



Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

Integrity of overseas Commonwealth
law enforcement operations

June 2013

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LIST OF ACRONYMS AND ABBREVIATIONS

ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP Act	<i>Australian Federal Police Act 1979</i>
AGD	Attorney-General's Department
AIC	Australian Institute of Criminology
APEC	Asia-Pacific Economic Cooperation
APS	Australian Public Sector
APSC	Australian Public Service Commission
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWB	Australian Wheat Board
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CDPP	Commonwealth Director of Public Prosecutions
Customs	Australian Customs and Border Protection Service
DAFF	Department of Agriculture, Fisheries and Forestry
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
EFIC	Export Finance and Insurance Corporation
FIU	Facilities and Implementation Unit
FMA Act	<i>Financial Management and Accountability Act 1997</i>

GOPAC	Global Organization for Parliamentarians Against Corruption
HOCOLEA	Heads of Commonwealth Operational Law Enforcement Agencies
LEIC Act	<i>Law Enforcement Integrity Commissioner Act 2006</i>
MIO's	Migration Integrity Officers
MOUs	Memoranda of Understanding
NPA	Note Printing Australia
OCSF	Organised Crime Strategic Framework
OECD	Organisation for Economic Co-operation and Development
RBA	Reserve Bank of Australia
TA&T	Technical Assistance and Training
the committee	Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity
TIA	Transparency International Australia
UNCAC	United Nations Convention against Corruption
UNODC	UN Office of Drugs and Crime

RECOMMENDATIONS

Recommendation 1

6.9 The committee recommends that as a matter of priority, the Attorney-General's Department publish for public consideration, a detailed and comprehensive definition of corruption for the purposes of the *Law Enforcement Integrity Commissioner Act 2006*. The committee further recommends the inclusion of the definition in the National Anti-Corruption Plan together with guidance for Commonwealth agencies on the threshold for notification of serious matters to the Australian Federal Police.

Recommendation 2

6.50 The committee recommends that the Australian Public Service Commission in collaboration with other Commonwealth oversight bodies including the Office of the Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity consider the feasibility of developing an integrity risk assessment framework focused on the post-deployment context for application across Commonwealth agencies.

Recommendation 3

7.51 The committee recommends that, subject to existing resources, the Public Service Commissioner conduct a study on the feasibility of a mandatory reporting regime for Commonwealth agencies in relation to allegations of serious misconduct including non-criminal misconduct.

Recommendation 4

9.10 The committee recommends that the Public Service Commissioner conduct a review of Australian Public Service Code of Conduct training which considers the feasibility of a mandatory APS Code of Conduct training regime for all Australian Public Service employees.

Recommendation 5

9.14 The committee recommends that the Public Service Commissioner review and amend the Australian Public Service Code of Conduct guidelines on the acceptance of gifts for consistent application across the Australian Public Service.

CHAPTER 1

Introduction

1.1 On 6 December 2011, pursuant to the duties of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (the committee) as set out in paragraph 215(1)(d) of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), the committee initiated an inquiry into the management of corruption risks arising from the international operations of Commonwealth law enforcement agencies including:

- the Australian Federal Police;
- the Australian Crime Commission;
- the Australian Customs and Border Protection Service;
- the Australian Taxation Office;
- the Australian Transaction Reports and Analysis Centre;
- CrimTrac;
- the Australian Quarantine and Inspection Service; and
- the Department of Immigration and Citizenship.

The committee noted that, in the context of challenges particular to international operations, it would consider:

- (a) trends in and the nature and extent of corruption risks facing Commonwealth agencies involved in international operations;
- (b) the extent to which Commonwealth law enforcement agencies are able to prevent and investigate corruption in international operations;
- (c) the extent to which the Australian Commission for Law Enforcement Integrity (ACLEI) is able to assist in corruption prevention and to successfully investigate or otherwise respond to corruption in international operations;
- (d) the nature and effectiveness of integrity measures, models and legislation adopted by other jurisdictions, including for their international operations;
- (e) the interaction of Commonwealth and foreign integrity measures, including in cases of joint operations with foreign governments or multinational organisations; and
- (f) any other relevant matters.

1.2 The nature of evidence received by the committee in submissions and during three days of hearing conducted in March and May 2012 led the committee to revise part of its inquiry terms of reference. On 21 June 2012, the committee resolved to amend the terms of reference to allow consideration of the corruption and integrity matters faced by all Commonwealth agencies and not just Commonwealth law

enforcement agencies. Terms of reference (a), (b) and (d) were amended and a new term or reference (f) was introduced. The new terms of reference state that:

In the context of challenges particular to international operations, the committee will consider:

- (a) trends in and the nature and extent of corruption risks facing Commonwealth agencies involved in international operations;
- (b) the extent to which Commonwealth law enforcement agencies are able to prevent and investigate corruption in international operations;
- (c) the extent to which ACLEI is able to assist in corruption prevention and to successfully investigate or otherwise respond to corruption in international operations;
- (d) the nature and effectiveness of integrity measures, models and legislation adopted by other jurisdictions, including for their international operations;
- (e) the interaction of Commonwealth and foreign integrity measures, including in cases of joint operations with foreign governments or multinational organisations;
- (f) the extent of integration of approaches to identifying and addressing corruption risks and best practice approaches to integration of anti-corruption efforts in international operations; and
- (g) any other relevant matters.

Conduct of the inquiry

1.3 The committee advertised the inquiry in *The Australian* and through the Internet, calling for submissions by 29 February 2012. The committee wrote to a number of organisations and individuals inviting them to make a submission to the inquiry.

1.4 The committee received ten public submissions and four confidential submissions. A list of individuals and organisations that made public submissions to the inquiry, together with other information authorised for publication, is provided at Appendix 1. The committee held six public hearings in Canberra on 16 March, 23 March, 11 May, 8 August and 20 November 2012 and in Sydney on 4 October 2012. The witnesses who appeared before the committee are listed in Appendix 2. The public submissions and Hansard transcript of evidence can be accessed through the committee's website at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=aclei_ctte/integrity_international_operations/index.htm

1.5 As part of the inquiry, a committee delegation met with Australian Federal Police (AFP) and other Commonwealth agency representatives in the Philippines in January 2013 in order to gain insight into law enforcement matters pertinent to the inquiry. The delegation observed AFP law enforcement operations and activities in Manila including the administration of projects funded by AusAID. The committee

also attended the conference of the Global Organization for Parliamentarians Against Corruption (GOPAC) from 30 January to 2 February 2013.

Scope of the inquiry

1.6 As a first step in the inquiry, the committee sought to understand the corruption risks that arise from Australian overseas law enforcement operations and how they are managed and mitigated by Commonwealth agencies. This includes corruption risks to law enforcement which may be imported back into Australia. In reviewing the risk environment, it became clear that not all the identified agencies have law enforcement as their core business while the extent to which agencies engage in international operations and focus on corruption risks in the context of international operations varies considerably from one agency to the next. Notwithstanding the fact that the likelihood of exposure to corruption varies across agencies as does the severity of possible consequences, all Commonwealth agencies are susceptible to corruption. The Integrity Commissioner informed the committee that law enforcement functions of whatever nature give rise to corruption risks while overseas operations, regardless of whether they involve law enforcement, entail inherent vulnerabilities.¹

1.7 In terms of the scope of the inquiry, the committee sought evidence from a wide range of Commonwealth agencies. These include those under ACLEI's jurisdiction including the AFP, Australian Crime Commission (ACC), Australian Customs and Border Protection Service (Customs) and the former National Crime Authority. From 1 July 2013, the Australian Transaction Reports and Analysis Centre (AUSTRAC), CrimTrac and the Department of Agriculture, Fisheries and Forestry (DAFF) Biosecurity (formerly the Australian Quarantine and Inspection Service) will also come under ACLEI's purview.

1.8 The committee also considered agencies with a law enforcement function. The concept of a 'law enforcement function' is broad and encompasses agencies not traditionally associated with law enforcement. The Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) which is made up of twelve law enforcement, taxation and regulatory agencies include departments considered to have a 'law enforcement function' such as the Attorney-General's Department (AGD) and the Department of Immigration and Citizenship (DIAC).

1.9 The LEIC Act's definition of a 'law enforcement function' includes any of the following functions:

- (a) investigating whether:
 - (i) an offence has been committed against a law of the Commonwealth; or
 - (ii) there has been a contravention of a law of the Commonwealth in relation to which civil penalty proceedings may be brought;

1 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2; Department of Immigration and Citizenship, *Submission 4*, p. 8.

- (b) preparing the material necessary to prosecute a person for an offence against a law of the Commonwealth;
- (c) preparing the material necessary to bring civil penalty proceedings against a person for a contravention of a law of the Commonwealth;
- (d) collecting, maintaining, correlating, analysing, accessing or distributing information for the purpose of assisting the enforcement of laws of the Commonwealth;
- (e) assisting in carrying out a function referred to in paragraphs (a) to (d).

1.10 In light of this broad definition, many agencies and departments which are not widely associated with law enforcement matters could be considered to have a law enforcement function. The Commonwealth Director of Public Prosecutions (CDPP) noted in its 2011–12 Annual Report that a large number of Commonwealth agencies have an investigative role and that it had received briefs of evidence over the year from 43 Commonwealth, state and territory investigative agencies.² The Australian Taxation Office (ATO) stated that although 'it is not a law enforcement agency, it refers matters to law enforcement agencies for investigation and possible prosecution'.³ Similarly, DAFF noted that while a lot of its activities are not law enforcement *per se*, it manages trade and movement of people in a biosecurity context.⁴ Furthermore, its activities could be conceived as supporting law enforcement across a range of issues and jurisdictions as they are largely directed at building capacity in regions where the risks of bribery and corruption are known to be high.⁵ At the same time, as part of DIAC's overseas network which is focused on delivering the migration program and related initiatives, DIAC officers overseas support the whole-of-government agenda including that of law enforcement.⁶

1.11 In relation to anti-corruption initiatives, the government recognises thirteen Commonwealth bodies involved in the prevention of corruption including the Australian Securities and Investments Commission (ASIC), AUSTRAC and the ATO.⁷ In addition, the Commonwealth's approach to anti-corruption discussion paper which proposes a National Anti-Corruption Plan recognises the involvement of agencies including the Australian Public Service Commission (APSC), AusAID and

2 Commonwealth Director of Public Prosecutions, *Annual Report 2011–12*, p. 4, <http://www.cdpp.gov.au/Publications/Annual-Reports/CDPP-Annual-Report-2011-2012.pdf> (accessed 17 April 2013).

3 Mr Greg Williams, ATO, *Committee Hansard*, 8 August 2012, p. 6.

4 Ms Rona Mellor, DAFF, *Committee Hansard*, 16 March 2012, p. 11.

5 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 12.

6 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 12.

7 Australian Government Response to: Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity Final Report, February 2012, p. 2.

the Office of the Commonwealth Ombudsman.⁸ For the purposes of the inquiry, the committee sought evidence from all such agencies and bodies.

1.12 The committee widened its terms of reference during the inquiry in response to evidence it received which highlighted the specific integrity challenges faced by non-law enforcement agencies. Concerns were raised not only in relation to the vulnerabilities of non-law enforcement bodies without strong integrity regimes and anti-corruption safeguards in place, but also in relation to the involvement of such agencies in joint operations.

1.13 The involvement of former and current Commonwealth-owned, controlled or largely controlled entities, namely the Australian Wheat Board (AWB), Note Printing Australia (NPA) and Securrency were raised in evidence to underscore the reputational damage to Australia that corruption and allegations of serious misconduct can cause.⁹ Following the AWB and NPA/Securrency revelations, a number of Commonwealth agencies reviewed their integrity and anti-corruption regimes.¹⁰ As part of its review, as a case in point, DFAT considered the adequacy of its training on the obligations of staff to report 'credible suspicions of bribery'.¹¹

1.14 NPA is fully owned by the Reserve Bank of Australia (RBA) which, at the time when the corruption allegations were raised, owned 50 per cent of Securrency.¹² The NPA/Securrency matter is considered in Chapter 2 as a case study on integrity matters and lessons learned. While the committee appreciates that legal proceedings are ongoing, the integrity matters raised in relation to NPA and Securrency, namely corruption risks overseas, integrity standards, organisational culture and the protection of whistleblowers are directly relevant to the committee's terms of reference. These matters and the manner in which Commonwealth agencies learn from them have a direct bearing on Australia's reputation overseas.

8 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 12,

<http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/TheCommonwealthsApproachtoAntiCorruption.pdf> (accessed 21 March 2013).

9 Mr Michael Ahrens, Transparency International Australia, *Committee Hansard*, 8 August 2012, p. 11; Mr Malone, ATO, *Committee Hansard*, 8 August 2012, p. 8; Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 3.

10 Mr Paul Malone, ATO, *Committee Hansard*, 8 August 2012, p. 8; Export Finance and Insurance Corporation, Answer to Question on Notice at a public hearing on 11 May 2012 (received 25 May 2012); Mr Peter Yuile, Austrade, *Committee Hansard*, 11 May 2012, p. 28.

11 Department of Foreign Affairs and Trade, Answer to Question on Notice at a public hearing on 11 May 2012.

12 In February 2013, the RBA agreed to sell its 50 shareholding in Securrency to Innovia Films. Reserve Bank of Australia, Sale of Securrency, Media Release, 12 February 2013, <http://www.rba.gov.au/media-releases/2013/mr-13-02.html> (accessed 20 May 2013).

Overseas operations

1.15 There are a number of arrangements which are considered 'overseas operations' for the purposes of this inquiry. These include the activities of:

- Australian-based staff living and working overseas;¹³
- Australian-based staff travelling overseas for a short period of time on official business;¹⁴
- Australian-based staff holidaying overseas; and
- locally-engaged staff who work for Australian agencies overseas.

1.16 The tenure of an international deployment, which excludes staff travelling overseas for the purposes of short term activities such as conferences and meetings, varies both within and across Commonwealth agencies. The Department of Foreign Affairs and Trade (DFAT) has the highest number of Australian staff deployed overseas at any one time. In 2012, Australian-based staff posted overseas and locally-engaged staff included:

- 594 DFAT officers posted abroad including 397 policy officers or 35 per cent of its total staff.¹⁵
- 218 AusAID officers and 580 locally engaged staff in the 40 countries.¹⁶
- 147 DIAC Australian-based staff located in 40 countries.¹⁷
- Over 85 AFP appointees under its International Liaison Officer Network operating in 30 countries. An estimated 10 per cent of the AFP's total workforce is located overseas.¹⁸

13 Evidence to the committee suggests that Australian officials are most commonly deployed for up to three years. Mr Michael Pezzullo, Australian Customs and Border Protection Service, *Committee Hansard*, 23 March 2012, pp 19–20; Mr Todd Frew, Department of Immigration and Citizenship, *Committee Hansard*, 23 March 2012, p. 15.

14 As a case in point, ATO staff travel internationally to attend international forums and conferences as well as to partner AusAID to deliver Australia's overseas aid program. Mr Greg Williams, ATO, *Committee Hansard*, 8 August 2012, p. 6.

15 Department of Foreign Affairs and Trade, *Annual Report 2011–12*, pp 4–5, http://www.dfat.gov.au/dept/annual_reports/11-12/pdf/DFAT_AR_2011-12.pdf (accessed 10 May 2013).

16 Mr Blair Excell, AusAID, *Committee Hansard*, 11 May 2012, p. 9.

17 As at December 2011. Department of Immigration and Citizenship, *Submission 4*, pp 5–6.

18 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 5. AFP officers serve as advisors and intelligence analysts in people smuggling investigation teams in Malaysia and Indonesia. The AFP has an advisor deployed to the Jakarta Cybercrime Centre and Transnational Crime teams in Ho Chi Minh City, Phnom Penh, Manila and Bangkok while counter-terrorism officers work alongside counterparts in London and Washington. Australian Federal Police, *Submission 5*, p. 4.

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- 67 Australian Trade Commission (Austrade) Australian-based employees and 518 locally engaged employees in 50 countries.¹⁹
 - 19 Customs officers located overseas and 19 locally engaged staff.²⁰
 - Up to six ATO staff posted overseas at any one time.²¹

Acknowledgement

1.17 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

19 Mr Peter Yuile, Executive Director, Education and Corporate Operations, Austrade, *Committee Hansard*, 11 May 2012, p. 26.

20 Answer to Question on Notice from the Australian Customs and Border Protection Service in response to Chair's letter of 6 February 2012 (received 7 March 2012).

21 Mr Greg Williams, ATO, *Committee Hansard*, 8 August 2012, p. 8.

CHAPTER 2

Note Printing Australia and Securrency—a case study on risk management and integrity practices

2.1 This chapter is a case study on the NPA/Securrency matter. Within the context of the inquiry, the matters brought to light in relation to the NPA and Securrency case raised key questions regarding management of corruption allegations, integrity frameworks, corporate governance and the protection of whistleblowers.

2.2 The committee is mindful that court proceedings and investigations continue. For the purposes of the inquiry, the committee contained its examination to key integrity matters in relation to NPA and Securrency rather than focusing on or making any findings in relation to the actions of any individuals or agencies. The key integrity matters before the inquiry which were thrown into sharp relief by the NPA/Securrency case include:

- the requirements for agencies to act on suspicions of corruption and deal with reported suspicions of misconduct which may be a precursor to corruption;
- integrity management and corporate compliance including systems to ensure that organisational policies are implemented and upheld;
- a culture of reporting and protection of whistleblowers;
- the importance of integrity oversight; and
- the gaps or intersection of roles of agencies within the integrity framework.

