceedings against two companies: Securrency International Pty Ltd (Securrency) and Note Printing Australia Ltd (NPA). Following the lifting of these orders, we can advise that, in late 2011:

- both companies pleaded guilty to offences involving bribery of officials in Malaysia and Indonesia;
- Securrency also pleaded guilty to an offence involving bribery of officials in Vietnam;
- NPA also pleaded guilty to an offence involving bribery of officials in Nepal.

Both companies co-operated in a proceeds of crime application that was brought following the successful criminal prosecutions, and pecuniary penalty orders made against them were taken into account at sentencing. The companies paid a combined total of \$21,666,482 in pecuniary penalty orders. This was in addition to a \$480,000 criminal fine paid by Securrency and a \$450,000 criminal fine paid by NPA.

If no action has been taken to implement recommendation 4 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 4(a) has been implemented.

Text of recommendation 4 (b):

4. Regarding sanctions and confiscation, the Working Group recommends that:

- b) Australian procuring agencies put in place transparent policies and guidelines on the exercise of their discretion on whether to debar companies or individuals convicted of foreign bribery [2009 Recommendation XI (i)].

Action taken as of the date of the follow-up report to implement this recommendation:

Australia continues to consider this recommendation in the context of existing mechanisms available under the Commonwealth procurement framework and in parallel with recommendations made by Australia's Senate Economics Reference Committee relating to foreign bribery published in a report entitled *Foreign Bribery* in March 2018.

Australia's Commonwealth Government operates a devolved procurement framework, in which Commonwealth agencies are responsible for managing individual procurement processes to meet their business needs, in accordance with the Commonwealth Procurement Rules (CPRs). Through this framework, and the Resource Management Framework more broadly, the Government ensures the efficient, effective, economical and ethical use and management of public resources.

Under the CPRs, procuring officials are able to determine eligibility criteria for a particular procurement and may request relevant information to assess the suitability of a potential supplier. Agencies can also require information on any convictions from tenderers as part of the procurement process, and are able to exclude a potential supplier from consideration on various grounds, including if the supplier's practices are dishonest, unethical or unsafe.

If no action has been taken to implement recommendation 4 (b), please specify in the space

below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

In its report entitled *Foreign Bribery*, the Senate Economics Reference Committee recommended that the Government introduce a debarment framework that would ensure companies are required to disclose if they have been found guilty of foreign bribery offences and give agencies the power to preclude the tenderer from being awarded a contract (Recommendation 20). The Government is currently considering its response to the report's recommendations, including Recommendation 20.

Text of recommendation 5 (a):

5. Regarding the liability of legal persons, the Working Group recommends that Australia:

- a) Proactively pursue criminal charges against legal persons, where appropriate, for foreign bribery and related offences, such as false accounting, money laundering, fraud and tax evasion, including where an individual perpetrator pleads guilty; [Convention Articles 2 and 8, 2009 Recommendation VIII i)];

Action taken as of the date of the follow-up report to implement this recommendation:

The Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecution service established by the Parliament of Australia to prosecute alleged Commonwealth criminal offences. Where a brief is referred to the CDPP by an investigative agency, it is a matter for the CDPP as to whether the alleged misconduct should be prosecuted. Such decisions are made by the CDPP consistently with the [Prosecution Policy of the Commonwealth](#)⁸⁶. Provided that the applicable tests set out in this policy are met, including reasonable prospects of conviction and public interest considerations, the CDPP will decide which charges are most appropriate. Each case is dependent on its own facts and the evidence contained in the brief of evidence that is referred to the CDPP.

In the Secrecy and Note Printing prosecutions, offences of conspiracy to bribe foreign public officials were prosecuted against these two legal persons, while false accounting offences were prosecuted against two natural persons (see our response to recommendation 4(a)). The decision as to which charges would be brought against these legal and natural persons in this prosecution were made consistently with the applicable tests under the Commonwealth's Prosecution Policy, and took account of the particular facts of the misconduct.

The Government is currently considering the introduction of a new corporate offence for failure to prevent foreign bribery by an associate. If this offence is introduced, Australia would expect to see increased criminal charges against legal persons for foreign bribery offences.

If no action has been taken to implement recommendation 5 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5(a) has been implemented.

Text of recommendation 5 (b):

5. Regarding the liability of legal persons, the Working Group recommends that Australia:

- b) Finalise and publish the draft Best Practice Guideline on Self-Reporting of Foreign Bribery and Related Offending by Corporations, and take concrete steps to raise awareness of the Guideline amongst the private sector [Convention Articles 3 and 5], and

Action taken as of the date of the follow-up report to implement this recommendation:

In December 2017, following an extensive consultation process with business and the private sector, and in support of providing corporate entities a clear framework to self-report instances of suspected

⁸⁶ <https://www.cdpp.gov.au/prosecution-process/prosecution-policy>

foreign bribery, the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) published the [Best Practice Guideline: Self-Reporting of Foreign Bribery and Related Offending by Corporations](#)⁸⁷. This guideline was accompanied by a [joint media release](#)⁸⁸ by the AFP and CDPP with guidance on how to access the guideline online.