Background

2.3 NPA prints banknotes for the RBA, Australian passports, and banknotes for a small number of other countries, while Securrency manufactures, markets and supplies a range of polymer substrates on which banknotes are printed by NPA and others.¹

2.4 In July 2011, the AFP announced that it had charged two subsidiaries of the RBA, NPA and Securrency, as well as six former banknote executives, with paying bribes to foreign officials 'in order to win banknote supply contracts'.² In August 2011,

1 Reserve Bank of Australia, Answers to Questions on Notice in response to committee request of 23 May 2012 (received 1 June 2012), pp 7–8.

2 AFP, 'Foreign bribery charges laid in Australia', Media Release, 1 July 2011, <http://www.afp.gov.au/media-centre/news/afp/2011/july/foreign-bribery-charges-laid-in-australia.aspx> (accessed 5 June 2012); Nick McKenzie and Richard Baker, 'Former Securrency bosses arrested', *Sydney Morning Herald*, 1 July 2011, <http://www.smh.com.au/business/former-securrency-bosses-arrested-20110701-1gtr8.html> (accessed 5 June 2011).

the AFP reported that a seventh individual had been charged.³ At the time, the RBA wholly owned NPA and owned 50 per cent of Securrency.⁴

2.5 The AFP investigation relates to alleged bribes paid to public officials in up to six countries including Indonesia, Malaysia and Vietnam between 1999 and 2005.⁵ The allegations are that senior managers from Securrency and NPA used international sales agents to bribe foreign public officials to secure bank note contracts. The charges against the individuals relate to subsections 11.5(1) and 70.2(1) of the *Criminal Code Act 1995* which carry a maximum penalty of 10 years imprisonment and/or a \$1.1 million fine.⁶ The case is the first of its kind under Australia's foreign bribery legislation which came into effect in December 1999. AFP investigations were pursued concurrently with related investigations by overseas law enforcement agencies involving cooperation with the UK's Serious Fraud Squad, the Malaysian Anti-Corruption Commission and Attorney-General's Chambers as well as the Indonesian National Police.⁷

2.6 In October 2011 Securrency and NPA pleaded guilty to three charges each of conspiring to bribe foreign public officials and were ordered to pay penalties of \$19.8 million and \$1.8 million respectively under the *Proceeds of Crime Act 2002*.⁸ On 20 August 2012, Mr David Ellery, a former Chief Financial Officer (CFO) of Securrency was sentenced by the Supreme Court of Victoria to imprisonment for six months, wholly suspended for two years.⁹

2.7 In March 2013, another individual was charged with foreign bribery activities alleged to have occurred in Nepal. At the same time, additional charges were laid against three individuals who were originally charged in 2011 in relation to efforts to

3 AFP, 'Further charges laid in foreign bribery investigation', Media Release, 10 August 2011, <http://www.afp.gov.au/media-centre/news/afp/2011/august/further-charges-laid-in-foreign-bribery-investigation.aspx> (accessed 5 June 2012).

4 In February 2013, the RBA agreed to sell its 50 shareholding in Securrency to Innovia Films. Reserve Bank of Australia, 'Sale of Securrency', Media Release, 12 February 2013, <http://www.rba.gov.au/media-releases/2013/mr-13-02.html> (accessed 20 May 2013).

5 AFP, 'Foreign bribery charges laid in Australia', Media Release, 1 July 2011, <http://www.afp.gov.au/media-centre/news/afp/2011/july/foreign-bribery-charges-laid-in-australia.aspx> (accessed 5 June 2012), Nick McKenzie & Richard Baker, 'Bank head admits bribery defences were inadequate', *Saturday Age*, 12 February 2011, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/548923/upload_binary/548923.pdf;fileType=application%2Fpdf#search=%22securrency,%20bribery%22 (accessed 6 June 2012).

6 AFP, 'Foreign bribery charges laid in Australia', Media Release, 1 July 2011.

7 AFP, 'Foreign bribery charges laid in Australia', Media Release, 1 July 2011.

8 Staff reporters, 'Reserve bank firms plead guilty to paying bribes to middlemen', *Sydney Morning Herald*, 28 October 2011.

9 *R v Ellery* [2012] VSC 349, [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2012/349.html?stem=0&synonyms=0&query=title\(R%20and%20Ellery%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2012/349.html?stem=0&synonyms=0&query=title(R%20and%20Ellery%20)) (accessed 20 May 2013).

secure banknote contracts on behalf of NPA.¹⁰ The AFP noted that the total number of individuals charged with foreign bribery offences as part of the investigation as of March 2013 was nine.¹¹ The matters remain before the courts.

2.8 In early March 2012, evidence of 'possible illegality' by senior Reserve Bank officials and business figures in connection with the banknote bribery case was referred by the AFP to ASIC.¹² However, after having reviewed material from the AFP for possible breaches of directors' duties under the *Corporations Act 2001*, ASIC decided not to proceed to a formal investigation.¹³

Identified risks and the organisational culture within Securrency and NPA

2.9 In late 2011, United Nations Global Compact representative, Mr Matthew Tukaki noted that Australian companies face three risks in relation to corruption overseas:

- overseas suppliers often engage in practices considered unethical or illegal in Australia;
- companies engage agents or workers who are taking commissions from others and who are not acting in the company's interests; and
- public officials seek bribes for preferential treatment on contracts.¹⁴

2.10 Both NPA and Securrency were faced with all three of these risk factors.

2.11 The sentencing judge in the Ellery case noted that at the time of the alleged offences, a culture had developed within Securrency whereby staff members were 'discouraged from examining too closely the use of, and payment arrangements for, overseas agents'. The judge also noted that:

Secrecy, and a denial of responsibility for wrongdoing, also seem to have been part of the corporate culture at Securrency at that time.¹⁵

10 AFP, 'Further charges laid in foreign bribery investigation', Media Release, 14 March 2013, <http://www.afp.gov.au/media-centre/news/afp/2013/march/Media%20Release%20-%20Further%20charges%20laid%20in%20foreign%20bribery%20investigation.aspx> (accessed 20 May 2013).

11 AFP, 'Further charges laid in foreign bribery investigation', Media Release, 14 March 2013.

12 Nick McKenzie and Richard Baker, 'Senior RBA men face fresh scrutiny over bribe scandal', *Sydney Morning Herald*, 5 March 2012, <http://www.smh.com.au/national/senior-rba-men-face-fresh-scrutiny-over-bribe-scandal-20120304-1ub4z.html> (accessed 5 June 2012).

13 Richard Baker and Nick McKenzie, 'ASIC drops note printing bribes probe', *Sydney Morning Herald*, 13 March 2012, <http://www.smh.com.au/national/asic-drops-note-printing-bribes-probe-20120312-1uwjo.html> (accessed 5 June 2012).

14 Maris Beck, 'UN forum tackles business graft', *Age*, 15 November 2011, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/1226013/upload_binary/1226013.pdf;fileType=application%2Fpdf#search=%22securrency,%20bribery%22 (accessed 6 June 2012).

15 *R v Ellery* [2012] VSC 349.

2.12 In terms of Mr Ellery's part in a 'deception' regarding payments to a Malaysian agent, Mr Abdul Kayum, the judge noted that Mr Ellery had engaged in false accounting. Mr Kayum was arrested in 2011 along with a former assistant governor of Malaysia's central bank on charges of taking bribes in return for awarding contracts to NPA and Securrency.¹⁶ The judge in the Ellery case noted that Mr Ellery had informed an assistant governor of the RBA in June 2007 in an answer to an inquiry that 'Securrency had never paid any commission to its Malaysian agent' and maintained the 'deception in July 2007 when questioned by RBA auditors'.¹⁷ The judge stated to Mr Ellery:

You were asked to provide supporting documentation in relation to the payment. The managing director suggested a response to the auditors' enquiries, which you essentially adopted as your own. It involved a false and elaborate attempt to justify the payment, as a legitimate reimbursement of Kayum's actual expenses.¹⁸

2.13 In relation to NPA, evidence provided to the committee by Mr Brian Hood, a former NPA senior executive who became a whistleblower, also emphasised the poor organisational culture in existence at the time of the alleged offences:

...when I joined, there was an air of desperation because of the financial losses. Business was in bad shape; operations, the production facility was in bad shape. There was a lot of spoilage, a lot of wastage. Deliveries were often late against contractual commitments with customers. There were adverse operational audit reports. The business was not in good shape at all. The production capacity was significantly underutilised, so there was a lot of machinery and time and people sitting there underutilised.¹⁹

2.14 Mr Hood noted that on his arrival at NPA in 2004, there was no risk management framework in place to address risks arising from business dealings with foreign governments while policies and procedures in relation to agents did not deal with matters of corruption or wrongdoing.²⁰ Recognising that bribery was the key corruption risk to the agency, particularly in relation to countries where corruption was rife, Mr Hood questioned the practices and policies within NPA at the time. He found it unusual that NPA operated in Malaysia and Nepal with the use of agents when, in direct contrast, it did not use agents in Singapore, New Zealand, Papua New Guinea and Brunei where it had an 'excellent working relationship' with the respective central banks.²¹

16 Nick McKenzie, 'More questions over RBA role in corruption scandal', *ABC News*, 12 September 2012, <http://www.abc.net.au/news/2012-09-11/more-questions-over-rba-role-in-corruption-scandal/4255344> (accessed 27 September 2012).

17 *R v Ellery* [2012] VSC 349.

18 *R v Ellery* [2012] VSC 349.

19 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 14.

20 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 10.

21 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 13.

2.15 Furthermore, Mr Hood noted that there was no 'due diligence and the right sort of corporate governance culture'. Rather, the culture that existed within NPA at the time was one of 'sell, sell, sell and get whatever business we possibly get'. Mr Hood informed the committee:

...for a business that was making banknotes and Australia's passports, there was not the culture of compliance, of due diligence, of rigorously following policies and procedures. It was far more dynamic than that and fairly cavalier in many ways.²²

2.16 When he started in his position with NPA, Mr Hood's initial concerns were of a financial nature. While the business was in 'poor shape financially and otherwise', payments to agents were 'very significant and material'.²³ Furthermore, payments of commissions were not reported to the NPA board and did not appear on the agency's operating statement or income statement despite the fact that they amounted to a material loss. As payment of commissions were 'in amongst all sorts of other expenses', there was no attention drawn to them which might otherwise indicate whether the remuneration of agents is 'sensible relative to the value of the contract and profitability of the contract to the NPA'.²⁴ As a first step, Mr Hood reformed this practice by itemising commissions and introducing financial reporting in relation to such payments.²⁵

2.17 In relation to the practices within NPA regarding the payments of agents, Mr Hood explained that:

Some time not long before I had started the Indonesian agent had been paid \$7.4 million. The Malaysian agent was being paid millions of dollars. Quite naturally that caused me to look at it financially and say: 'Hang on—what are the agents doing? What is their role? What is the value? What are we getting in return here in the context of the business's overall financial shape?' But progressively, given events especially with the Malaysian agent, the concerns went from just being financial to being ones of ethics and honest and probity, so attempting to divert funds into somebody else's bank account, being dishonest about having an agency agreement with Securrency where he had one with NPA and had called for exclusivity, being dishonest about having an arrangement with the previous management team about receiving interim payments of commission where policy said that agents should only be paid at the end of the transaction when their foreign central bank had paid us for the notes.²⁶

2.18 Over a period of three years from 2004 to 2007, Mr Hood reported his concerns relating to a Malaysian agent and a Nepalese agent internally to the CEO, auditors, NPA board and eventually to the RBA. According to Mr Hood, it was only

22 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 14.

23 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 12.

24 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 14.

25 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 13.

26 Mr Brian Hood, *Committee Hansard*, 4 October 2012, pp 12–13.

his 2007 memorandum to, and meeting with, then RBA Deputy Governor, Mr Ric Battellino which triggered an audit and investigation. However, Mr Hood noted that for quite some time 'there was never any recognition or acknowledgement that somebody was trying to do the right thing here and there was some reporting'.²⁷

2.19 Mr Ric Battellino, Deputy Governor of the RBA from 2007 to 2012 informed the committee that while detailed reporting was a practice within the RBA, he could not comment on the reporting practices of the NPA and Securrency because the 'corporate structure' in existence at the time 'removed all that from the Reserve Bank'.²⁸ RBA Governor, Mr Glenn Stevens also indicated that the governance arrangements in both NPA and Securrency 'proved not to be strong enough to detect and prevent the things which were alleged to have occurred'.²⁹

2.20 Evidence to the committee highlighted that the relationship between the NPA board and management was poor. Mr Battellino suggested that the NPA board and RBA audit committee were dissatisfied with the NPA management which was 'not performing to the standard that the board and the audit committee expected'.³⁰ In terms of interaction with the RBA, Mr Battellino stated that both Securrency and NPA had their own boards and that as interaction with the RBA occurred through six-monthly reports, 'there was not a lot of day-to-day interaction'.³¹

2.21 Within this context, the important role that boards play in relation to integrity matters was raised by Mr Hood who said that:

Boards have to be aware of and alert to what management is doing and what controls are in place or not in place, as well as what sort of reporting is happening to them. They have to be willing to ask hard questions and to dig into matters to understand what is going on.³²

Reserve Bank of Australia response to NPA/Securrency practices

2.22 It was the AWB matter which triggered questions within the RBA about the practices of NPA and Securrency particularly in relation to the use of agents. The RBA board discussed the practice of the two companies at its April 2006 meeting and asked the two companies to provide their policies on agents.³³ The request was responded to in July 2006 and according to Mr Battellino:

27 Mr Brian Hood, *Committee Hansard*, 4 October 2012, pp 12–13.

28 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 7.

29 Mr Glenn Stevens, RBA, *Committee Hansard*, 30 November 2012, p. 17.

30 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 1.

31 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 2.

32 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 11.

33 Reserve Bank of Australia, Memorandum for the House of Representatives Standing Committee on Economics, Note Printing Australia Pty Ltd ('NPA') and Securrency International Pty Ltd (Securrency) History, Governance and Response to Issues Raised in 2007, p. 5, <http://www.rba.gov.au/speeches/2012/pdf/sp-gov-081012-memorandum.pdf> (accessed 20 May 2013).

...we looked at the policies and they seemed to be pretty sound policies. It would be hard to fault them, so the companies were told, 'Yes, that's fine, make sure you implement those policies'.³⁴

2.23 According to the RBA, while each company had its own policies and procedures regarding agents, they both had policies which:

- prohibited direct or indirect involvement in corrupt, unethical or otherwise questionable practices, and asked management to ensure that all agents formally acknowledged and committed to the policy. The agency agreements provided for termination when this commitment was breached;
- established a process to inform the respective boards about the appointment of agents, the applicable commission rates and payments made; and
- established a process of annual review of the policies on the use of agents.³⁵

2.24 However, Mr Battellino noted that in 2006, the NPA board started to put pressure on its management for answers regarding the use of agents. This pressure came to a head in February 2007 when the board informed management that:

'We want a paper for the May meeting of the board that sets out exactly what is going on with these agents: where we are up to and what they are doing'. In the course of that, management, including Mr Hood, who at that stage was the chief financial officer and the company secretary, were asked to prepare a paper for the board. In the course of preparing that paper and implementing the policies these issues arose, mainly in April 2007.³⁶

2.25 In response to matters raised in the May 2007 board paper, the NPA board terminated the contracts of two agents and an audit was undertaken which made a series of recommendations.³⁷ Mr Battellino noted that the two key recommendations of the audit were that the company should 'cut back on the use of agents in some countries—high-risk countries—and that the staff should be counselled about the risks involved in dealing with agents'.³⁸ Mr Battellino emphasised that:

The reason those agents were sacked was basically there had been a whole string of instances with those agents, which came out in the light of the board paper. The board just terminated those contracts with the agents. The agents' contracts were not terminated because the board had knowledge they were paying bribes.³⁹

34 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 2.

35 Reserve Bank of Australia, Memorandum for the House of Representatives Standing Committee on Economics, Note Printing Australia Pty Ltd ('NPA') and Securrency International Pty Ltd (Securrency') History, Governance and Response to Issues Raised in 2007, p. 5,

36 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 2.

37 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, pp 2–3.

38 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 3.

39 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 4.

2.26 In June 2007, the NPA board commissioned Freehills to look more deeply into the issues raised by the audit.⁴⁰ Mr Hood met and briefed Mr Battellino on the alleged corrupt agents on 5 June 2007. Mr Hood informed Mr Battellino that he had 'serious concerns about probity issues which had not been adequately addressed' inside the RBA company. Thereafter, Mr Hood set out his concerns in a five-page 'private and confidential' memo and sent it to the Deputy Governor the same month.⁴¹ The memo detailed what Mr Hood saw as corrupt behaviour involving NPA and multimillion dollar payments to its overseas agents including Mr Kayum, a Malaysian arms dealer who was revealed in the memo as working for both NPA and Securrency.⁴² The memo also highlighted that:

- while the NPA board wanted all agents to sign up to new agency agreements, the NPA management demonstrated a 'distinct lack of urgency' to do so;
- Securrency used the same agents and did not change its agency agreements;
- many communications with agents were 'inappropriately informal', carried out by mobile or text messages, with little or no documentation;
- numerous overseas trips were not reported beyond NPA management;
- commission rates payable to agents greatly exceeded industry average rates; and
- in response to efforts on Mr Hood's part to raise concerns with the NPA executive, the agents were supported and NPA management reacted with hostility to any criticism of their conduct.⁴³

2.27 Freehills completed its work in August 2007 and the NPA board considered its report in September 2007.⁴⁴ When questioned why the corruption allegations were not referred to the AFP rather than Freehills, Mr Battellino noted that 'normal process within a company is to have a look at those, test them and get the information'.⁴⁵ The RBA also stated that based on legal advice from Freehills, it determined not to report the alleged corruption to the AFP.⁴⁶ Mr Battellino noted in this regard that:

40 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 3.

41 The June 2007 RBA memo, <http://www.theage.com.au/national/the-june-2007-rba-memo-20120822-24llm.html?rand=1345598937818> (accessed 10 January 2013).

42 Nick McKenzie, 'RBA faces questions over bribery connections', *7:30 Report*, 21 August 2012.

43 The June 2007 RBA memo, <http://www.theage.com.au/national/the-june-2007-rba-memo-20120822-24llm.html?rand=1345598937818> (accessed 10 January 2013).

44 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 9.

45 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 3.

46 Nick McKenzie and Richard Baker, 'Reserve chief admits bank new of corruption', *Saturday Age*, 25 February 2012, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/1464517/upload_binary/1464517.pdf;fileType=application%2Fpdf#search=%22securrency,%20bribery%22 (accessed 7 June 2012).

When you look back now, the obvious step is, 'Why didn't we give that Freehills report to the police?' It is such a costless and easy thing to do. You wonder. We should have done that. It just did not come up. It was not just that it did not come up with me. It did not come up with a range of people.⁴⁷

2.28 The AFP first received the allegations in April 2008 and after an initial assessment decided that the material was insufficient to launch an investigation.⁴⁸ It was only as a result of the referral by the chairman of Securrency to the AFP in May 2009 that further investigation was conducted and charges were ultimately laid.⁴⁹

2.29 In relation to Securrency, a 2007 audit of Securrency triggered by the AWB matter 'gave no indication of any concern about the nature of payments that were being made'.⁵⁰ As the audit found that Securrency had 'very sound business practices and policies', there was according to Mr Battellino, 'no basis to discontinue the use of agents there'. However, the agents that had been causing concern at Securrency were terminated within weeks of the termination of NPA agents.⁵¹

2.30 After referring the allegations against agents engaged by Securrency to the AFP, the Reserve Bank commissioned KPMG to review its agent arrangements and evaluate Securrency's policies and procedures. According to the RBA's Assistant Governor, Corporate Services, Mr Frank Campbell, KPMG found that:

...the board's policies around these agents were very good policies. The problem was that management had not implemented them properly, and that was a very serious problem. That, in part, is why the board was caught out.

If I can summarise all of that, there was nothing fundamentally improper about the model that Securrency was using. The policies were badly implemented and, as the governor has acknowledged, there were gaps in the governance framework around the conduct of that business by the company.⁵²

47 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 8.

48 Commissioner Tony Negus, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 25 May 2010, p. 111, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_1011/index.htm (accessed 5 June 2012).

49 AFP, 'Foreign bribery charges laid in Australia', Media Release, 1 July 2011, <http://www.afp.gov.au/media-centre/news/afp/2011/july/foreign-bribery-charges-laid-in-australia.aspx> (accessed 5 June 2012); Nick McKenzie & Richard Baker, 'Bank head admits bribery defences were inadequate', *Saturday Age*, 12 February 2011, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/548923/upload_binary/548923.pdf;fileType=application%2Fpdf#search=%22securrency,%20bribery%22 (accessed 6 June 2012).

50 Mr Frank Campbell, RBA, *Committee Hansard*, 30 November 2012, p. 19.

51 Mr Ric Battellino, RBA, House of Representatives Standing Committee on Economics, *Committee Hansard*, 26 August 2011, p. 16.

52 Mr Frank Campbell, RBA, *Committee Hansard*, 30 November 2012, p. 19.

2.31 In the wake of the bribery charges, Securrency committed itself to the implementation of all twelve recommendations contained in the KPMG report.⁵³

2.32 Mr Stevens noted that after the KPMG report on Securrency, 'the use of sales agents was discontinued' and 'policies were overhauled', as recommended in that report.⁵⁴ Now where consultants are hired to provide expert advice on developing foreign markets, they are paid on a fee for service basis and engaged mostly for short terms.⁵⁵

2.33 The Reserve Bank noted that the main lessons it had learned from the bribery matter were that its governance arrangements and processes need to be stronger to prevent and detect corrupt behaviour. It identified four areas where changes had taken place in relation to both Securrency and NPA to strengthen controls and tighten governance as part of efforts to mitigate the risks of corruption including:

- those charged with offences are no longer with the companies;
- the use of sales agents by both companies has ceased;
- policies, procedures and controls at both companies have been thoroughly overhauled with the assistance of the companies' external advisers; and
- the Reserve Bank draws all of its appointees to the boards of both companies from the Bank's executive or the Reserve Bank Board.⁵⁶

2.34 Mr Battellino reflected that the mistake was to 'assume' that the culture that existed in the RBA was also in existence in Securrency and NPA.⁵⁷ Furthermore:

If there is one lesson that I draw out of this, it is that economic policy institutions like the Reserve Bank really do not have any business being involved in commercial operations; it is impossible for them to run it successfully. That is why, since this has blown up—we have spent a lot of our time trying to get out of Securrency...It is a company over which the bank has no control. It only has a 50 per cent shareholding. You cannot

53 Securrency Pty Ltd, Securrency Releases KPMG Review of Agent Arrangements, Press Release, 30 March 2010, <http://www.securrency.com.au/805.htm> (accessed 6 June 2012), Mr Glenn Stevens, Reserve Bank Governor, House of Representatives Standing Committee on Economics, Inquiry into the Reserve Bank of Australia Annual Report 2010, *Committee Hansard*, 11 February 2011.

54 Mr Glenn Stevens, RBA, House of Representatives Standing Committee on Economics, *Committee Hansard*, 8 October 2012, p. 5.

55 Reserve Bank of Australia, Answers to questions on notice in response to committee request on 23 May 2012 (received 1 June 2012), p. 1, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=aclei_ctt/e/integrity_international_operations/submissions.htm (accessed 5 November 2012).

56 Reserve Bank of Australia, Answers to Questions on Notice in response to committee request of 23 May 2012 (received 1 June 2012), p. 1.

57 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 6.

control the company. That is why, in 2007, when we did the review of NPA, we could not stop Securrency using agents.⁵⁸

2.35 In a response to committee questions on notice, the RBA asserted that the NPA/Securrency matter had highlighted to its board the need for 'targeted governance arrangements and processes' to seek to prevent corrupt behaviour and detect it if it occurs. To manage corruption risks more broadly, the RBA had introduced the following systems:

- a fraud control framework, a fraud policy and a policy regarding reporting of fraud and unethical behaviour which provides for an anonymous concern reporting hotline. These policies are drawn from Australian standards including the Commonwealth Fraud Control Guidelines and Commonwealth Procurement Rules;⁵⁹ and
- procurement guidelines that ensure there is a transparent, robust and defensible framework for making decisions about the purchase of goods or services.⁶⁰

2.36 Some of the measures introduced in NPA included greater alignment of its charter with the RBA's core objectives and risk tolerance as well as changes to the composition of its board.⁶¹

2.37 Securrency introduced the following integrity measures:

- a Code of Conduct and Ethics which requires the disclosure of gifts, hospitality or expenses given or received above a \$100 threshold and prohibits all facilitation payments;
- an Integrity and Ethics Policy which states that Securrency has a zero tolerance for bribery;
- appointment of a Chief Risk and Compliance Officer who leads the risk and management functions; and
- establishment of a Risk and Integrity Committee to assist the Managing Director manage risk and ensure that the risk management and the internal control system operates with a high level of integrity.⁶²

2.38 Following the foreign bribery investigations, the AFP noted some other Australian companies had changed their approach in order to better address corruption risks. Some contractors, including WorleyParsons, UGL and Downer EDI, banned or

58 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 6.

59 Mr Glenn Stevens, RBA, *Committee Hansard*, 30 November 2012, p. 13.

60 Mr Glenn Stevens, RBA, House of Representatives Standing Committee on Economics, *Committee Hansard*, 8 October 2012, p. 5.

61 Mr Glenn Stevens, RBA, House of Representatives Standing Committee on Economics, *Committee Hansard*, 8 October 2012, p. 5.

62 Reserve Bank of Australia, Answers to questions on notice in response to committee request on 23 May 2012 (received 1 June 2012), p. 1.

moved to ban facilitation payments which are paid to foreign agents for procuring permits or processing government papers.⁶³

Whistleblower protections

2.39 In the non-government sectors regulated by the Commonwealth, limited whistleblower protection is provided in provisions including Part 9.4AAA of the *Corporations Act 2001* (Corporations Act). To be protected under the Corporations Act, a whistleblower must be an officer, employee or contractor of the company about which they want to report and must report to ASIC, the company's auditor or audit team; a director, secretary or senior manager of the company, or a person authorised by the company to receive whistleblower disclosures.

2.40 Currently whistleblower protection in the private sector is also provided by law under the *Banking Act 1959*, the *Insurance Act 1973*, the *Life Insurance Act 1995* and the *Superannuation Industry (Supervision) Act 1993*. These protections are designed to encourage people within companies, or with special connections to companies, to alert ASIC and other authorities to illegal behaviour.⁶⁴

2.41 Mr Hood, the NPA whistleblower explained to the committee that his experience as a whistleblower was 'frustrating' given that:

Through the course of my employment and after all the investigations happened my position was significantly changed. My span of responsibilities and duties were cut back significantly and, ultimately, I was made redundant. I was in a position as CFO where I was responsible for finance, IT, security and compliance; by the time I finished I had only the finance function left with me and was made redundant.⁶⁵

2.42 Mr Hood reflected on his experience:

...while you are progressively reporting things up the line, it is difficult because at some point you end up feeling you do not know who you can trust and who you can turn to. If there were an external party you could confidentially and reliably turn to, that would be of enormous assistance.⁶⁶

2.43 Speaking of the RBA's treatment of Mr Hood, Mr Battellino held that:

We treated him as a whistleblower; we gave him all the protections of a whistleblower. It was not because we felt obliged to but because we wanted to.

63 Jenny Wiggins and Ayesha de Kretser, 'Big stick is out to beat bribery', *Australian Financial Review*, 7 May 2012, http://www.afr.com/p/business/companies/big_stick_is_out_to_beat_bribery_DognUpKX3jPa53lzjoFmWI (accessed 20 May 2013).

64 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 17.

65 Mr Brian Hood, *Committee Hansard*, 4 October 2012, pp 10–11.

66 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 10.

When you look at it, we took his concerns very seriously. The day that paper went to the NPA board they took immediate steps. They initiated an audit; they followed it up with the Freehills report. As I say, all those concerns that Brian Hood raised were vindicated through that process. His concerns were taken very seriously. We protected his confidentiality.⁶⁷

2.44 Mr Battellino further noted that since the period of alleged corrupt conduct, whistleblower policies within the RBA have been formalised and improved including with the provision of an external whistleblower hotline which is now considered 'standard practice' amongst companies and organisations.⁶⁸

2.45 Professor of Public Law at Griffith Law School, Griffith University, Professor AJ Brown, stated that the NPA/Securrency case brought to light concerns regarding the adequacy of whistleblower protections and highlighted 'massive holes' in the protection of whistleblowers.⁶⁹ Professor Brown argued that the revelations about Mr Hood and his apparent victimisation suggest there may have been a breach of corporate laws on whistleblowers but that these laws are weak and have never been used. Furthermore, he argued that Mr Hood's experience highlighted the need for new laws to protect public servants who raise the alarm.⁷⁰ He put the view that Part 9.4AAA of the Corporations Act is a 'well-intentioned but relatively poorly framed set of provisions for whistleblower protection for the private sector'. He described the deficiencies of the Corporations Act provisions:

...things like a lack of protection for an anonymous disclosure; the requirement for good faith, which could mean anything or nothing and generally operates as a discouragement to people to report and, if it is quality legislation, is not found in public sector whistleblowing legislation in Australia or elsewhere.

There are other deficiencies in it, including the fact that the compensation mechanism is so ill-defined and is basically tied to the idea that an applicant effectively needs to go the whole hog of a civil action with exposure to costs without any kind of recognition of the employment relationship or the type of relationship which governs and should govern compensation in these situations. It is similar to most of the current public sector state laws in being deficient in that respect. The single biggest problem is that I do not think there is any clarity at all in terms of what 'breaches of the Corporations Law' means for the purposes of activating those provisions.⁷¹

67 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 10.

68 Mr Ric Battellino, *Committee Hansard*, 30 November 2012, p. 12.

69 Clancy Yeates, 'Pressure grows to protect those who reveal misdeed', *The Age*, 15 September 2012, <http://www.theage.com.au/opinion/political-news/pressure-grows-to-protect-those-who-reveal-misdeed-20120914-25y3z.html> (accessed 28 September 2012).

70 Clancy Yeates, 'Pressure grows to protect those who reveal misdeed', *The Age*, 15 September 2012, <http://www.theage.com.au/opinion/political-news/pressure-grows-to-protect-those-who-reveal-misdeed-20120914-25y3z.html> (accessed 28 September 2012).

71 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 3.

2.46 Professor Brown informed the committee that establishing what types of breaches might be included under Part 9.4AAA provisions is 'massively open to interpretation'. He questioned whether the type of breaches of the Corporations Act that would trigger these provisions amount to:

- technical breaches in the financial reporting obligations of a company's failure (such as to supply their reports on time);
- failure to notify of a change of directors; or
- breaches of directors' duties, duties by public officials, fraud, corruption, major breaches of law and breaches of foreign bribery provisions.⁷²

2.47 Further, Professor Brown identified 'bigger holes' in relation to companies in which the Commonwealth has overriding financial interest. He argued that there is a deficiency in relation to these Commonwealth companies (which may include joint ventures), not only in the private sector whistleblowing regulations but also in relation to public sector whistleblowing regulations. In this regard, Part 9.4AAA should 'provide a robust regime which deals with this situation better but so should the Commonwealth public sector legislation'.⁷³ However, he concluded that:

I think it is particularly unnerving for the average citizen to see that the entities which are causing the greatest concern in terms of breaches of the foreign bribery legislation are actually Commonwealth government owned, controlled or largely controlled entities. You cannot help but draw a parallel with the recent Australian Wheat Board matter. It was a privatised Commonwealth government owned corporation that was basically found in breach of similar principles internationally. When you have that sort of history and these sorts of issues being raised in relation to Commonwealth entities, the average citizen can only reasonably conclude that there could be problems and look for a sign that the problems are being strategically dealt with.⁷⁴

2.48 On the matter of protections for private sector whistleblowers, the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery report noted that:

...laws cited by the Australian authorities are insufficient or irrelevant to foreign bribery. Section 317A of the Corporations Act protects officers, employees and contractors of Australian companies who disclose violations of the Corporations Act to ASIC. This covers disclosure of foreign bribery-related false accounting, but not foreign bribery *per se*. Whistleblower laws that apply only to financial institutions are not so restricted and cover

72 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 4.

73 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 9.

74 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 9.

disclosures about any misconduct, including foreign bribery. None of these laws, however, protects disclosures to law enforcement or the media.⁷⁵

2.49 While emphasising the 'inadequate protection' offered to whistleblowers, the OECD Working Group stated that the Securrency/NPA case highlighted the need for the better protection of whistleblowers as 'two Securrency employees claim to have been dismissed after raising bribery concerns'. It also noted that commentators believe that 'better whistleblower protection could lead to a higher level of foreign bribery enforcement' and provided the following commentary:

The lead examiners recommend that Australia put in place appropriate additional measures to protect public and private sector employees who report suspected foreign bribery to competent authorities in good faith and on reasonable grounds from discriminatory or disciplinary action. The Working Group should also follow up the enactment and implementation of the Public Interest Disclosure Bill.⁷⁶

2.50 In its response to concerns regarding whistleblowers in the private sector, Australia reported the development of draft legislation for public sector whistleblowing protection and consideration of amendments to Part 9.4AAA of the Corporations Act in regard to private sector whistleblowers. The UNCAC Implementation Review Group responsible to review Australia's implementation of the UNCAC noted this initiative as a 'positive' step.⁷⁷

ASIC and the Securrency/NPA matter

2.51 Separate to the ongoing court case involving bribery allegations is the matter of directors' duties as prescribed by the Corporations Act which ASIC regulates. Section 187 of the Corporations Act deals with the position of directors of wholly-owned subsidiaries of Commonwealth authorities. The AFP have not charged any director with corruption in relation to the NPA/Securrency matter and it is ASIC's role to investigate possible breaches of directors' duties.

2.52 Some witnesses to the inquiry raised the question of the exercise of power by NPA and Securrency directors. Mr Michael Ahrens of Transparency International Australia (TIA) noted that the question of whether there was a breach of directors'

75 OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p.44, <http://www.oecd.org/australia/oecdseriouslyconcernedbylackofforeignbriberyconvictionsbutencouragedbyrecenteffortsbytheaustralianfederalpolice.htm> (accessed 5 November 2012).

76 OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p. 44, <http://www.oecd.org/australia/oecdseriouslyconcernedbylackofforeignbriberyconvictionsbutencouragedbyrecenteffortsbytheaustralianfederalpolice.htm> (accessed 5 November 2012).