This guideline explains the principles and process that AFP and CDPP will apply where a corporation has self-reported activity associated with foreign bribery or a related offence. The guideline also provides details of the Investigation Cooperation Agreement (ICA) process which allow corporations to model best practice corporate governance, demonstrate a commitment to cooperation and provides a clear framework and guidance on the AFP's expectations when assisting in an investigation.

The OECD recommended in its Phase 3 report into Australia's implementation of the OECD Anti-Bribery Convention that Australia develop a clear framework to address the nature and degree of cooperation of a corporation where foreign bribery or related activity is suspected to have taken place.

This guideline delivers on that recommendation and further demonstrates the leadership, both within the Australian government and private sector, to introduce mechanisms to enhance cooperation that upholds the rule of law, protects inherent legal rights and holds both the government and private sector to account.

The guideline is accessible via the AFP and CDPP websites.

In addition to publication and media release, other concrete steps that have been taken to raise awareness of the Guideline amongst the private sector include developing new slides on self-reporting and the Guideline that will be included in the publicly-available foreign bribery [online learning module](#) on the Attorney-General's Department's website⁸⁹. The Guideline was also discussed by AFP and CDPP at the three day 'Raising the Bar' foreign bribery forum in May 2019 attended by the private sector including industry representatives. Additionally, ASIC has also participated in awareness-raising around the Guideline, including through ASIC Commissioner Cathie Armour's panel presentation at the Transparency International Australia 2019 conference, 'Tackling Corruption'.

If no action has been taken to implement recommendation 5 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5 (b) has been implemented.

Text of recommendation 5 (c):

5. Regarding the [liability of legal persons](#), the Working Group recommends that Australia:

- c) Provide clear information in the public domain about where a company should go in order to make a voluntary report of foreign bribery [2009 Recommendation Annex I B)].

Action taken as of the date of the follow-up report to implement this recommendation:

AFP / CDPP initiatives

Information on where a company should go in order to make a voluntary report of foreign bribery is outlined in the Best Practice Guideline: Self-Reporting of Foreign Bribery and Related Offending by Corporations, which was issued jointly by the Commonwealth Director of Public Prosecutions (CDPP)

⁸⁷ <https://www.cdpp.gov.au/publications/best-practice-guideline-self-reporting-foreign-bribery-and-related-offending>; <https://www.afp.gov.au/what-we-do/crime-types/fraud/fraud-and-anti-corruption>

⁸⁸ <https://www.afp.gov.au/news-media/media-releases/new-best-practice-guideline-self-reporting-foreign-bribery>

⁸⁹ The module is available at: <https://www.ag.gov.au/Crime/Foreignbribery/OnlineModule/index.html>

and also that of the Australian Federal Police (AFP) (see our response to recommendation 5(b)). The guideline is publicly available on the CDPP's and the AFP's websites.

The AFP's website allows people to report instances of foreign bribery to the AFP via the 'Report a Commonwealth Crime' portal. There is also further information on the AFP website on the foreign bribery offences and a further hyperlink to report a Commonwealth crime.

Future outcomes of the AFP's public private partnership with industry as it relates to foreign bribery outreach (see our response to recommendation 6(a)) will further enhance the public's visibility of foreign bribery and the methods with which people can report suspected offending.

ASIC has participated in awareness-raising as to how a company can report suspected foreign bribery, including through ASIC Commissioner Cathie Armour's panel presentation at the Transparency International Australia 2019 conference, 'Tackling Corruption'.

Austrade initiatives

Relevant initiatives are also being undertaken by the Australian Trade and Investment Commission (Austrade), which is the Australian Government's promotion agency for international trade, and for attracting productive foreign investment to Australia. Austrade regularly conducts outreach to the Australian business community, particularly to companies conducting business overseas.

Austrade includes a warning in the footer of every email correspondence and in any contractual agreement – including partnerships, ally arrangements and service agreements – of Australia's anti-bribery laws and that detection will lead to reporting by Austrade to the AFP.

Through internal presentations and training, Austrade regularly communicates information to staff about their obligation to report bribery and of the process for making such reports. Staff are advised to report any credible evidence of bribery, either self-detected or advised by clients, to the Chief Legal Counsel to determine whether a report should be made to the AFP to assess under its case prioritisation criteria. Information to this effect is also contained on Austrade's website.