77 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, 15 May 2012, p. 6, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253616e.pdf> (accessed 19 April 2013).

duties is 'apparently not going to be ventilated by an investigation' and is separate to the matters currently subject to court action.⁷⁸ Mr Hood expressed the view that:

I am very mindful that the Corporations Law requires managers, directors and board members to exercise their powers and discharge their duties with care and diligence, and that there are such things as the 'business judgement rule', where you are meant to act in good faith and make decisions for a fit and proper purpose and in the best interests of an organisation. I wonder if a lot of the actions and inactions at Note Printing would pass that test and if some of those questions not only have not been answered but have not yet been posed.⁷⁹

2.53 Mr Hood informed the committee that he had not been approached by ASIC at any stage and that he had not approached them, having only dealt with the AFP.⁸⁰ Further, the Governor of the RBA, Mr Stevens also gave evidence to the House of Representatives Economics Committee that ASIC had not contacted the RBA.⁸¹

2.54 A key responsibility of ASIC as part of its market integrity and corporate governance functions is to investigate suspected misconduct by company officers and take enforcement action to achieve criminal convictions via the CDPP, civil penalties or administrative sanctions. Section 180 of the Corporations Act requires that company directors and other financial officers exercise their powers and discharge their duties with care and diligence. In addition, under section 181, directors and other corporate officers are required to exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose. ASIC can lay criminal charges against directors it believes have acted recklessly and it has the power to pursue civil proceedings for breach of duties.

2.55 Section 13 of the *Australian Securities and Investments Commission Act 2001* empowers the regulator to conduct a formal investigation where it suspects a breach of the law is being committed. Once an investigation is underway, ASIC can require a person to appear (section 19) and give information relevant to the investigation, as well as give reasonable assistance. ASIC determined not to proceed with a formal investigation and on 12 March 2012, issued the following statement in relation to the Securrency/NPA matter:

The Australian Federal Police (AFP) has provided ASIC with material relating to bribery allegations concerning Securrency International Pty Ltd and Note Printing Australia Limited.

ASIC considers a range of factors when deciding to investigate and possibly take enforcement action.

78 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 13.

79 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 10.

80 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 15.

81 Mr Glenn Stevens, RBA, House of Representatives Standing Committee on Economics, *Committee Hansard*, 8 October 2012, p. 44.

In line with its normal practice, ASIC has reviewed this material from the AFP for possible directors' duty breaches of the Corporations Act and has decided not to proceed to a formal investigation.

ASIC intends to make no further comment on this matter.⁸²

2.56 When questioned about its engagement with the AFP by the Parliamentary Joint Committee on Corporations and Financial Services, ASIC stated that it had held discussions with the AFP at various times throughout 2011 about a possible referral to ASIC. At a 21 January 2012 meeting at the AFP, ASIC officials were provided a briefing on the AFP investigation and on 24 January, ASIC was provided with a CD containing the documents identified by the AFP as potentially relevant to the referral.⁸³ ASIC advised the Parliamentary Joint Committee on Corporations and Financial Services:

ASIC held discussions with the AFP and analysed these documents for the purposes of deciding whether or not to commence an investigation. Based on that review ASIC noted that there were significant obstacles to commencing any action. ASIC then issued a statement on 12 March 2012 to advise it had decided not to proceed to a formal investigation.⁸⁴

2.57 In response to specific questions about ASIC's role in relation to the Securrency/NPA matter, Ms Belinda Gibson, Deputy Chairman, ASIC provided the following statement to the Corporations and Financial Services Committee on 21 March 2012:

Perhaps I should explain that the legislation for payment of bribes is a matter vested with the Federal Police. With respect to those breaches, our scope to do anything is very limited in these respects.

...

We would bring directors' duties [actions], where there are breaches, where the company is threatened as to its very undertaking. That is the sort of instance that might also engage other legislation.⁸⁵

82 ASIC, 12-47AD Statement on Securrency International and Note Printing Australia, 12 March 2012, <http://www.asic.gov.au/asic/asic.nsf/byheadline/12-47AD+Statement+on+Securrency+International+and+Note+Printing+Australia> (accessed 6 November 2012).

83 ASIC, answers to questions no notice taken at ASIC oversight hearing of the Parliamentary Joint Committee on Corporations and Financial Services, 12 September 2012, p. 4, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/asic/index.htm (accessed 6 November 2012).

84 ASIC, answers to questions no notice taken at ASIC oversight hearing of the Parliamentary Joint Committee on Corporations and Financial Services, 12 September 2012, p. 4, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=corporations_ctte/asic/index.htm (accessed 6 November 2012).

85 Parliamentary Joint Committee on Corporations and Financial Services, *Committee Hansard*, 21 March 2012, p. 19, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22committees/commjnt/7203c0c6-f5c6-4153-8681-84b0a92cda30/0000%22> (accessed 6 November 2012).

2.58 In evidence to the committee on 11 May 2012, Mr Warren Day, ASIC's Regional Commissioner, stated that ASIC does not 'see itself as having a role as to integrity across agencies' and that its role is to focus on alleged breaches of the Corporations Act 'and no further than that'.⁸⁶ He further noted that, ASIC does not have any direct powers in relation to bribery and corruption.⁸⁷

Responses and lessons learned across Commonwealth agencies

2.59 Assistant Commissioner of the AFP, Mr Kevin Zuccato informed the committee that there had been quite a lot of outreach by the AFP to other Commonwealth departments with regard to learning lessons emanating from the Securrency/NPA matter. Assistant Commissioner Zuccato noted that this outreach had led to 'increased engagement with the AFP by those agencies, who now report matters to us more frequently'.⁸⁸ The RBA noted, however, that it had neither been asked nor had provided advice to other Commonwealth agencies in relation to its experience of the matter.⁸⁹

2.60 The committee asked a variety of agencies, including DFAT, ASIC, Austrade and Export Finance and Insurance Corporation (EFIC), what lessons, if any, they had learned from the NPA/Securrency matter. Austrade's Executive Director of Education and Corporate Operations, Mr Peter Yuile described the agency's response to the NPA/Securrency matter as a 'wake-up call, for business and for officials'. As part of its own response to the matter, Austrade conducted an internal review of the organisation and its strategic direction in the areas of promotion, advisory responsibilities and governance. Austrade also took legal advice about the *Criminal Code Act 1995* (Criminal Code) to understand its parameters and translate the legislation into a practical legal code for staff. Face-to-face training was conducted with all staff overseas and in Australia, with checklists provided to staff.⁹⁰ Further, Austrade consulted the AGD and AFP while Transparency International reviewed its training program.⁹¹ Mr Brendan Jacomb, General Manager, Legal, Security and Procurement at Austrade explained that:

The training that has been done is very focused on the scenario and situations facing Austrade and drawing on any learnings, lessons and insights from the Note Printing and Securrency matter. I think there was a combination of the understanding of the law and practical considerations: 'What are the circumstances you are going to face out there in the market and what are the sorts of practical examples you will need to work your way through and the steps you will need to take not only to make sure you

86 Mr Warren Day, ASIC, *Committee Hansard*, 11 May 2012, p. 24.

87 Mr Warren Day, ASIC, *Committee Hansard*, 11 May 2012, p. 23.

88 Assistant Commissioner Kevin Zuccato, AFP *Committee Hansard*, 23 March, p. 6.

89 Reserve Bank of Australia, Answers to Questions on Notice in response to committee request of 23 May 2012 (received 1 June 2012), p. 1.

90 Mr Peter Yuile, Austrade, *Committee Hansard*, 11 May 2012, p. 28.

91 Mr Peter Yuile, Austrade, *Committee Hansard*, 11 May 2012, p. 29.

are doing the right thing but you are seen to be doing the right thing and you are recording that the right thing is being done?'.⁹²

2.61 In terms of any allegations of corruption, Austrade refers all such concerns to the AFP. Emails are sent directly to a special mailbox set up by an AFP unit which deal with claims under section 70 of the Criminal Code Act concerning the facilitation payment defence. Thereafter, the AFP acknowledges the information and conducts inquiries. It will then inform Austrade whether a matter is closed, a broader investigation will be undertaken or whether additional information is required. In this regard, Austrade's Mr Jacomb noted that:

A lot of the material we have comes from eyes and ears out in the field: 'We heard or saw something.' It can vary in range and it can even be overhearing something in a social context. But we have made it very clear to the world and to our clients that if we see, hear or are aware of any bribery we are going to refer it to the Australian Federal Police, and that is what we are doing.⁹³

2.62 When asked further whether Austrade staff have any involvement in the NPA/Securrency matter Mr Yuile responded:

Certainly Austrade officers have worked with Securrency around the world—that is a matter of record—and introduced them to other agencies within those markets. If the question is 'Have any Austrade officers been charged?' the answer is no. But we have been providing full information and assistance to the AFP, and they have acknowledged that publicly. At this stage anyway, we are doing all we can to support that investigation.⁹⁴

2.63 DFAT informed the committee that when the Securrency bribery allegations were referred to the AFP, the department reviewed its guidelines at posts to assess the 'bona fides of Australian businesses seeking assistance overseas' as part of a broader review of the guidelines for assisting business.⁹⁵ The guidelines had previously been updated following other revelations involving Australian businesses overseas, namely the Cole Inquiry into Certain Australian Companies in relation to the UN Oil-for-Food Programme. DFAT established that in some cases, additional information could be obtained through other agencies but that there remained 'significant constraints on the capacity of agencies to share information on companies, given confidentiality and legal restrictions'. Therefore DFAT advised:

92 Mr Brendan Jacomb, Austrade, *Committee Hansard*, 11 May 2012, p. 29.

93 Mr Brendan Jacomb, Austrade, *Committee Hansard*, 11 May 2012, p. 24.

94 Mr Peter Yuile, Austrade, *Committee Hansard*, 11 May 2012, pp 29–30.

95 Answer to Questions on Notice from DFAT at a public hearing on 11 May 2012 (received 30 May 2012).

Government agencies have limited capacity or authority to investigate Australian business to an extent that would make them fully aware of the propriety of all the activities undertaken by any one business.⁹⁶

Committee view

2.64 The NPA/Securrency case raises the critical importance of integrity standards and due diligence. These need to be matched with clear processes in relation to reporting suspected misconduct and corruption as well as effective protection of whistleblowers. The case demonstrates how, in a situation in which established policies and procedures were not adhered to or subject to effective oversight (for reasons including the poor relationship between the respective company boards and management), an opaque culture of secrecy and collective amnesia (when asked to explain practices) came to characterise both companies.

2.65 The NPA/Securrency matter, which is yet to run its full course, could only have damaged Australia's international reputation and standing. It serves as an important case where bribery was not uncovered through internal reporting systems or robust oversight, but rather through individual actions. The experience of Mr Hood reveals the extent to which whistleblowers can ultimately suffer both professionally and personally for making such revelations. The NPA/Securrency matter serves, therefore, as a serious reminder to companies that they cannot rely on the efforts of individuals to highlight the systemic weaknesses in their operations. It demonstrates the need for a strong reporting culture which encourages staff to question practices and raise concerns.

2.66 The public has a right to expect that the need for appropriate protections for private sector whistleblowers as well as clear and transparent reporting systems which were thrown into sharp relief by the NPA/Securrency matter will be addressed. While the committee is mindful that legal proceedings continue, it will endeavour to monitor for potential future inquiry, key integrity matters including private sector whistleblower protections and the efficacy of the guidance provided regarding the facilitation payment defence. The committee appreciates that reforms to private sector whistleblowing may take place once public sector whistleblowing reforms are fully considered. The committee strongly encourages consideration of the evidence regarding private sector whistleblowing and the reforms needed to it as highlighted in this chapter. Lessons emanating from the NPA/Securrency matter appertaining to the role of whistleblowers and oversight of disclosures of potential misconduct and corruption must inform the reform process.

2.67 The committee acknowledges that ASIC is focused on alleged breaches of the Corporations Act rather than the integrity matters *per se*. For these reasons, consideration of private sector whistleblower protections should also take into account the need for a strong and robust oversight function in relation to the integrity of corporations. If such an oversight function is established, the welfare of

96 Answer to Questions on Notice from DFAT at a public hearing on 11 May 2012 (received 30 May 2012).

whistleblowers needs to be a key consideration in the management of the integrity process.

2.68 The committee also notes the concerns of DFAT regarding the constraints on Commonwealth agencies sharing information about companies which may otherwise provide some assessment of probity in relation to the activities of companies overseas. The committee recognises the importance of the proposed National Anti-Corruption Plan in bridging the integrity divide between the public and private sector including the facilitation of common integrity standards which narrow the gaps between the operations of private and public sector agencies.

2.69 The key issues brought to light by the NPA/Secrecy matter including robust integrity and reporting systems, oversight, whistleblowing provisions and due diligence informed the committee's deliberations throughout the inquiry.

CHAPTER 3

The corruption risk environment

3.1 This chapter considers corruption risks and the environmental factors specific to international operations which contribute to the risk of corruption. It explores some of the key risk factors and vulnerabilities while considering the nature of operations in which those risks are heightened.

Global costs of corruption

3.2 Corruption can take many forms including bribery, extortion, embezzlement, fraud and conflict of interest whereby an official stands to profit incidentally from an official act. It has political, economic, social and environmental costs.

3.3 Global corruption has the potential to threaten national security, regional stability and democracy, economic security and sustainable development, the rule of law and good governance. Recognising its corrosive effects on societies, the United Nations Convention against Corruption (UNCAC) states that corruption:

...undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.¹

3.4 The Chair of the 2013 GOPAC Conference, Dr Naser Al Sane noted that illicit financial flows including corruption, bribery, theft and tax evasion cost developing countries an estimated US \$1.26 trillion a year, an amount equivalent to the economies of Switzerland, South Africa and Belgium combined. He further noted that:

This amount of money could lift the 1.4 billion people living on less than \$1.25 a day above this threshold for at least six years. (World Bank, Global Financial Integrity 2011). Countries with weak governance, control of corruption, rule of law, have a 30–45 per cent higher risk of civil war (World Bank World Development Report 2011). This is a clear-cut matter of figures.²

Costs of corruption in Australia

3.5 Mr Howard Whitton, Fellow, ANZSOG Institute of Governance at the University of Canberra noted that sustaining public trust in the integrity of Australia's public institutions underpins Australia's democratic system of government.³

1 United Nations Convention against Corruption, Foreword, p. iii, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (18 April 2013).

2 Dr Naser Al Sane, Welcome Remarks, GOPAC Global Conference of Parliamentarians Against Corruption 2013, <http://gopacmanila2013.com/blog/2013/01/welcome-remarks-dr-naser-al-sane> (accessed 25 March 2013).

3 Mr Howard Whitton, *Submission 9*, p. 1.

3.6 Transparency International's Corruptions Perception Index measures how corrupt a country is perceived to be as assessed by perceptions of bribery of public officials, embezzlement of public funds and kickbacks in public procurement as well as the effectiveness of anti-corruption measures. Australia ranked seventh highest out of 176 countries in 2012.⁴ Hidden corruption, however, is less likely to be perceived. Furthermore, the publishers of the index, Transparency International also recognised that transnational perceptions of corruption 'do not provide an objective, let alone relative measure of corruption nor anti-corruption efforts in any given nation in actuality'.⁵

3.7 There are considerable risks of corruption to agencies with a law enforcement function. As a consequence of that function alone, such agencies are at high risk of compromise and infiltration. Law enforcement agencies such as the AFP which have a high public profile are central to public confidence in law enforcement and often rely upon public cooperation to perform their functions.⁶ The police have a mandate to serve society and have been given powers that other authorities do not have—to stop, detain and arrest as well as use force in the performance of their duties. Therefore, any form of compromise by way of corruption could have a significant and long-term effect on the ability of police to operate effectively, remain accountable for their actions and uphold a reputation to serve and protect society.⁷ As law enforcement agencies play a crucial role in the fight against corruption in society, their own integrity must be beyond reproach.

3.8 One of the many consequences of corruption is loss of reputation and standing and the associated negative impacts. Many agencies including DFAT highlighted the costs of corruption in terms of undermining Australia's international reputation and standing. In the *Report of the Inquiry into certain Australian companies in relation to the United Nations Oil-for-Food Programme* concerning the conduct of the AWB, the

4 Transparency International, *Corruption Perceptions Index 2012*, <http://www.transparency.org/cpi2012/results> (accessed 14 May 2013).

5 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 3.

6 One example in point is the April 2013 Boston Marathon bombings whereby the public mobilised in response to requests of investigators to submit photographs and videotapes. Todd Shields and Brian Chappatta, 'How public helped track perpetrators', *Australian Financial Review*, 23 April 2013, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/2390274/upload_binary/2390274.pdf;fileType=application%2Fpdf#search=%22\(Australian%20Financial%20Review\)%20%3e=20130422090003%20%20%3e=20130422090003\)%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/2390274/upload_binary/2390274.pdf;fileType=application%2Fpdf#search=%22(Australian%20Financial%20Review)%20%3e=20130422090003%20%20%3e=20130422090003)%22) (accessed 23 April 2013).

7 A 2010 survey conducted by the Australian Institute of Criminology established a link between the level of public confidence in the police with perceptions of the level of corruption in the police force. Those who perceive more corruption have lower confidence. Adam Tomison, AIC, *Confidence in the criminal justice system*, February 2010, <http://www.aic.gov.au/publications/current%20series/tandi/381-400/tandi387/view%20paper.html> (accessed 23 April 2013).