Through its outreach initiatives, Austrade also regularly reminds clients of the need to report foreign bribery and provides them the necessary information as how to make a report. Similar advice is provided in domestic presentations to State Government and at professional (legal and accounting) meetings. Included in presentations (and in Austrade's website under guidance on Foreign Bribery), is the email address for voluntary reporting along with an expressed preference that reports be made direct to the investigative authorities noting that Austrade exercises neither investigative nor prosecution obligations and to preserve evidence and the rights of the parties.

Attorney-General's Department initiatives

The Attorney-General's Department's website also provides information about how to report foreign bribery. This is partly contained in a publicly available online learning module on foreign bribery hosted on the website. The module is intended for use by industry and government, and provides advice on Australia's anti-bribery policy, relevant laws and how they apply, and steps that business can take to help promote compliance. The module contains information on self-reporting and reporting suspected foreign bribery, including information about who to report to, what information should be reported, and how to report foreign bribery. The Attorney-General's Department is working to update this module, including additional information on self-reporting and the Best Practice Guideline: Self-Reporting of Foreign Bribery and Related Offending by Corporations.

If no action has been taken to implement recommendation 5 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5 (c) has been implemented.

Text of recommendation 6 (a):

6. Regarding engagement with the private sector, the Working Group recommends that Australia:

- a) Find additional ways to encourage companies, particularly SMEs, to develop and adopt adequate internal controls, ethics, and compliance programmes or measures for the purpose of

preventing and detecting foreign bribery. Efforts in this regard could include drawing companies' attention to existing domestic and international guidance, including practical guidance regarding the high-risk sectors and regions in which Australian businesses commonly operate. [2009 Recommendation C i) and ii)]; and

Action taken as of the date of the follow-up report to implement this recommendation:

Austrade initiatives

Austrade has developed guides on bribery and corruption risks in the 50 jurisdictions (including Australia) in which Austrade facilitates trade. These guides contain information on :

- the current corruption perception index ratings compiled by Transparency International
- in-country efforts made to improve and comply with international standards
- applicable laws and penalties
- regulatory bodies that assist in compliance and enforcement
- the different types of corruption that may be encountered, recognising that not every jurisdiction experiences the same risk, and
- on advancements in improving compliance in the relevant country.

These guides are included in a welcome package provided to new exporters and investors seeking assistance from Austrade. They were made available in all Austrade's 89 foreign offices in October 2019.

Austrade has also developed an interactive Business Risk matrix which measures the international ranking of a foreign jurisdiction in terms of country risk of corruption, legal ranking in terms of existing laws and enforcement and cross-referenced with industry risk. The matrix is a more granular examination of the particular, practical risks in-country particularly highlights risks and brings them to the attention of interested parties, particularly for investors and exporters with little international experience or lacking the resources to apply adequate procedures to mitigate the risk of bribery and corruption when entering a foreign market. The matrix will be applied to the 49 foreign jurisdictions in which Austrade offers Australian companies international assistance. Austrade intends to make the matrix publicly available in November 2019.

AFP initiatives

The Australian Federal Police (AFP), supported by the Attorney-General's Department, has established a public private partnership with a number of Australian companies such as BHP, Commonwealth Bank, Qantas, Westpac and Allens Linklaters, along with civil society representation from the Global Compact Network Australia (GCNA) and Transparency International Australia (TIA). Through this partnership, entities are able to leverage their respective skills, understanding and experience across both government and private sectors to jointly engage Australian business in respect of countering foreign bribery issues.

The partnership was established as an outcome of a three day forum held in May 2019, titled 'Raising the Bar', which brought together representatives from over 30 different organisations and government agencies to co-design a new approach to preventing and detecting foreign bribery in Australian business, with a particular emphasis on SMEs. Following this forum, the concept of the Bribery Prevention Network (BPN) was developed which will redefine the way foreign bribery outreach is conducted with Australia's private sector, and provide a sustainable model for access to information and training on foreign bribery risks for business of all sizes.

The BPN will continue with a number of work streams soon to be made public including:

- a free online portal with relevant, reliable resources for the prevention and detection of bribery and corruption and guidance for how to address the risk where issues arise. It will be curated by Australia's leading private sector anti-bribery experts and endorsed by Australian Government agencies as a measure to raise the bar on the prevention of bribery and corruption

- research and development into trends within industries as it relates to foreign bribery including geographic areas of risk and foreign bribery typologies, and
- development of an online resource of case studies from companies involved in foreign bribery investigations to raise awareness among SMEs of the risks of foreign bribery.

The AFP has presented on this partnership at various fora, including of the 'ACT Net Workshop for Law Enforcement Agencies on Effectively Using Corporate Compliance Programs to Combat Domestic & Foreign Bribery', which took place during the APEC SOM III meetings in Chile in August 2019.

The AFP will present on this initiative at the WGB meeting in December 2019.

Relevant initiatives undertaken by ASIC

In August 2018, the Australian Securities and Investments Commission (ASIC) received funding to conduct targeted reviews into corporate governance practices of large listed entities to gain practical insight in this area. ASIC established a Corporate Governance Taskforce which has to date considered how directors and officers have overseen and managed non-financial risk (namely operational, conduct and compliance risks). The focus of the Taskforce's work is to identify good and poor practices and recommend improvements to lift corporate governance standards. Improving governance and accountability is a key strategic priority for ASIC.

In a report released on 2 October 2019, ASIC set out its observations on a review of 7 large financial services companies and highlighted ways in which governance practices could be improved. ASIC urged companies to apply a greater focus and sense of urgency to the oversight and management of non-financial risk. Although not specifically foreign bribery-related, ASIC's review focused primarily on the oversight and management of compliance risk (which would include compliance with foreign bribery obligations). The review made the following findings:

- All too often, management was operating outside of board-approved risk appetites for non-financial risks, particularly compliance risk. Boards need to actively hold management accountable for operating within stated risk appetites.
- Reporting of risk against appetite often did not effectively communicate the company's risk position. Boards need to take ownership of the form and content of information they are receiving so that they can adequately oversee the management of material risks.
- Material information about non-financial risk was often buried in dense, voluminous board packs. It was difficult to identify key non-financial risk issues in information presented to the board. Boards should require reporting from management that has a clear hierarchy and prioritisation of non-financial risks, and
- The effectiveness of board risk committees (BRCs) could be improved. BRCs should meet more regularly, devote enough time and be actively engaged to oversee material risks in a timely and effective manner.

Annexed to the review was a report by an organisational expert into the effectiveness of the board and how behaviours of the board (including their interaction with management) could assist or hinder the oversight of non-financial risk. This review was informed by the methodology adopted by the Dutch Central Bank into behavioural analysis of boards and included board observations, interviews and document reviews relating to 6 companies (3 financial services and 3 non-financial services companies).

ASIC launched the report on 2 October 2019 and the Chair provided the keynote address at the Australian Institute of Directors (AICD) Essential Director Update conference held in Sydney on that date. In addition to the report being published on ASIC's website, together with a media release which resulted in widespread coverage, ASIC also produced a podcast which discussed the report with the team leader of the Taskforce. In addition ASIC has written to the companies that are the subject of the review providing feedback and asking them to respond in writing and participate in feedback sessions.

Relevant initiatives undertaken by EFA

Australia's export credit agency, Export Finance Australia (EFA), has a comprehensive Anti-Bribery

and Corruption Framework on its [website](#)⁹⁰.

EFA's webpage also provides references to the OECD Council Recommendation on Bribery and Officially Supported Export Credits and includes a link to an online learning module from the Attorney-General's Department (see our response to recommendation 5 (c)). In line with recommendation 6 (a) and the 2019 OECD Recommendation of the Council on Bribery and Officially Supported Export Credits, EFA is currently exploring innovative ways to assist its customers to prevent and detect bribery (both foreign and domestic). Possible initiatives include:

- collaborative learning sessions between EFA, its customers (with a focus on SME customers) and external bribery and corruption specialists;
- an online training module on bribery and corruption; and
- production of anti-bribery and corruption guidance material.

EFA aims to settle and implement these measures by first quarter 2020.

If no action has been taken to implement recommendation 6 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 6 (a) has been implemented.

Text of recommendation 6 (b):

6. Regarding engagement with the private sector, the Working Group recommends that Australia:

b) In the event that Australia enacts a 'failure to prevent' offence for companies, closely engage with the private sector to prepare guidance on the establishment and implementation of adequate compliance measures with regard to the new offence [2009 Recommendation i) and ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

In December 2017, the Government introduced the [Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2017](#)⁹¹ (the 'CLACCC Bill') into Parliament. The CLACCC Bill proposed to:

- amend the substantive foreign bribery offence under section 70.2 of the schedule to the *Criminal Code Act 1995* (the Criminal Code) in order to remove undue impediments to successful prosecution
- introduce a proposed new corporate offence for failing to prevent foreign bribery, and
- introduce a deferred prosecution agreement (DPA) scheme for certain corporate offences including foreign bribery.