Commissioner, the Hon. Terence Cole highlighted the consequences for Australia's reputation:

The consequences of AWB's actions, however, have been immense. AWB has lost its reputation. The Federal Court has found that a 'transaction was deliberately and dishonestly structured by AWB so as to misrepresent the true nature and purpose of the trucking fees and to work a trickery on the United Nations'. Shareholders have lost half the value of their investment. Trade with Iraq worth more than A\$500 million per annum has been forfeited. Many senior executives have resigned, their positions being untenable. Some entities will not deal with the company. Some wheat farmers do so unwillingly but are, at present, compelled by law to do so. AWB is threatened by law suits both in Australia and overseas. There are potential further restrictions on AWB's trade overseas. And AWB has cast a shadow over Australia's reputation in international trade.⁸

3.9 The Integrity Commissioner noted that the responsibility to uphold Australia's reputation overseas rested with individual officials who are the 'visible representatives of the Australian government' and their agencies.⁹ Similarly, while noting that its officials are considered official representatives of Australia when overseas, DIAC acknowledged that its officers may be the 'most visible Australian presence in the host country even when they are off duty'.¹⁰

Australia's corruption threat environment

3.10 ACLEI highlighted a number of threats of corruption to Australia including:

- the strong Australian dollar which has increased the potential profitability of smuggling illicit drugs and other contraband through Australia's borders. A strong dollar has attracted new criminal syndicates and corruption risks include the potential that organised crime gangs will be prepared to pay bribes;
- sophistication of organised crime and its ability to transcend national borders and exploit the escalating cross-border movement of people, goods and money, emerging international markets and developing technologies; and
- the transnational nature of organised crime which poses a multi-dimensional threat inextricably linked to global economic activity and national security

8 The Hon. Terence RH Cole AO RFD QC, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, Volume 1, Summary, recommendations and background, Prologue, November 2006, [http://www.oilforfoodinquiry.gov.au/agd/WWW/rwpattach.nsf/VAP/\(22D92C3251275720C801B3314F7A9BA2\)_Volume%2bI%2b\(21Nov06\)-CD.pdf/%24file/Volume%2bI%2b\(21Nov06\)-CD.pdf](http://www.oilforfoodinquiry.gov.au/agd/WWW/rwpattach.nsf/VAP/(22D92C3251275720C801B3314F7A9BA2)_Volume%2bI%2b(21Nov06)-CD.pdf/%24file/Volume%2bI%2b(21Nov06)-CD.pdf) (accessed 18 April 2013).

9 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

10 Department of Immigration and Citizenship, *Submission 4*, p. 8.

issues and is no longer a simple law and order problem within the remit of a single agency, jurisdiction or country.¹¹

3.11 The ACC recognised that in the international context, the current strength of the Australian dollar may make Australia more attractive to organised crime as a potential market for the sale of illicit commodities. Furthermore:

In effect, the profits in Australian dollars derived from the sale of border controlled drugs will have greater real value internationally. This high profit motive may lead to increased and more assertive attempts to corrupt well-placed Australian law enforcement personnel.¹²

3.12 TIA argued that corruption matters have arisen in Australia regularly, affecting all levels of government and that corruption risks are only likely to intensify for the foreseeable future in the modern globalized economy.¹³

3.13 Rather than having no relevance to organised crime, national borders are exploited by organised crime. Within this context, the distinctions between foreign and domestic, national and international as well as internal and external have been blurred.¹⁴

Strategic risks

3.14 ACLEI informed the committee that there were a number of factors which presently coincide to increase the corruption risk to certain types of overseas operations. These factors include:

- the strength of the Australian dollar and resilience of the economy (relative to other illicit drug markets), and domestic demand for illicit drugs, which means that large returns are possible for organised crime groups that arrange the importation of illicit goods;
- record levels of legitimate transactions at Australian ports of entries which have led Customs to use border protection technology to detect illicit imports and focus on intelligence-led law enforcement interventions;
- the increasing reliance of Commonwealth law enforcement agencies on information gathered from overseas agencies, and Australian officers posted overseas to inform intelligence-led border detection strategies; and

11 Australian Commission for Law Enforcement Integrity, *Submission 1*, pp 5–6.

12 Australian Crime Commission, *Submission 6*, p. 2.

13 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 3.

14 The Hon. Kevin Rudd MP, Prime Minister, *House of Representatives Hansard*, 4 December 2008, p. 12549, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2008-12-04/0045/hansard_frag.pdf;fileType=application%2Fpdf (accessed 16 May 2012).

- high returns for illicit importations which provides greater capacity to circumvent detection strategies through offers of (higher) corrupt payments.¹⁵

3.15 According to ACLEI, this set of circumstances has created a heightened risk that corruption, especially bribery, is used to avoid or circumvent established detection systems.¹⁶

3.16 The UN Office on Drugs and Crime (UNODC) observed that Australia's wealth and vast sea borders made it attractive to organised criminal entities.¹⁷ In April 2012, the UNODC Regional Representative, Mr Gary Lewis warned that Australia was an 'obvious target for international crime' and that criminal syndicates were having a significant impact on Australia particularly in relation to drug smuggling and people trafficking.¹⁸ In relation to the spread of organised crime, ACLEI noted that organised criminal entities are not only unrestrained by legislation, borders, morality or technology but are also adaptable, able to infiltrate a 'wide range of industries and markets, well beyond areas generally considered vulnerable'.¹⁹

3.17 Evidence to the committee highlighted areas of high corruption risk such as the facilitation of illegal activities of organised crime groups through trusted insiders at Australian ports where there is an ongoing risk of compromise and corruption. The ACC argued that people with access to information on the activities of organised crime groups and law enforcement as well as employees of domestic agencies that provide identification documents such as driver licences or other permits are also potential targets of corruption. Within the context of law enforcement, improper relationships with informants or inappropriate management of informants remain key corruption risks for law enforcement officers.²⁰ Notwithstanding the specific risks in relation to these official roles, international and domestic experience has shown that 'even the most trusted people are vulnerable to corruption'.²¹ In this regard, agencies highlighted the risks associated with the provision of information. Austrade recognised the vulnerabilities of its staff in regard to bribery and corruption as they give advice and information to businesses internationally.²² Austrade acknowledged that commercial knowledge of international marketplaces is an area of risk for the

15 Australian Commission for Law Enforcement Integrity, *Submission 1*, p. 7.

16 Australian Commission for Law Enforcement Integrity, *Submission 1*, p. 7.

17 Mr Gary Lewis, UNODC, 'Australia obvious target for drug and people smugglers', Radio Australia, 19 April 2012, <http://www.radioaustralia.net.au/international/radio/program/connect-asia/australia-obvious-target-for-drug-and-people-smugglers/930224> (accessed 18 April 2013).

18 Mr Gary Lewis, UNODC, Australia an 'obvious target' for international crime, United Nations Office on Drugs and Crime, <http://www.unodc.org/eastasiaandpacific/en/video/2012/abc-news-australia.html> (accessed 21 May 2012).

19 Australian Commission for Law Enforcement Integrity, *Submission 1*, p. 6.

20 Australian Crime Commission, *Submission 6*, pp 1–2.

21 Australian Crime Commission, *Submission 6*, p. 2.

22 Mr Peter Yuile, Austrade, *Committee Hansard*, 11 May 2012, p. 26.

agency with the potential for such information to be misused for personal advantage.²³ DFAT noted the risks associated with commercial-in-confidence information.²⁴

Comparing risks in overseas and domestic operations

3.18 Most Commonwealth agencies recognised that overseas operations carry higher risks of compromise and corruption than domestic operations regardless of the length of officer deployment.²⁵ These risks relate to both the function of the operations themselves as well as the circumstances in which they are carried out. While some risks are inherent to both international and domestic operations, others are specific to the international context. DIAC noted that there are conduct issues and corruption risks that are more prevalent in the overseas environment while the sorts of pressures within an overseas context alone create a corruption risk.²⁶ These include issues arising from different cultural attitudes, ethical values and perceptions about the behaviour of public servants.²⁷ Customs and AusAID also recognised that overseas environments where there is a high corruption perception index pose a heightened risk or susceptibility to corruption.²⁸

3.19 The committee was informed that the physical presence of the individual officer overseas was not the determining factor in relation to the period of heightened risk to corruption. Organised crime transcends international and national borders and technological boundaries and is multi-dimensional in nature. As it has the ability to target officials regardless of their geographical location, the Integrity Commissioner emphasised to the committee that Australian officials may be susceptible to corruption on their return home where they may perceive the risks to be minimal. Agencies must therefore be alert to the possibility of both on-shore and off-shore compromise.²⁹ In terms of the vulnerabilities of staff working overseas, the types of corruption approaches that could be used to facilitate the importation into Australia of drugs or other contraband substances include:

- selling information about law enforcement methodologies—for example, how to circumvent border controls and detection systems;
- actively facilitating passage of illicit goods through collusive relationships and personal contacts;

23 Mr Peter Yuile, Austrade, *Committee Hansard*, 11 May 2012, p. 30.

24 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 4.

25 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2; Department of Immigration and Citizenship, *Submission 4*, p. 8; Mr Michael Pezzulo, Customs, *Committee Hansard*, 23 March 2012, p. 25.

26 Department of Immigration and Citizenship, *Submission 4*, pp 8–9.

27 Department of Immigration and Citizenship, *Submission 4*, p. 8.

28 Answer to Question on Notice from the Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012); Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, pp 10–12.

29 Australian Commission for Law Enforcement Integrity, *Submission 1*, p. 7.

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- involving or engaging other Australians in corrupt collaboration; and
 - manipulating intelligence collection and dissemination.³⁰

3.20 DIAC identified a range of corruption risks specific to the overseas context including the possible abuse of diplomatic privileges, financial dealings overseas (including the prevalence of black markets in some locations), increased risks associated with debts and gambling as well as different local laws governing the use of drugs and alcohol. Furthermore, DIAC recognised that gift giving and hospitality which might otherwise be considered acceptable in the host country may be perceived as corrupt behaviour.³¹

3.21 AusAID identified three aspects of risk in relation to its overseas operations as Mr Laurie Dunn, First Assistant Director-General, Program Effectiveness and Performance Division explained:

One is that developing countries by definition have low capacity, so you will often find that in those environments the capacity of the partner authorities are relatively thin or weak, and that includes their policing and legal capacity. So a general issue around developing countries is the thinness of the capacity of their own institutions. More specifically, the countries we mentioned have significant issues around fraud and corruption, with corruption in a number of countries being widespread and systemic. In those cases, we need to take specific mitigation measures around how we deliver the aid program. The third aspect, I would say, is often to do with the culture and operating environment in those countries.³²

3.22 Numerous corruption risks characteristically arise for the AFP because of the scale and geographical spread of its operations and the nature of its business. Organisational challenges to the AFP arise from factors such as officers' exposure to criminality coupled with the growing risks of terrorism and organised crime particularly in circumstances where operations are carried out in remote regions with a high level of discretion.³³ To manage these risks, the AFP's Fraud and Anti-Corruption Plan identifies nine strategic risks of which many are inherent to all AFP operations. These include vulnerabilities to theft, dishonest conduct, the dishonest use of official information and other AFP resources and powers, dishonest disclosure or lack of disclosure relating to personal circumstances, and conspiring with others to exploit any of the other risks.³⁴ However, the risks specifically considered in relation to overseas deployment which serve as the focus of the AFP's pre-deployment training include:

- fraternisation—with a focus on power imbalance;

30 Australian Commission for Law Enforcement Integrity, *Submission 1*, p. 7.

31 Department of Immigration and Citizenship, *Submission 4*, p. 9.

32 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 10.

33 Australian Federal Police, *Submission 5*, p. 9.

34 Australian Federal Police, *Submission 5*, p. 10.

- cultural sensitivities including around alcohol consumption;
- isolation, lower security and potential for coercion, and the prevalence of bribery in some locations; and
- appropriate use of corporate cards, travel/communication claims and other corporate expenditure.³⁵

3.23 Mr Luke Williams, Director of DFAT's Management Strategy, Conduct and Diversity Section informed the committee that as the range of misconduct in relation to DFAT officials overseas was very broad, there were no trends as to the types of misconduct committed including corruption and fraud:

It can go from simple things like a driver abusing the way in which the receipts for petrol fuel are reconciled, for example. You can also have staff working for DIAC in the visa area where there have been some bribes paid, and that has been investigated. You can have misconduct in terms of people bringing the reputation of Australia into disrepute. That is again an issue where they have not behaved appropriately.³⁶

3.24 As part of its response to these threats, a six-monthly assessment is undertaken of the current fraud risks associated with the department under DFAT's Fraud Control Plan. Possible fraud risk overseas include misappropriation of funds; altering documents; falsifying signatures; misuse of Commonwealth assets; and provision of false information to the Commonwealth.³⁷

3.25 The Australian Public Service Commission (APSC) provides advice and guidance to Australian Public Sector (APS) agencies in relation to working overseas including overseas postings as well as short-term missions and visits including employees traveling to attend meetings and conferences.³⁸

Importing corruption

3.26 DAFF emphasised that some of its high risk activities have an international dimension but are not physically undertaken overseas. These activities include the aviation and maritime clearance process.³⁹ Similarly, the ACC highlighted the ongoing threat of corruption of employees who work in areas that can facilitate the illegal activities of organised crime groups such as 'trusted insiders at Australian ports'.⁴⁰

35 Australian Federal Police, *Submission 5*, p. 11.

36 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 3.

37 Department of Foreign Affairs and Trade, Answer to Question on Notice at a public hearing on 11 May 2012.

38 APSC, Sect 4.16 Working overseas, <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/working-overseas> (accessed 26 April 2013).

39 Ms Rona Mellor, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 March 2012, p. 17.

40 Australian Crime Commission, *Submission 6*, p. 1.

3.27 These concerns were realised in late 2012 when the joint Operation Marca/Heritage involving the AFP, Customs and ACLEI uncovered a drug importation ring involving an organised crime syndicate and corrupt Commonwealth officials at Sydney International Airport.⁴¹ A number of persons were arrested in December 2012 for conspiring with Customs officials and baggage handlers to smuggle pseudoephedrine from Vietnam through Sydney Airport. By April 2013, a total of 20 individuals had been arrested in relation to the investigation into border protection at the airport including four Customs officials and one Australian Quarantine and Inspection Service official.⁴² The ongoing investigation is expected to lead to further arrests.⁴³

3.28 The Integrity Commissioner highlighted the risks of importing corruption. Under this circumstance, corruption may start overseas and be repatriated with the returning Australian official. Either knowingly or unwittingly, Australian officials can be co-opted for corrupt purposes. Corruption risks may manifest overseas and be imported back into Australia, with potential corrupters looking for a point of entry into Australian agencies. Bribery, subordination and other forms of compromise of officials who work or holiday overseas are some of the corrupt methods that can be used to achieve this aim.⁴⁴

3.29 As serious and organised crime infiltrates sectors of the economy, its activities are supported by people, knowingly or otherwise, with access to information, infrastructure, government services, knowledge of institutional weaknesses or access to specialist skills. The Commonwealth Organised Crime Strategic Framework also recognises the role of 'facilitators' as individuals with specialist skills such as accountants, information technology specialists, lawyers and bankers who:

41 The Hon. Jason Clare MP, Minister for Home Affairs and Minister for Justice, *Ministerial Statement*, 12 February 2013,

<http://www.ministerhomeaffairs.gov.au/Mediareleases/Pages/2013/First%20Quarter/12th-February-2013---Ministerial-Statement.aspx> (accessed 18 April 2013).

42 'Three more charged over Customs smuggling ring', *ABC News*, 23 April 2013, <http://www.abc.net.au/news/2013-04-23/three-more-charged-over-customs-smuggling-ring/4646770> (accessed 23 April 2013); Nick McKenzie and Richard Baker, 'Five arrested in customs drug sting', *Sydney Morning Herald*, 13 February 2013,

<http://www.smh.com.au/national/five-arrested-in-customs-drug-sting-20130212-2eb6q.html> (accessed 18 April 2013).

43 AAP, Customs staff charged over alleged drug smuggling ring', *The Australian*, 12 February 2013, <http://www.theaustralian.com.au/news/nation/customs-staff-charged-over-alleged-drug-smuggling-ring/story-e6frg6nf-1226576397568> (accessed 18 April 2013). AFP, 'AQIS official arrested over corruption', *Media Release*, 20 December 2012, <http://www.afp.gov.au/media-centre/news/afp/2012/december/aqis-official-arrested-over-corruption.aspx> (accessed 18 April 2013).

44 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2013, p. 2.

...play a vital role, sometimes unintentionally, in assisting criminal networks operate undetected and seamlessly across both legitimate and illicit markets.⁴⁵

3.30 Once criminal networks establish a foothold in industry sectors, organised crime can then more easily operate in, and profit from, these sectors which can become 'resistant to law enforcement interventions'. Therefore:

Criminal networks will continue to seek out individuals within law enforcement and other public sector agencies and industry for the purpose of infiltration, corruption or facilitation to further their criminal activity.⁴⁶

Investigative function

3.31 The overseas operations of law enforcement agencies vary considerably in their nature and exposure to corruption. Law enforcement agencies including the AFP have a responsibility to manage the integrity of their own operations and to investigate allegations involving other Commonwealth agencies and entities. The AFP's investigative role provides another layer of challenges for it and other law enforcement agencies engaged in investigations. Professor AJ Brown explained:

...if they are called upon to investigate other Commonwealth agencies, Commonwealth controlled entities, Australian controlled entities or Australian companies overseas, who equivalently are operating without a culture of recognition of the same sorts of principles, then it has to be regarded as being a very high risk for the officers who are charged with those sorts of investigations and posted overseas. It is that much harder for them to operate on the basis that everybody, especially Commonwealth agencies, are playing by the same rules and are subject to the same obligations, before you even get to the private sector or to other actors that they would be interacting with.⁴⁷

3.32 The Integrity Commissioner noted the high risks of corruption through concealment and cover up of investigations into misconduct allegations.⁴⁸ This risk is particularly acute where internal subcultures operate within agencies. It is also a considerable risk in the context of societies where power imbalances may be pervasive. The Integrity Commissioner underscored the implications for Australia's reputation in relation to such investigations:

These are sensitive topics but it is important to Australia's reputation abroad that our agencies respond appropriately and transparently to such allegations. I have no particular instance in mind, but I wish to record that I

45 Australian Government, *Commonwealth Organised Crime Strategic Framework: Overview*, 2009, p. 9.

46 Australian Government, *Commonwealth Organised Crime Strategic Framework: Overview*, 2009, p. 9.

47 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 2.

48 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

would regard as most serious any indication that investigations of this type are not cooperated with in full.⁴⁹

Tangible resources, influence and perceptions of authority

3.33 There is a high corruption risk associated with the granting of benefits such as the delivery of aid and donation of equipment and other resources. The Integrity Commissioner informed the committee that the risk of corruption in the allocation of project funding and provision of equipment was inherent.⁵⁰

3.34 In 2011, Australia's anti-money laundering and counter-terrorism financing regulator, AUSTRAC, conducted an internal fraud risk assessment. The two key areas of identified risk associated with the agency's technical assistance and training program related to:

- the purchase and distribution of goods and services by staff, associated with the delivery of in-country training workshops and events; and
- general staff conduct and interaction with international stakeholders in locations of differing cultural customs and values.⁵¹

3.35 The transfer of tangible resources was widely recognised by agencies as a key area of corruption risk. Another area of high risk concerns the possibility of 'trading in influence' whereby official decisions or services can be bought and sold.⁵²

3.36 DIAC noted that perceptions alone regarding decision making power created their own risks. For example, the perception that an individual staff member has power over visa applications and can make a determination in relation to such applications is enough to create a corruption risk. Mr Todd Frew, First Assistant Secretary, Visa and Offshore Services Division, DIAC explained:

It is not that someone has to be in a position to corruptly provide somebody with a visa in return for a fee, it can almost be just a perception of influence. So people who were working at the counter, who had no decision-making capacity at all, were putting about that they did have some influence in that they could take something and put [it] in the right spot where it would subsequently be approved as opposed to not.⁵³

3.37 Similarly, the Integrity Commissioner explained that information about law enforcement methodologies, systems or processes are commodities that criminal groups seek to acquire to circumvent and manipulate official processes.⁵⁴ Other

49 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

50 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 3.

51 Australian Transaction Reports and Analysis Centre, *Submission 3*, p. 2.

52 The Integrity Commissioner clarified that there was little opportunity for this form of corruption to occur in relation to the roles and functions of LEIC Act agencies. Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

53 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, 17.

54 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

commodities which can be exploited include contacts for possible collaborators in Australia and active assistance with moving illicit or border controlled goods into Australia as well as influencing or manipulating intelligence collection and dissemination for purposes that include deflecting attention from an illicit importation.⁵⁵

3.38 The Integrity Commissioner drew the committee's attention to opportunities for corruption outside the law enforcement functions of a deployment such as bribery of foreign officials.⁵⁶ There are also specific opportunities for corruption in the intersection between law enforcement and non-law enforcement bodies where agencies conduct joint operations or engage in collaborative activities particularly where there are considerable differences between the legislative, policy or integrity frameworks of involved agencies.

Displacement and detachment from integrity systems

3.39 Corruption risks arise in the context of joint operations and inter-agency initiatives which are a feature of Commonwealth international operations. Agencies working under such collaborative arrangements hold different integrity standards which can be exploited by corrupt elements. Termed 'displacement' this situation arises where agencies operating under a high integrity standard with effective oversight, such as ACLEI scrutiny, work with agencies with a lower integrity standard.⁵⁷

3.40 Collaborative relationships between Commonwealth agencies in overseas jurisdictions can take many forms. Agencies commonly share official premises, information, seconded or locally engaged staff and engage in joint initiatives such as task forces. The Acting Commonwealth Ombudsman highlighted the complexities for agencies working together in circumstances such as joint operations where they share the same objective but operate under different legal and or policy frameworks such as secrecy provisions.⁵⁸ Under these circumstances, corruption risks can be 'displaced' from one agency with a strong integrity regime to an agency whose anti-corruption measures are perceived to be less developed. Conversely, an agency with a weaker integrity regime may be targeted by corrupt entities as the weaker link in a joint

55 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

56 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 2.

57 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, Inquiry into the Operation of the *Law Enforcement Integrity Commissioner Act 2006*, Final Report, July 2011, p. 10, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=aclei_ctt/completed_inquiries/2010-13/integrity_com_act/report/index.htm (accessed 31 May 2012).

58 Ms Alison Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, 11 May 2012, p. 20.

operation given the strong integrity regime of the agency with which they are engaged.⁵⁹

3.41 Professor AJ Brown explained that the evidence in relation to displacement brought about by conflicting or incompatible integrity cultures demonstrates that the organisational culture with fewer rules tends to pervade a joint operation. Drawing on an example of a joint task force, Professor Brown noted that:

...if law enforcement officials cross-posted from one agency to another—into a task force, for example—come from a jurisdiction which has no attention to these rules, and other members of those operations or task forces come from jurisdictions which have a lot of those rules, more often than not it tends to be the culture of those without the rules that tends to create a free-for-all environment while the ones who know they should be subject to those rules regard the pressure as being off. We know that those things have a big influence.⁶⁰

3.42 The risks of corruption are heightened in contexts when agency staff are detached from the integrity framework of their home agency and isolated from institutional support systems and networks including their usual supervisory arrangements, wider governance framework and family.⁶¹ Under such conditions, officials may face personal temptations for corrupt activity that they 'would not normally encounter in Australia' including bribes or 'facilitation payments' for personal purposes or 'speed money' paid to fast track legitimate administrative decisions.⁶²

3.43 Officials can become detached from their agency's integrity standards at the same time that they are exposed to and influenced by local ways of conducting business. In countries where corruption is pervasive and business practices are underpinned by corruption, the boundaries can become blurred quickly.

3.44 Mr Michael Pezzullo, Chief Operating Officer of Customs informed the committee that the greatest risk to the agency in terms of its operations related to the circumstances of officers living away from home and the isolation of some deployments which can create a heightened vulnerability to grooming by corrupt elements which seek insider access.⁶³ The agency's response to such risks is to use its internal intelligence processes and standard integrity and professional standards processes to combat and defeat attempts at penetration.

3.45 Displacement from integrity standards can also come about inadvertently when Australian officials rely on locally-engaged staff members who might bring

59 ACLEI, Submission to the PJC–ACLEI, Inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2005*, July 2009, Submission 14, pp 11–13.

60 Professor AJ Brown, *Committee Hansard*, 16 March 2012, p. 6.

61 Ms Alison Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, 11 May 2012, p. 21.

62 Australian Commission for Law Enforcement Integrity, *Submission 1*, p. 6.

63 Mr Michael Pezzullo, Customs, *Committee Hansard*, 23 March 2012, p. 21.

'different cultures and different controls in those environments'. The position of local staff members may also be complicated by different experiences and expectations about integrity and loyalty. DIAC acknowledged the susceptibility of locally engaged staff to allegations of corruption particularly where their 'cultural values' may be in conflict with the APS Code of Conduct.⁶⁴

Gift giving

3.46 Gift giving is recognised under Article 8 of the UNCAC as a source of corruption requiring states parties to:

...establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.⁶⁵

3.47 Gift giving is a prevalent social custom in many countries. DFAT highlighted the need for caution in relation to gifts which can easily 'become something else'.⁶⁶ Austrade's code of conduct also highlights the risks. It states that the very acceptance of a gift may 'create the perception that the Austrader's integrity has been compromised and this should be avoided'.⁶⁷

3.48 From an integrity perspective, Commonwealth agencies must understand when it is appropriate to give or receive a gift, what sort of gift is suitable, and what obligations gift giving imposes.⁶⁸ As the Australian government's export credit agency, EFIC is responsible for assisting Australian exporters and companies investing overseas to overcome financial barriers. Over the past financial year, EFIC signed facilities worth \$593 million to support exports and overseas investment of over \$3.4 billion. The gift policy of EFIC places an emphasis on the motivation of the gift giver and the context in which the gift is offered. EFIC's Code of Conduct Policy advises that accepting gifts, hospitality or entertainment will not usually be appropriate if the:

...company or person making the gift or offer of hospitality or entertainment are involved in a tender process with EFIC, either for the procurement of goods and services or sale of assets, or the subject of a

64 Department of Immigration and Citizenship, *Submission 4*, p. 9.

65 United Nations Convention against Corruption, Article 8 (5), http://treaties.un.org/doc/source/RecentTexts/Corruption_E.pdf (accessed 19 April 2013).

66 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 28.

67 Austrade, Client Service Handbook, Attachment F, Answer to Question on Notice from Austrade at a public hearing on 11 May 2012 (received 31 May 2012).

68 P. Steidlmeier, Gift Giving, Bribery and Corruption: Ethic Management of Business Relationships in China, *Journal of Business Ethics*, Vol. 20, No. 2, June 1999, pp 121–132.

decision within the discretionary power or substantial influence of the EFIC employee concerned.⁶⁹

3.49 Some agencies place a value limit on the gifts their employees can receive. The EFIC Code of Conduct Policy notes that employees must seek the approval of a Board Secretary of any gift, hospitality or entertainment received which exceeds \$300 in value. It further notes that the executive will decide whether gifts will be kept by the employee, handed over to EFIC, or returned to the giver.⁷⁰

Facilitation payments

3.50 According to the OECD, facilitation payments are made to 'obtain or retain business or other improper advantage'.⁷¹

3.51 In its 2013 review of Australia's implementation of the UNCAC, the UNCAC Implementation Review Group noted of Australia that:

While the foreign bribery statute criminalizes many forms of payment made to foreign government officials, there is an exception for facilitation payments made to expedite or to secure the performance of a routine governmental action by a foreign official, political party or party official. In contrast, the principal domestic bribery statute contains no such exception. Notwithstanding the fact that the obligation of appropriate culpability to establish a criminal offence is fundamental to the legal system of Australia, as well as a constituent element of the offence established in accordance with article 16(1) of the Convention ("*committed intentionally*"), it was noted that the Convention contains no enumerated exception for facilitation payments.⁷²

69 EFIC Code of Conduct Policy, Answer to Question on Notice from Export Finance and Insurance Corporation in response to the committee's request on 6 September (received 7 September 2012).

70 EFIC Code of Conduct Policy, Answer to Question on Notice from Export Finance and Insurance Corporation in response to the committee's request on 6 September (received 7 September 2012).

71 OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related documents*, Commentaries on the Convention, p. 15, <http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/38028044.pdf> (accessed 17 May 2013).

72 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, 15 May 2012, p. 3, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253616e.pdf> (accessed 19 April 2013).

3.52 The offence of bribing a foreign public official is set out in section 70.2 of the Criminal Code.⁷³ There is, however, a facilitation payment defence which is set out in section 70.4 of the Criminal Code. The AGD noted that a defence to the offence is provided where:

- the value of the benefit was of a minor nature; and
- the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and
- as soon as practicable after the conduct occurred, the person made a record of the conduct.⁷⁴

3.53 Mr Brendan Jacomb, Group Manager, Legal, Security and Procurement, Austrade expressed the view that the facilitation payment defence was a hard defence to make out for reasons including the fact that you have to 'note and to date it and time it according to the official you gave it to'.⁷⁵

3.54 In December 2009, the OECD issued a 'Recommendation of the Council for Further Combating Bribery of Foreign Public Officials' which recognised the 'corrosive effect of small facilitation payments' and recommended that member states review their policies and approach on small facilitation payments 'in order to effectively combat the phenomenon and encourage companies to 'prohibit or discourage' the use of small facilitation payments.⁷⁶ The OECD has also repeatedly highlighted the bribery risks in relation to intermediaries defined as a 'person put in contact with or in between two or more trading parties'. For example, a 2009 OECD

73 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, 15 May 2012, p. 3, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253616e.pdf> (accessed 19 April 2013).

74 Attorney-General's Department, Assessing the 'facilitation payments' defence to the Foreign Bribery offence and other measures, Public Consultation Paper, 15 November 2011, p. 2. <http://www.crimeprevention.gov.au/Financialcrime/Documents/v2Public%20consultation%20paper%20-%20amendments%20to%20bribery%20offences%20-%20corrected%20version%2018%20November%202011.pdf> (accessed 19 April 2013).

75 Mr Brendan Jacomb, Austrade, *Committee Hansard*, 4 October 2012, p. 21.

76 OECD Working Group on Bribery in International Business Transactions, *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, 26 November 2009, <http://www.oecd.org/dataoecd/11/40/44176910.pdf> (accessed 7 June 2012).

report found that 'intermediaries are frequently used to commit bribery in public procurement'.⁷⁷

3.55 A 2011 report by the Australian Council of Superannuation Investors (ACSI) found that only 16 per cent of the top 100 companies listed on the Australian Stock Exchange (ASX) prohibited facilitation payments and only half restricted or controlled them.⁷⁸ In its review of the top 200 companies listed on the ASX, ASIC concluded that:

In the current environment, the chances of an ASX 200 company with international operations, no stated anti-bribery policy, and/or inadequate anti bribery management controls becoming embroiled in another large scale corruption scandal over the next five years appear to be substantial.⁷⁹

3.56 The ACSI review found that 75 per cent of the top 100 companies and 63 per cent of the top 200 companies listed on the Australian Stock Exchange operate in a high risk sector, high risk country or both. The report indicated that:

Collectively the ASX 100 continue to focus on bribery prevention more than on facilitation payment prevention, although more companies are seeking to regulate facilitation payments now than in 2006. While indicators included in Codes of Conduct are improving, more work is needed for companies to implement a strong culture of compliance through provision of reviewing, monitoring and training measures. Otherwise these Codes are not likely to result in meaningful outcomes. For example, although 69% of companies prohibit bribery in their Codes of Conduct, 32% have been rated at basic or worse in regards to having adequate management systems to implement that Code.⁸⁰

3.57 Australia updated its public guidance material to clarify the operation of the facilitation payment defence following a 2006 recommendation by the OECD Working Group on Bribery in International Business Transactions.⁸¹ In its 2012

77 The three include an official's family, friends, and other third persons acting as intermediaries; intermediaries who do not provide any identifiable service; and intermediaries who provide a combination of legitimate and illegitimate goods and services. OECD Working Group on Bribery in International Business Transactions, *Typologies on the Role of Intermediaries in International Business Transactions, Final Report*, 9 October 2009, p. 6, <http://www.oecd.org/dataoecd/40/17/43879503.pdf> (accessed 8 June 2012).

78 Australian Council of Superannuation Investors, *Anti-Corruption and Bribery Practices in Corporate Australia*, October 2011, p. 5, http://www.acsi.org.au/images/stories/ACSIDocuments/generalresearchpublic/11_anti_corrupti_on_bribery_practices_in_corporate_australia.oct_11.pdf (accessed 22 April 2013).

79 Australian Council of Superannuation Investors, *Anti-Corruption and Bribery Practices in Corporate Australia*, October 2011, p. 20.

80 Australian Council of Superannuation Investors, *Anti-Corruption and Bribery Practices in Corporate Australia*, 26 October 2011, p. 21.

81 OECD Working Group on Bribery in International Business Transactions, *Australia: Phase 2 Follow up report on the implementation of phase 2 recommendations*, August 2008, p. 5, <http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/41305864.pdf> (accessed 20 May 2013).

report, the OECD Working Group acknowledged that Australia had amended the guidance to clarify that the facilitation payment defence is restricted to 'payments of a minor value, and to eliminate certain examples that had caused concern'.⁸² In addition, the maximum fine against legal persons for foreign bribery was substantially raised in 2010.⁸³

3.58 In its 2012 report, the Working Group also brought to light a lack of understanding about what constitutes a facilitation payment under Australian law leading to a misunderstanding of how the requirement to properly record facilitation payments applies in practice.⁸⁴ The OECD Working Group also noted that facilitation payments were frequently equated with bribes while substantial confusion over the scope of the facilitation payment defence remained.⁸⁵ The lead examiners recommended that Australia continue to raise awareness of the distinction between bribes and facilitation payments, and to encourage companies to:

...prohibit or discourage the use of small facilitation payments in internal company controls, ethics and compliance programmes or measures, recognising that such payments must in all cases be accurately accounted for in such companies' books and financial records.⁸⁶

3.59 Evidence to the committee supported the observation concerning confusion regarding the distinction between facilitation payments and bribery. Austrade's Mr Jacomb used an example of a scenario involving a \$200 payment:

The act does not define what is a small amount. For some people, that is a small amount and that might meet the definition. Others say, 'Hang on a sec. \$200 in some countries is a lot of money and could very well be regarded as a bribe.' For that very reason...we have taken the position...around facilitation payments [that] our clear instruction to staff is not to be involved in it.⁸⁷

3.60 From November 2011 to February 2012, a consultation process was conducted in relation to possible changes to Australia's anti-foreign bribery laws and

82 OECD Working Group on Bribery in International Business Transactions, *Australia Phase 3: Final Report, Final Report on Implementation and Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, November 2012, p. 4.

[http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB\(2012\)1/FINAL&docLanguage=En](http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB(2012)1/FINAL&docLanguage=En) (accessed 20 May 2013).

83 OECD Working Group on Bribery in International Business Transactions, *Australia Phase 3: Final Report*, November 2012, p. 4.

84 OECD Working Group on Bribery in International Business Transactions, *Australia Phase 3: Final Report*, November 2012, p. 9.

85 OECD Working Group on Bribery in International Business Transactions, *Australia Phase 3: Final Report*, November 2012, pp 9–10.