Under the proposed new corporate offence, there would be automatic liability where an associate of the corporation commits bribery for the profit or gain of the corporation, and the corporation does not have adequate procedures in place to prevent the commission of the foreign bribery offence (see further discussion in our response to recommendation 7(g)). An 'associate' would be defined broadly, to include an officer, employee, agent, contractor, subsidiary or controlled entity of the body corporate, or a person who otherwise performs services for the body corporate. The responsible government Minister would be required to publish guidance on the steps companies could take to implement effective compliance programs to prevent bribery by their associates.

The Attorney-General's Department will publish draft 'adequate procedures' guidance on the Department's website and allow at least four weeks from the date of publication to receive feedback.

⁹⁰ <https://www.exportfinance.gov.au/our-organisation/our-corporate-responsibility/business-ethics/anti-corruption>

⁹¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1108

This is consistent with earlier recommendations made by the Senate Economics References Committee report and the Senate Legal and Constitutional Affairs Committee on the CLACCC Bill after it was first introduced 2017.

In addition to inviting public submissions on the draft guidance through the Department's website, the Department will conduct targeted consultation with business and civil society stakeholders, including Global Compact Network Australia and Transparency International Australia. We anticipate the draft guidance will be launched in mid-November 2019.

Note: The CLACCC Bill was re-introduced into Parliament on 2 December 2019.

If no action has been taken to implement recommendation 6 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The above action has been taken to implement recommendation 6 (b).

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments. Please include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

Text of issue for follow-up 7 (a):

7. The Working Group will follow-up on:

- a) Whether ATO proactively detects and reports to AFP suspected bribe payments to foreign public officials;

The Australian Tax Office (ATO) has protocols in place for ATO auditors who uncover suspected bribery payments when looking through financial and other documentation relating to a taxpayer (for example, where a bribe has been masked as a deduction). Under these protocols, ATO auditors refer such cases to the Australian Federal Police (AFP). The ATO conducts investigations into suspected bribery where the associated criminal cases are not compromised as a result of the tax investigation.

In the past the ATO has referred suspected cases of bribing a foreign public official to the AFP.

Text of issue for follow-up 7 (b):

7. The Working Group will follow-up on:

- b) Whether AUSTRADE, in the course of its trade facilitation role, effectively detects and reports foreign bribery suspicions that involve client companies to AFP;

Austrade has an ongoing program of awareness raising amongst its staff, clients, allies, state governments, civil society, professional and compliance bodies. For example, Austrade's Chief Counsel has presented programs in PNG (March 2019) and Vietnam (Oct 2019) to staff, business clients and various public and private sector groups. Austrade also maintains a publicly-available suite of compliance materials on its website.

Internally, Austrade regularly communicates to its staff that all evidence of bribery is to be reported to the Chief Counsel, by direct email or via the Austrade bribery and corruption email address (bribery@austrade.gov.au). Chief Counsel then assesses the reports for credibility, and applying the case prioritisation criteria of the Australian Federal Police (AFP), reports suspected foreign bribery to the AFP.

Reports of fraudulent and corrupt behaviour made to Austrade by the trading public who wish to make a complaint or seek assistance have increased since 2011/12. In the past two years Austrade has received a number of reports of suspected bribery of which less than 10 matters have been reported to the AFP as possible breaches of Australia's anti-bribery laws.

Anecdotal evidence (related via Australia-based Trade Commissioners and locally-engaged staff) indicates that all levels of business are more aware of Australian and foreign laws and are better equipped to deal with various common practices including solicitation of bribes in tenders or procurement, excessive commissions claimed by local agents and third party benefits. Australian businesses are more aware of corrupt foreign business practices and indicate a willingness to engage with this risk and employ mitigation strategies rather than indirect participation in domestic and international criminal activity. Foreign jurisdictions may also catch this behaviour. Public anti-corruption initiatives driven by governments have made previous behaviours more difficult to maintain in the face of risk of detection.

More work may be required to raise awareness and provide guidance on mitigation of more subtle practices that are being employed country to country to buy influence, particularly in terms of having adequate procedures in place at every level of a supply chain in the face of a potential Australian 'failure to prevent' bribery offence (see our response to recommendation 6(b)).

Text of issue for follow-up 7 (c):

7. The Working Group will follow-up on:

- c) Whether the Department of Defence reports credible suspicions of foreign bribery involving its contractors and potential contractors to AFP;

Australia's Department of Defence has robust and established policies and procedures for the mandatory reporting of allegations of corruption, including foreign bribery, and for the formal referral of such matters to the Australian Federal Police (AFP). These policies and procedures are consistent with the Commonwealth Fraud Control Framework and Australian Government Investigation Standards and include the Department's Incident Reporting and Management Policy Guidance and supporting references within the Procurement Policy Framework.

Defence works closely with the AFP and there are effective mechanisms for cross-reporting allegations of corruption where appropriate, including in relation to foreign bribery. Since December 2017, Defence has received one report of suspected foreign bribery which was referred to the AFP.

Text of issue for follow-up 7 (d):

7. The Working Group will follow-up on:

- d) Australia's ongoing review and monitoring of the defence for facilitation payments, including any recommendations that come out of the ongoing Senate Inquiry Into Foreign Bribery;

In its report on Foreign Bribery (see our response to recommendation 4(b)), the Senate Economic References Committee recommended the facilitation payment defence be abolished over a transition period, to enable companies and individuals to adjust their business practices and procedures to comply with the law as amended

The Australian Government is considering this recommendation and continues to review the operation of this defence. It is important to note the following in this regard:

- The facilitation payment defence available under Australian law is narrow in its operation. Under the Commonwealth Criminal Code, a facilitation payment is a payment of minor value provided in return for securing a minor, routine government action. Such a payment must be appropriately documented. Facilitation payments are distinguished from bribes in that they cannot be made to secure any decision to award or continue business, or any decision related to the terms of new or existing business. They may be made solely to secure or

expedite a routine government action that would ordinarily be due to the person making the payment.

- Operational experience has indicated that the facilitation payment defence has not been an impediment to the enforcement of the foreign bribery offence. Even so, Australian government agencies, wherever possible, strongly discourage businesses from making facilitation payments.
- Facilitation payments are not prohibited under the OECD Anti-Bribery Convention.

Text of issue for follow-up 7 (e):

7. The Working Group will follow-up on:

e) The steps that Australia has taken to address the recommendations made by the Committee with respect to whistleblowers in both the public and private sectors;

See our response to recommendation 1(b). The Government has not yet implemented the Government response to the PJCCFS Report in respect of recommendations relating to the public sector whistleblower scheme in the PIDA. As noted in response to Recommendation 1(b), the Government will implement the recommendations in the PJCCFS Report in relation to the PIDA at the same time as it implements the Government response to the Moss Review.

Text of issue for follow-up 7 (f):

7. The Working Group will follow-up on:

f) Investigations into foreign bribery allegations to verify whether the increased foreign bribery capacity is working in practice;

The following trends can be noted regarding foreign bribery allegations referred to the AFP since the last reporting period (June 2017), measured against the statistics reported in June 2017:

- An increase in evaluations/investigations from 57 to 101.
- An increase in allegations finalised after evaluation/investigation from 20 to 62 (this includes seven investigations that were reported as active during the Phase 4 review).
- A reduction in matters under evaluation from 13 to 0.
- An additional six matters have proceeded to investigation since June 2017.

The reported increase in matters finalised is reflected in a change in approach to how the AFP records foreign bribery investigations in anticipation of further information from foreign enforcement agencies (such as law enforcement, financial intelligence units etc.). Notably, during the tenure of the Fraud and Anti-Corruption Centre (see our response to recommendation 2(a)), a number of evaluations were held in place whilst awaiting further information to be obtained. A concerted effort was undertaken post the Phase 4 review in 2017 to finalise such matters where there was no reasonable prospect of obtaining any relevant information from overseas, on the proviso that the matter could be reactivated in the future should further information come to light.

It is also noted that an active investigation from the time of the Phase 4 review has resulted in a further 23 individual referrals of foreign bribery involving the same legal entity. This has somewhat skewed the figures of active investigations to reflect a dramatic increase in foreign bribery investigations.

Text of issue for follow-up 7 (g):

7. The Working Group will follow-up on:

g) Whether there are any specific issues impacting on CDPP's ability to prove intent;

A number of measures are presently in train to address difficulties associated with proving the fault element in prosecutions for foreign bribery.

On 10 April 2019, the Government commissioned the Australian Law Reform Commission to conduct a review of Australia's corporate criminal responsibility regime. This regime applies to a wide range of offences, including foreign bribery. The Commission is due to report on 30 April 2020. The review will consider matters including the following:

- options for reforming to the Commonwealth Criminal Code and other relevant legislation to provide a simpler, stronger and more cohesive regime for corporate criminal responsibility;
- the availability of other mechanisms for attributing corporate criminal responsibility, including mechanisms that could be used to hold individuals, such as senior corporate officer holders, to account for corporate misconduct; and
- the appropriateness and effectiveness of criminal procedure laws and rules as they apply to corporations.

Furthermore, as explained in our response to recommendation 6(b), in December 2017, the Government introduced the CLACCC Bill into Parliament. This Bill proposed to create a new corporate offence for failing to prevent foreign bribery. Under this offence, a corporation would be held criminally liable where an associate of the company commits bribery for the profit or gain of the corporation. This would be an absolute liability offence, so no intent or other fault element would need to be proven. In other words, there would be no need to prove that the company, intentionally or otherwise, directed, encouraged or endorsed the misconduct of the associate in question (a defence would be available where the company could show that it had adequate procedures in place to prevent foreign bribery). The enactment of this offence would significantly address any difficulties that would otherwise be faced in proving corporate intention.