86 OECD Working Group on Bribery in International Business Transactions, *Australia Phase 3: Final Report*, November 2012, p. 10.

87 Mr Brendan Jacomb, Austrade, *Committee Hansard*, 4 October 2012, p. 22.

specifically the facilitation payment defence.⁸⁸ The OECD Working Group noted that it would follow up on the outcome of Australia's consultation process on the facilitation payment defence.⁸⁹

3.61 In its 2012 report, the UNCAC Implementation Review Group encouraged the continued review of Australia's policies and approach on facilitation payments noting that Australia should:

Continue to periodically review policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of such payments, including in internal company controls, ethics and compliance programmes or measures.⁹⁰

3.62 The committee will endeavour to monitor work carried out by the AGD to address the confusion regarding facilitation payments as well as initiatives emanating from the facilitation payment defence consultation process.

88 AGD, Assessing the 'facilitation payments' defence to the foreign bribery offence and other measures, <http://www.crimeprevention.gov.au/Financialcrime/Pages/Briberyofforeignpublicofficials.aspx#Assessing> (accessed 20 May 2013).

89 OECD Working Group on Bribery in International Business Transactions, *Australia Phase 3: Final Report*, November 2012, p. 10.

90 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, June 2012, p. 9.

CHAPTER 4

International obligations and regional engagement

4.1 Australia is signatory to a range of international conventions and standards pertaining to integrity and anti-corruption and serves as a member of various international and regional anti-corruption bodies and forums. This chapter considers Australia's obligations as an international signatory to these agreements and examines the various legislative and policy measures as well as integrity models in place to adhere to these agreements. Central to these initiatives is the development of a National Anti-Corruption Plan which is expected to provide a Commonwealth policy on and multi-agency response to anti-corruption which reflects international standards and regional commitments in relation to corruption.

United Nations Convention against Corruption

4.2 The UNCAC is recognised as the first and only legally binding universal instrument in the fight against corruption.¹ UN Secretary-General Ban Ki-moon noted that the UNCAC is the 'world's strongest legal instrument to build integrity and fight corruption'.² Australia became a signatory to the UNCAC on 9 December 2003 and ratified the convention on 7 December 2005.³

4.3 UNCAC introduces a set of standards, measures and rules that countries party to the convention can apply in order to strengthen their legal and regulatory regimes to fight corruption. Amongst its purposes, the convention is directed to 'promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery'. The convention's preamble makes note of the fact that corruption is a 'transnational phenomenon' making international cooperation in the area of prevention and control essential and requiring a 'comprehensive and multidisciplinary approach'.⁴

4.4 Prevention and addressing of corruption through international and national initiatives has also been recognised by the UN General Assembly as fundamental to achieving the Millennium Development Goals. A UN General Assembly report of 2010 highlighted that:

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- 1 United Nations, *UNODC's Action against Corruption and Economic Crime*, 2013, <http://www.unodc.org/unodc/corruption/index.html> (accessed 22 April 2013); United Nations, *Technical Guide to the United Nations Convention against Corruption*, September 2009, http://www.unicri.it/news/article/0909-5_guide_corruption (accessed 22 April 2013).
 - 2 Secretary-General Ban Ki-moon, International Anti-Corruption Day 9 December 2009 cited in *UNODC's Action against Corruption and Economic Crime*, 2013, <http://www.unodc.org/unodc/corruption/index.html> (accessed 22 April 2013)
 - 3 UNODC, UNCAC Signature and Ratification Status as of 24 December 2012, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (accessed 22 April 2013).
 - 4 United Nations Convention against Corruption, Preamble, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (accessed 21 May 2012).

...fighting corruption at both the national and international levels is a priority and that corruption is a serious barrier to effective resource mobilization and allocation and diverts resources away from activities that are vital for poverty eradication, the fight against hunger and sustainable development. We are determined to take urgent and decisive steps to continue to combat corruption in all of its manifestations...⁵

4.5 As part of fulfilling its obligations under the UNCAC implementation review mechanism, Australia commenced a review of its implementation of the UNCAC in 2011 through a self-assessment and peer review process which culminated in a report submitted to the UNODC in July 2011. The review focused on compliance with chapters three and four (articles 15-50) of the convention which address criminalisation of corruption, prevention of corruption, law enforcement, asset recovery and international cooperation. According to the AGD, since ratification Australia has 'implemented all of the mandatory requirements prescribed in the provisions of UNCAC'.⁶ This is achieved through various means including a combination of Commonwealth legislation, the actions of various government bodies including the AGD, AFP and the ACC, procedural safeguards such as auditing conducted by the Australian National Audit Office, self-regulation and cooperation with regional and international authorities.⁷

4.6 Following submission of the self-assessment report, experts from Turkey and the United States representing the UNCAC Independent Review Group visited Australia to review Australia's implementation of the relevant articles under the UNCAC. The review team completed the executive summary of the review of Australia's compliance with UNCAC. This summary was tabled at the UNCAC Implementation Review Group meeting on 18 June 2012 while work on the substantive country report is ongoing.⁸ The review highlighted a number of positive examples of good practices on the part of Australia including efforts to ensure severe consequences for public officials who engage in corruption, including the possible

5 United Nations General Assembly, Keeping the promise: united to achieve the Millennium Development Goals, Sixty-fifth session, Agenda Items 13 and 115, A/65/L.1, paragraph 52, p. 11, <http://www.un.org/en/mdg/summit2010/pdf/mdg%20outcome%20document.pdf> (accessed 18 May 2012).

6 Attorney-General's Department, 'Consultation on the review of Australia's implementation of the United Nations Convention against Corruption', <http://www.ag.gov.au/Consultationsreformsandreviews/Pages/ConsultationonthereviewofAustraliaimplementationoftheUnitedNationsConventionagainstCorruption.aspx> (accessed 21 May 2012).

7 Attorney-General's Department, 'Australia's international anti-corruption obligations', <http://www.ag.gov.au/Crimepreventionandenforcement/Corruption/Pages/Australiasinternationalanticorruptionobligations.aspx> (accessed 21 May 2012).

8 Attorney-General's Department, 'Global leadership in combating corruption', <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/Globalleadershipincombatin corruption.aspx> (accessed 22 April 2013).

forfeiture of the public sector contribution to the convicted official's pension fund.⁹ The review group also recognised Australia's approach to unexplained wealth whereby a court can compel a person to prove that their wealth was not derived from an offence as innovative.¹⁰

4.7 The review team made the following four recommendations to strengthen Australia's existing anti-corruption measures:

- continue to periodically review policies and approach on facilitation payments in order to effectively combat the phenomenon and continue to encourage companies to prohibit or discourage the use of such payments, including in internal company controls, ethics and compliance programmes or measures;
- consider adopting a written policy on parole that sets forth the factors for consideration;
- the adoption and implementation of legislation currently under review for the establishment of a comprehensive scheme for public sector whistleblower protection and to expedite access to existing protections for private sector whistleblowers; and
- continue the consultative process for the development of a comprehensive national anti-corruption action plan, which will include an examination of how to make anti-corruption systems more effective.¹¹

4.8 In March 2012, the government released a discussion paper on the proposed National Anti-Corruption Plan. It recognised the UNCAC implementation review process as a significant opportunity to 'guide international technical assistance and capacity building programs' and inform the National Anti-Corruption Plan. The discussion paper further noted that:

UNCAC implementation reviews provide a consistent framework and methodology for evaluation. This will help coordinate and target whole-of-government and wider international donor assistance.¹²

9 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, 15 May 2012, p. 6, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253616e.pdf> (accessed 19 April 2013).

10 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, 15 May 2012, p. 3.

11 UNCAC Implementation Review Group, Review of implementation of the United Nations Convention against Corruption, *Executive Summary: Australia*, CAC/COSP/IRG/I/2/1, 15 May 2012, p. 3, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1253616e.pdf> (accessed 19 April 2013).

12 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 27.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

4.9 Australia ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or Anti-Bribery Convention on 18 October 1999.¹³ The convention is one of two international instruments on corruption (along with the UNCAC) and establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. It focuses on the supply of bribes and requires states party to the convention to 'prosecute individuals who offer, promise or give bribes to foreign public officials and subject them to effective penalties including heavy fines or even prison time'.¹⁴

4.10 In its Phase 3 report on Australia's implementation of the convention, the OECD Working Group on Bribery in International Business Transactions (OECD Working Group) welcomed Australia's efforts while also noting serious concern that overall, enforcement of the foreign bribery offence had been extremely low. The OECD Working Group emphasised the limited enforcement of Australia's foreign bribery laws despite the risk to Australian of exposure to foreign bribery solicitation in the industries in which they operate. It highlighted that this lack of enforcement was not due to an absence of allegations, noting that the AFP had received 28 allegations of foreign bribery involving Securrency and NPA of which twelve cases were rejected for investigation and terminated and a further nine were accepted for investigation but later closed without charges being laid because of insufficient evidence. The remaining seven cases are ongoing while an additional two cases were finalised without charge.¹⁵ In its press release announcing the Phase 3 report, the OECD noted that:

Australia's enforcement of its foreign bribery laws has been extremely low, with just a single case leading to prosecutions out of 28 referrals in 13 years. Cases may have been closed prematurely. Australia must vigorously pursue foreign bribery allegations.¹⁶

4.11 The OECD Working Group made eleven recommendations directed at the effective investigation, prosecution and sanctioning of foreign bribery as well as five recommendations for ensuring effective prevention, detection and reporting of foreign

13 OECD, *Australia–OECD Anti-Bribery Convention*, <http://www.oecd.org/daf/anti-bribery/australia-oecdanti-briberyconvention.htm> (accessed 22 April 2013).

14 OECD Working Group on Bribery, *2010 Annual Report*, p. 11, <http://www.oecd.org/dataoecd/7/15/47628703.pdf> (accessed 21 May 2012).

15 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 9.

16 OECD, 'OECD seriously concerned by lack of foreign bribery convictions, but encouraged by recent efforts by the Australian Federal Police', *Media Release*, 25 October 2012, <http://www.oecd.org/australia/oecdseriouslyconcernedbylackofforeignbriberyconvictionsbutencouragedbyrecenteffortsbytheaustralianfederalpolice.htm> (accessed 25 October 2012).

bribery.¹⁷ Recommendations included alignment of the Australian Public Service Values and Code of Conduct in Practice (APS Guide) with its practice of requiring Australian civil servants who work overseas to report suspicions of foreign bribery to the AFP in all cases.¹⁸ The OECD Working Group further recommended that Australian public servants, officials and employees of independent statutory authorities 'be subject to equivalent reporting requirements'.¹⁹ It noted the need for Australia to put in place appropriate 'additional measures' to protect public and private sector employees who report suspected foreign bribery and that AusAID 'expressly require' all foreign bribery allegations involving Australian nationals, residents and companies to be reported to the AFP.²⁰

4.12 In relation to coordination and information sharing, the working group recommended that in accordance with Article 5 of the convention, the AFP, ASIC and Australian Prudential Regulation Authority (APRA):

...set out in writing with greater precision, following consultations with one another, their complementary roles and responsibilities in foreign bribery and related cases, and written rules for case referral and information sharing.²¹

4.13 The OECD Working Group further recommended that Australia adopt a 'whole-of-government approach' to raise awareness of foreign bribery.²² Other recommendations included that Australia:

- take sufficient steps to ensure that cases are not prematurely closed;
- gather foreign bribery allegations proactively and from diverse sources;
- ensure that corporations cannot avoid criminal liability in practice;

17 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, pp 48–51, <http://www.oecd.org/daf/anti-bribery/Australiaphase3reportEN.pdf> (accessed 19 April 2013).

18 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 51.

19 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 52.

20 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 52.

21 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 49.

22 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 50.

- improve co-ordination and case referral among Commonwealth and State authorities;
- tap into the ASIC's expertise in fighting corporate crime; and
- vigorously pursue false accounting cases.²³

4.14 Noting that Australia's first set of foreign bribery prosecutions began in July 2011 with changes in relation to the Securrency/NPA matter, the OECD Working Group stated that it would continue to monitor Australia's foreign bribery enforcement efforts including exploration of relevant matters pertaining to the Securrency/NPA case that 'could not be discussed in this evaluation because of suppression orders and on-going investigations'.²⁴

4.15 Australia is due to report orally in October 2013 and in October 2014 to the OECD on its foreign bribery-related enforcement actions including implementation of the OECD recommendations.²⁵ The AGD noted that the results of the OECD review will be closely considered in the development of the National Anti-Corruption Plan.²⁶

G20 Anti-Corruption Action Plan

4.16 The G20 Anti-Corruption Action Plan is directed at preventing and addressing corruption through legal and policy frameworks that promote market integrity. Recognising that as leaders of major trading nations, the G20 has a 'special responsibility to prevent and tackle corruption', the plan commits to a common approach to an effective global anti-corruption plan which adheres to the principles enshrined in the UNCAC.²⁷

4.17 Australia is a member of the G20 Anti-Corruption Working Group and participated in negotiations and development of the G20 Anti-Corruption Action Plan.²⁸ At the Seoul Summit in November 2010, the G20 Leaders identified the protection of whistleblowers as one of the high priority areas on their global anti-

23 OECD, 'OECD seriously concerned by lack of foreign bribery convictions, but encouraged by recent efforts by the Australian Federal Police', *Media Release*, 25 October 2012.

24 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, pp 9 and 49.

25 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 49.

26 Attorney-General's Department, 'Global Leadership in combating corruption', <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/Globalleadershipincombatin corruption.aspx> (accessed 22 April 2013).

27 G20 Anti-Corruption Action Plan, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/G20AntiCorruptionActionPlan.pdf> (accessed 22 April 2013).

28 Attorney-General's Department, 'Global Leadership in combating corruption', <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/Globalleadershipincombatin corruption.aspx> (accessed 22 April 2013).

corruption agenda. Recognising the importance of effective whistleblower protection laws, Leaders, in point 7 of the G20 Anti-Corruption Action Plan, called on G20 countries to enact and implement whistleblower protection rules by the end of 2012 to 'protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption'.²⁹

4.18 Whistleblower protection as a key element of a strong integrity framework is discussed in Chapter 7 of this report.

4.19 The discussion paper on the National Anti-Corruption Plan notes that Australia is committed to implementing the G20 Anti-Corruption Action Plan and will any examine necessary reforms in the context of developing the plan.³⁰

APEC Anti-Corruption and Transparency Working Group

4.20 At a 2004 meeting in Santiago, Asia-Pacific Economic Cooperation (APEC) leaders acknowledged the threat that corruption poses to good governance and economic growth in the Asia Pacific. They agreed to work together and coordinate efforts in adopting actions contained in the UNCAC and other multilateral frameworks to fight corruption and ensure transparency.³¹

4.21 In 2005, an Anti-Corruption and Transparency Experts' Task Force was established, the status of which was upgraded a year later in recognition of the importance of its work.³² As a member of the APEC Anti-Corruption and Transparency Working Group, Australia led the development of the APEC Anti-Corruption Code of Conduct for Business in 2007.³³ The code provides a list of business integrity and transparency principles for the private sector, addressing instances of bribery which may:

...involve transactions by, or in relation to, subsidiaries, joint ventures, agents, representatives, consultants, brokers, contractors, suppliers or employees with (including but not limited to) a public official, family members and close associates of a public official, a political candidate,

29 OECD, *G20 Anti-Corruption Action Plan, Action Point 7: Protection of Whistleblowers*, <http://www.oecd.org/general/48972967.pdf> (Accessed 22 April 2013).

30 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 25.

31 APEC, *APEC Course of Action on Fighting Corruption and Ensuring Transparency*, p. 1, http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/~media/Files/Groups/ACT/04_amm_033rev2.ashx (accessed 22 April 2013).

32 Asia-Pacific Economic Cooperation, 'Anti-Corruption and Transparency Working Group', <http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Anti-Corruption-and-Transparency.aspx> (accessed 22 May 2012).

33 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 25. At its inception in 2005, the working group was called the Anti-Corruption and Transparency Experts' Task Force. Its status was upgraded to a working group in March 2011.

party or party official, any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), or a third party.³⁴

Global Organization of Parliamentarians Against Corruption

4.22 The Global Organization of Parliamentarians Against Corruption (GOPAC) is an international network of parliamentarians dedicated to good governance and combating corruption. Founded in October 2002 with the aim of bringing together parliamentarians to combat corruption and promote transparency and accountability 'in order to ensure high standards of integrity in public transactions', there are now over 700 members of GOPAC worldwide.³⁵

4.23 GOPAC serves as an umbrella organisation working directly, through regional and 53 national chapters on five continents as well as through six global task forces.³⁶ GOPAC produces publications including guides and handbooks for parliamentarians often in association with its partners which include the UN Development Programme (UNDP), the UNODC, the World Bank Institute and Transparency International. Recent publications include:

- the *GOPAC Anti-Money Laundering Guide for Parliamentarians* which provides a guide on how to introduce anti-money laundering legislation and build a coalition with other legislators to police and prosecute money laundering at the national level.³⁷
- *How Strong are we in the Global Fight Against Corruption?–Self-assessing the implementation of the UNCAC*. Produced in partnership with the UNDP in

34 APEC, *APEC Anti-corruption Code of Conduct for Business*, September 2007, p. 1, http://publications.apec.org/publication-detail.php?pub_id=269 (accessed 22 April 2013).

35 GOPAC Inaugural Conference, Constitution, Rules and Regulations, October 2002, http://www.gopacnetwork.org/Docs/GOPACConstitution_EN.pdf (accessed 22 April 2013). GOPAC, *Annual Report 2011–12*, p. 5, http://www.gopacnetwork.org/Docs/AnnualReport_2011_2012_EN.pdf (accessed 22 April 2013).