The CLACCC Bill also proposed to remove potential impediments to the successful prosecution of the substantive foreign bribery offence contained under section 70.2 of the Criminal Code. The CLACCC Bill proposed to

- extend the definition of foreign public official to include candidates for public office
- expand the offence to capture bribery to obtain a personal (i.e. non-business) advantage
- remove the requirement that a benefit and business advantage be 'not legitimately due' and replace this requirement with the concept of 'improperly influencing' a foreign public official, and
- remove the requirement that the foreign official must be influenced in the exercise of the official's duties.

Note: The CLACCC Bill was re-introduced into Parliament on 2 December 2019.

Text of issue for follow-up 7 (h):

7. The Working Group will follow-up on:

h) Whether the proposed new corporate offence of failing to prevent foreign bribery is enacted;

Under the proposed new corporate offence, a company would be automatically held liable for failing to prevent foreign bribery where its associate (such an employee, contractor, agent or subsidiary) engages in conduct constituting a foreign bribery offence for the profit or gain of the corporation. A full defence is available where a corporation can demonstrate that it had 'adequate procedures' in place. This legislation will also provide that the Attorney General must publish Adequate Procedures guidance.

The Attorney-General's Department will publish draft guidance on the Department's website and allow at least four weeks from the date of publication to receive feedback. This is consistent with earlier recommendations made by the Senate Economics References Committee report and the Senate Legal and Constitutional Affairs Committee on the CLACCC Bill after it was first introduced 2017.

In addition to inviting public submissions on the draft guidance through the Department's website, the Department will conduct targeted consultation with business and civil society stakeholders, including Global Compact Network Australia (GCNA) and Transparency International Australia. We anticipate the draft guidance will be launched in mid-November 2019.

Note: The CLACCC Bill was re-introduced into Parliament on 2 December 2019.

Text of issue for follow-up 7 (i):

7. The Working Group will follow-up on:

- i) Whether external auditors who discover indications of a possible illegal act of bribery are reporting the discovery to management and, as appropriate, to corporate monitoring bodies;

The Best Practice Guideline: Self-reporting of foreign bribery and related offending by corporations, provides a clear framework for companies to self-report suspected incidents of foreign bribery (see our response under Recommendation 5 (b)).

We note ASIC has not received any reports from external auditors relating to possible acts of bribery since the Phase 4 evaluation in 2017. In the same period ASIC has received over 1400 reports from external auditors under the *Corporations Act 2001* but none have related to bribery. Under section 311 of the Corporations Act an auditor is required to notify ASIC in writing if the auditor has reasonable grounds to suspect that a contravention of the Corporations Act has occurred and believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors. Note that the contraventions are restricted to the Corporations Act (no foreign bribery offences).

Text of issue for follow-up 7 (j):

7. The Working Group will follow-up on:

- j) Sanctions and confiscation in foreign bribery cases;

Australia has had two foreign bribery investigations that have proceeded to prosecution and have been finalised. The results of these prosecutions have previously been reported to the WGB through the *Tour de Table* and are provided below for completeness.

Securrency and Note Printing Australia prosecution, 2018-2019

The background to this prosecution is provided in our response to recommendation 4(b). The sanctions that were imposed on the natural and legal persons are as follows:

Radius Christanto (NP) - Conspiracy to bribe foreign public official)

- Mr Christanto was sentenced to two years imprisonment, and was released to be of good behaviour for two years. The sentencing judge took into account 42 days imprisonment that Mr Christanto served in Singapore prior to his extradition to Australia, his early plea of guilty and associated remorse and extensive cooperation that he undertook to provide to Australian authorities. Had Mr Christanto not pleaded guilty or offered future cooperation, he would have been sentenced to five years imprisonment, with a minimum non-parole period of three years and four months.

David Ellery (NP) - False accounting (Victorian state offence)

- Mr Ellery was sentenced to six months imprisonment, with the term suspended for a period of two years. Were it not for his plea of guilty, he would have been sentenced to one year of imprisonment with a non-parole period of nine months.

Myles Curtis (NP) - Conspiracy to bribe a foreign public official; False accounting (Victorian offence)

- On the conspiracy to bribe foreign public officials charge, Mr Curtis was sentenced to two years and six months imprisonment, but released to be of good behaviour for two years and

six months. On the false accounting charge, Mr Curtis was sentenced to six months imprisonment, wholly suspended for one year. Were it not for his plea of guilty, he would have been sentenced to three years imprisonment with a non-parole period of two years on the conspiracy charge, and one year imprisonment with a six month non-parole period on the false accounting charge.

Clifford Gerathy (NP) - False accounting (Victorian offence)

- Mr Gerathy was sentenced to three months' imprisonment, wholly suspended for six months. If he had not pleaded guilty, he would have been sentenced to four months immediate imprisonment.

Christian Boillot (NP) - Conspiracy to Bribe Foreign Public Official

- Mr Boillot was sentenced to two and a half years imprisonment, but released to be of good behaviour for two years. Were it not for his plea of guilty he would have been sentenced to three years imprisonment with a minimum non-parole period of two years.

Securrency (LP) - Conspiracy to bribe a foreign public official – Three counts (Indonesia, Malaysia, Vietnam)

Note Printing Australia (LP) - Conspiracy to bribe a foreign public official – Three counts (Indonesia, Malaysia, Nepal)

Securrency was sentenced to fines totalling \$480,000 and NPA was sentenced to fines totalling \$450,000. The fines would have been more substantial were it not for both companies pleading guilty and undertaking to cooperate with the authorities in relation to the prosecutions of their employees and agents.

Securrency and NPA cooperated in a proceeds of crime application that was brought as a result of the successful company prosecutions. The companies paid a combined total of \$21,666,482 in pecuniary penalty orders. At the time of writing, the pecuniary penalties against NPA and Securrency are the largest ever ordered.

Lifese prosecution, 2017

As the Phase 4 report noted, three natural persons were convicted of conspiracy to bribe a foreign public official. All three persons were sentenced to four years' imprisonment with a fixed non-parole period of two years. Two persons were fined \$250,000 each.

Text of issue for follow-up 7 (k):

7. The Working Group will follow-up on:

k) Australia's enforcement of foreign bribery cases that may be politically sensitive; and

As we have stated above (see response to Recommendation 5 (a)), the CDPP is an independent prosecution service. Consistent with paragraph 2.13 of the Prosecution Policy of the Commonwealth, a decision whether or not to prosecute must not be influenced by:

- the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved
- possible political advantage, disadvantage or embarrassment to the Government or any political group or party, or by
- the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

Text of issue for follow-up 7 (l):

7. The Working Group will follow-up on:

l) Australia's enforcement of false accounting offences related to foreign bribery.

Depending on the facts of the misconduct, AFP will usually give consideration to false accounting offences as part of an investigation into alleged foreign bribery. For example in the Security and Note Printing Australia prosecution for foreign bribery, three natural persons were also convicted of false accounting offences under the Victorian *Crimes Act 1958*.

It should be noted that ASIC would also consider false accounting offences in any foreign bribery-related investigation together with any relevant *Corporations Act 2001* breaches, for example, falsifying company books.

PART III: ADDITIONAL ISSUES FOR INFORMATION

Foreign bribery and related enforcement actions since Phase 4

To this end, we would kindly ask you to please provide information on:

- *The foreign bribery investigations and prosecutions mentioned in [relevant paragraphs and/or Annex 3] of the Phase 4 Report; and*
- *The foreign bribery cases in the Matrix extract here attached.*

Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 4.

Information may be provided below or in a separate document.

Action taken as of the date of the follow-up report:

An update on the foreign bribery prosecutions of Security, Note Printing Australia and Lifese has been provided in our responses to recommendation 4 (a) and follow-up issue 7 (j). An update on AFP's active foreign bribery investigations is provided in our response to recommendation 4 (a). Updates to the matrix will be provided separately.

Efforts made to publicise and disseminate the Australia Phase 4 report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit [*Phase 4 Evaluation Procedures, para. 50*]

Action taken as of the date of the follow-up report:

The Attorney General's Department (AGD) website contains a link to reports on the OECD website, and the report is referenced on websites of other government agencies such as Austrade. The Parliament of Australia published a research paper on Australia's implementation of the OED Anti-Bribery Convention, including a summary of the Phase 4 evaluation, in August 2019.

The AGD presented on the Phase 4 report, specifically recommendation 6 (a), during the Raising the Bar foreign bribery forum held in May 2019, which was attended by representatives from over 30 organisations and government agencies including Transparency International Australia and Global Compact Network Australia (GCNA). The report has also been the subject of presentations made by:

- the AGD at conferences including the GCNA inaugural flagship conference 'Rebuilding trust in corporate Australia – Business as an Agent of Sustainable Change' which brought together 250 local and global leaders from business, civil society, academia and Government, and
- ASIC and AFP at conferences including a joint panel presentation at the 2019 Transparency International Australia conference 'Tackling Corruption'.