36 GOPAC, 'Global Organization of Parliamentarians Against Corruption Welcomes New Executive Committee of the Board of Directors', *News Release*, 6 March 2013, http://www.gopacnetwork.org/Docs/NewsReleases/2013/NR_GlobalConference_Mar0613_EN.pdf (accessed 22 April 2013). The thematic Global Task Forces (GTF) include an anti-money laundering GTF; UNCAC GTF; parliamentary oversight GTF; parliamentary ethics and conduct GTF; participation in society GTF; and the Resource revenue and transparency GTF. GOPAC, Global Task Forces, <http://www.gopacnetwork.org/about/global-task-forces/> (accessed 22 April 2013).

37 GOPAC, *Annual Report 2011–12*, p. 9, http://www.gopacnetwork.org/Docs/AnnualReport_2011_2012_EN.pdf (accessed 22 April 2013)

June 2012, the report assesses pilot workshops of a self-assessment tool for parliamentarians on the UNCAC,³⁸ and

- *Handbook on Parliamentary Ethics and Conduct—A Guide for Parliamentarians* published in English, Arabic, French, Spanish, Armenian and Bhasa.³⁹

4.24 A committee delegation attended the fifth Global Conference of Parliamentarians Against Corruption in Manila from 31 January to 2 February 2013. The Manila Declaration, which was adopted by 500 legislators and representatives from 42 countries who attended the conference, called for the application of enforceable codes of ethics and conduct over parliamentarians themselves as well as broad public participation in the fight against corruption.⁴⁰

Proposed National Anti-Corruption Plan

4.25 In its 2011 inquiry report into the operation of the LEIC Act, the committee recommended a review of the Commonwealth integrity system with particular consideration of the merits of an integrity commission responsible for oversight of all Commonwealth public sector agencies.⁴¹ In September 2011, the Minister for Justice, the Hon. Brendan O'Connor (the Minister) announced the development of a National Anti-Corruption Plan which would involve a thorough review of existing measures at Commonwealth, state and territory level to ensure that those engaged in corruption cannot escape justice.⁴²

4.26 In February 2012, in its response to the committee report, the government noted that as part of developing Australia's first National Anti-Corruption Plan, it would examine:

...evolving corruption threats to Australia's national interests and ways to reduce corruption risks. The Plan will also clarify the roles and responsibilities of the range of bodies that promote accountability and

38 GOPAC, *Annual Report 2011–12*, p. 11, http://www.gopacnetwork.org/Docs/AnnualReport_2011_2012_EN.pdf (accessed 22 April 2013)

39 GOPAC, *Annual Report 2011–12*, p. 19.

40 GOPAC, 'Global Organisation of Parliamentarians Against Corruption Calls on International Community to Prosecute Corruption Perpetrators', *News Release*, 4 March 2013, http://www.gopacnetwork.org/Docs/NewsReleases/2013/NR_GlobalConference_Mar0413_EN.pdf (accessed 23 April 2013).

41 Parliamentary Joint Committee on ACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Final Report, July 2011, Recommendation 10, p. viii, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=aclei_ctte/completed_inquiries/2010-13/integrity_com_act/report/index.htm (accessed 22 April 2013).

42 The Hon. Brendan O'Connor MP, Minister for Home Affairs and Justice, 'Proceeds of crime to be used to fight corruption', *Media Release*, 22 September 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1129632%22> (accessed 22 April 2013).

transparency, including the overall lead responsibility for Commonwealth anti-corruption policy development and agency coordination.⁴³

4.27 The objective of the plan is to strengthen Australia's governance arrangements by developing a Commonwealth policy on anti-corruption.⁴⁴ The Minister noted that more than \$700 000 in confiscated proceeds of crime would be used to implement the plan and support Australia's implementation of the G20 Anti-Corruption Agenda and engagement with other international partners to strengthen cooperation and address global corruption.⁴⁵

4.28 The review of anti-corruption programs as part of the development of the plan was expected to build on current work at the federal and state levels to inform the UN review of Australia's implementation of the UNCAC.⁴⁶

4.29 As part of the consultation process in relation to the plan, the government released a discussion paper in March 2011.⁴⁷ In addition to the discussion paper, two consultation events involving interested stakeholders took place on 9 December 2011 and 11 July 2012 and 19 submissions were received. According to the AGD, there were three key issues identified in the submissions:

- issues surrounding the Commonwealth's multi-agency approach to corruption, including concerns around lack of coordination and gaps in the anti-corruption regime;
- the appropriateness of a single anti-corruption agency at a Commonwealth level; and
- the need for the plan to include a focus on research, prevention and education.⁴⁸

43 Australian Government, Australian Government Response to Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, Final Report—Inquiry into the Operation of the *Law Enforcement Integrity Commissioner Act 2006*, February 2012, p. 7, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=aclei_ctt/e/completed_inquiries/2010-13/integrity_com_act/index.htm (accessed 22 April 2013).

44 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 4.

45 The Hon. Brendan O'Connor MP, Minister for Home Affairs and Justice, 'Proceeds of crime to be used to fight corruption', *Media Release*, 22 September 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1129632%22> (accessed 22 April 2013).

46 The Hon. Brendan O'Connor MP, Minister for Home Affairs and Justice, 'Proceeds of crime to be used to fight corruption', *Media Release*, 22 September 2011.

47 Ms Alex Taylor, Assistant Secretary, AGD, 'Anti-Corruption in Australia: Reducing the Risk. The National Anti-Corruption Plan', *Speech*, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/SpeechMsAlexTaylorAGDAssistantSecretary.pdf> (accessed 22 April 2013).

48 Ms Alex Taylor, Assistant Secretary, AGD, 'Anti-Corruption in Australia: Reducing the Risk. The National Anti-Corruption Plan', *Speech*.

4.30 The discussion paper recognised that the UNCAC compliance review provided a 'strong incentive' to take advantage of other international and domestic anti-corruption developments and opportunities, such as fulfilling Australia's commitments to the G20 and APEC, in addition to UNCAC.⁴⁹

4.31 While addressing any challenges or issues raised in relation to the review of Australia's compliance with the UNCAC and the G20 Anti-Corruption Action Plan, the National Anti-Corruption Plan will serve several other objectives including:

- defining and addressing corruption risks;
- providing a clear statement of the national, whole-of-government approach to combating corruption; and
- clarifying federal agency roles and responsibilities, including an examination of options to improve leadership and coordination of policy and implementation.⁵⁰

4.32 A number of submitters to the inquiry supported the Commonwealth's approach of using the development of the National Anti-Corruption Plan as an opportunity to examine the adequacy of current anti-corruption arrangements. TIA argued that a risk identification and management focus implied a focus on prevention and mitigation 'which is the fundamental goal of anti-corruption policies and operations'.⁵¹ The importance of an integrated integrity system was also highlighted in evidence as an important initiative to prevent exploitation of the gaps between agencies, policies and legislation. TIA argued that a robust integrated integrity system would result in the prevention, detection and investigation of corruption to a common standard across all areas of Commonwealth employment and responsibility including 'APS agencies, non-APS agencies, parliamentarians, Ministers and the judiciary'.⁵²

49 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 27, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/NationalAntiCorruptionPlan.aspx> (accessed 22 April 2013).

50 Attorney-General's Department, National Anti-Corruption Plan, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/NationalAntiCorruptionPlan.aspx> (accessed 20 May 2013).

51 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 3.

52 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 10.

CHAPTER 5

National integrity framework

5.1 This chapter considers the multi-agency national integrity framework and the roles of key Commonwealth agencies within it. It outlines the primary instruments within the framework and its efficacy.

A coordinated, multi-agency and multi-disciplinary approach

5.2 The National Security Statement of December 2008 emphasised the importance of a clearly defined role for the Commonwealth in combating serious and organised crime and of the importance of enhancing coordination amongst Commonwealth agencies.¹

5.3 The ACC's report on Organised Crime in Australia 2011 also emphasised that: Understanding the changing criminal environment is crucial to shaping not only an effective response by Australian law enforcement, but also a collaborative response by agencies outside the law enforcement umbrella which are responsible for regulation and monitoring of key sectors.²

5.4 In 2009, Attorney-General, the Hon. Robert McClelland MP stated that the Commonwealth Organised Crime Strategic Framework (OCSF) established a 'comprehensive and coordinated response to target the most significant threats from organised crime in order to reduce its impact on the community'.³ Amongst the mechanisms highlighted to enhance multi-agency approaches included task forces and the development of a Criminal Intelligence Fusion Capability to provide for the 'co-location of agency staff and systems'. The Attorney-General noted that:

This would ensure greater efficiency and productivity across agencies, as it would pool analytical skills and provide shared access to multiple Commonwealth data and intelligence holdings.⁴

5.5 The government's approach to corruption prevention is that no single body should be responsible as the distribution of responsibility creates a strong system of checks and balances otherwise referred to as the Commonwealth integrity system. It

1 The Hon. Kevin Rudd MP, Prime Minister, *House of Representatives Hansard*, 4 December 2008, p. 12553, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2008-12-04/0045/hansard_frag.pdf;fileType=application%2Fpdf (accessed 16 May 2012).

2 Australian Crime Commission, *Organised Crime in Australia 2011*, p. 95, <http://www.crimecommission.gov.au/sites/default/files/files/OCA/2011/oca2011.pdf> (accessed 16 May 2012).

3 The Hon. Robert McClelland MP, Attorney-General, *Commonwealth Organised Crime Strategic Framework: Overview*, 2009, Foreword, p. 5, <http://www.ag.gov.au/Documents/Organised%20Crime%20Strategic%20Framework%20Overview.PDF> (accessed 16 May 2012).

4 Australian Government, *Commonwealth Organised Crime Strategic Framework: Overview*, 2009, p. 11.

recognises that a strong constitutional foundation (separation of powers and rule of law) is enhanced by a range of bodies and government initiatives that promote accountability and transparency.⁵ All Commonwealth agencies are responsible to maintain guidelines for preventing and reporting corruption while all companies must also maintain guidelines for preventing and reporting crimes or risk facing liability for corrupt acts by employees.⁶ This national integrity system approach responds to calls for a broad, holistic multilayered method to tackle corruption, misconduct and maladministration in government and reflects international trends.⁷

5.6 The need for a coordinated approach to corruption at the international and national level is highlighted in international instruments and reflected in domestic measures. Recognising that corruption is a transnational phenomenon, the UNCAC describes international cooperation as essential and notes that a multidisciplinary approach is required to prevent and combat corruption effectively.⁸ The need for cooperation between national authorities is enshrined in article 38 of the convention. Similarly, the OCSF recognises that organised crime entities:

...neither respect borders (state or national) or demarcations of responsibility (between governments or agencies). Organised criminals in fact often target the gaps created by borders or demarcations as they can present opportunities for higher profit and lower risk. Respecting the fact that each government needs to be able to align its resources to deal with its jurisdictional priorities in the most effective manner possible, there remains an underlying need for all jurisdictions to work collaboratively and cohesively to address the most serious threats from organised crime.⁹

5.7 The need for cooperation between national authorities and the private sector and particularly financial institutions is recognised under Article 39 of the UNCAC and in the Commonwealth Government's approach to corruption as outlined in the Commonwealth's Approach to Anti-Corruption discussion paper, which addresses corruption in both the private and public sectors.¹⁰

5 Australian Government, Australian Government Response to Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, Final Report—Inquiry into the Operation of the *Law Enforcement Integrity Commissioner Act 2006*, February 2012, p. 7.

6 Australian Government, *UNCAC Self-Assessment Report, Chapter 3 and Chapter 4*, Australia, p. 5, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/Selfassessmentreport.pdf> (accessed 23 April 2013).

7 Scott Prasser, 'Australian integrity agencies in critical perspective', *Policy Studies*, Vol. 33, No. 1, January 2012, p. 21 received as Additional Information, Article 1, 26 July 2012.

8 United Nations Convention against Corruption, Preamble.

9 Australian Government, *Commonwealth Organised Crime Strategic Framework: Overview*, 2009, p. 6.

10 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 27, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/NationalAntiCorruptionPlan.aspx> (accessed 22 April 2013).

5.8 Australia's multi-agency approach encompasses standards and oversight, detection and investigation, prosecution, and international cooperation. The agencies responsible for each of these aspects of the framework are listed in the diagram below.

Figure 1: Australia's Multi-Agency Approach

Standards and oversight	Detection and investigation	Prosecution
Attorney-General's Department	Australian Federal Police	Office of the Commonwealth Director of Public Prosecutions
Australian Public Service Commission	Australian Commission for Law Enforcement Integrity	International cooperation
Auditor-General	Australian Crime Commission	
Australian Electoral Commission	Inspector-General of Intelligence and Security	International Crime Cooperation Central Authority
Office of the Australian Information Commissioner	Office of the Commonwealth Ombudsman	Attorney-General's Department Portfolio Agencies
Department of Finance and Deregulation	Australian Transaction and Reports Analysis Centre	AusAID
Parliamentary Standards		

Source: Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 12.

5.9 There are a number of legislative and other measures including criminal offences, ethical standards and codes of behaviour for public officials, and oversight mechanisms which contribute to a national integrity framework.

Legislative regime

5.10 In Australia's self-assessment report on implementing Chapter 3 (Criminalisation and Law Enforcement) and Chapter 4 (International Cooperation) of the UNCAC, the Australian Government refers to 25 separate pieces of Commonwealth legislation which contribute to fulfilling Australia's obligations under the convention to establish criminal offences.¹¹ This legislative framework includes:

- the *Criminal Code Act 1995* which criminalises the laundering of proceeds of crime, domestic and foreign bribery, embezzlement, trading in influence, abuse of public office and other fraudulent conduct, and money laundering and provides for extensions of criminal responsibility;

11 Australian Government, *UNCAC Self-Assessment Report, Chapter 3 and Chapter 4*, Australia, p. 3, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/Selfassessmentreport.pdf> (accessed 23 April 2013).

- the *Proceeds of Crime Act 2002* which establishes a regime to trace, restrain and confiscate assets which are wholly or partly derived from crime or have been used in the commission of a crime;
- the *Crimes Act 1914* which criminalises the obstruction of justice;
- the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* which establishes a regulatory regime to manage the risk of businesses being used to launder money or finance terrorism. (AUSTRAC supervises compliance with this Act); and
- the *Corporations Act 2001* which contains offences for breach of duties by directors of companies.

5.11 Corruption-related offences are also contained in the *Financial Management and Accountability Act 1997* as well as the *Commonwealth Authorities and Companies Act 1997* and Part V of the *Australian Federal Police Act 1979* which establishes a standards framework for the AFP.¹²

Standards and oversight

5.12 The activities of APS agencies and employees are governed by standards of conduct, as well as processes for identifying behaviour considered inconsistent with those standards. These elements of the integrity framework include:

- the APS Values and APS Code of Conduct contained in the *Public Service Act 1999* which requires APS employees to behave honestly and with integrity and agency heads to establish procedures, having due regard to procedural fairness, for determining if an employee has breached the APS Code of Conduct.¹³
- the Commonwealth Fraud Control Guidelines 2011 established under the *Financial Management and Accountability Act 1997* (FMA Act) and regulations for all agencies subject to the FMA Act. The guidelines require FMA Act agencies to refer all allegations of serious or complex fraud involving Commonwealth interests to the AFP.¹⁴
- the Commonwealth Procurement Rules and Commonwealth Procurement Guidelines for FMA Act agencies which establish principles under which

12 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, pp 16–17.

13 Australian Public Service Commission, *State of the Service 2011–12*, p. 50.

14 CAC Act agencies are not subject to the Fraud Control Guidelines 2011 unless the Finance Minister has made a General Policy Order in accordance with section 48A of the Act specifying mandatory requirements for that body under the guidelines. CAC Act agencies not subject to the guidelines should 'consider applying the Guidelines as a matter of policy'. Australian Government, *Commonwealth Fraud Control Guidelines 2011*, p.1, <http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Documents/CommonwealthFraudControlGuidelinesMarch2011.pdf> (accessed 17 May 2013).

procurement is to be considered that promote the efficient, effective and ethical use of Commonwealth resources.¹⁵

- the Commonwealth Grant Guidelines which establish the grant policy and reporting framework for all FMA Act agencies.¹⁶
- Individual agency codes of conduct such as the EFIC Code of Conduct Policy and DFAT Code of Conduct for Overseas Service which serves as a statement of the department's commitment to maintaining the highest ethical standards of behaviour.¹⁷

Attorney-General's Department

5.13 AGD is responsible for domestic criminal laws concerned with combating corruption including foreign bribery, organised crime, money laundering and proceeds of crime provisions. The AGD leads Australia's engagement on the UN, OECD, APEC, Financial Action Task Force and G20 anti-corruption related initiatives.¹⁸

Australian Public Service Commission

5.14 An ethical framework requires standards of conduct as well as processes for identifying behaviour that is inconsistent with those standards. Under the *Public Service Act 1999*, agency heads are required to establish procedures for determining if an employee has breached the APS Code of Conduct. The APSC is conferred statutory responsibilities to evaluate the extent to which agencies incorporate and uphold the APS Values and the adequacy of systems and procedures within agencies to ensure compliance with the APS Code of Conduct. The Public Service Commissioner issues directions in relation to each of the APS Values to ensure that they are complied with. Amongst the values, the APS must have the 'highest ethical standards and be openly accountable for its actions'.¹⁹ To encourage compliance, the APSC provides advice on

15 Department of Finance and Deregulation, *Commonwealth Procurement Rules*, 1 July 2012, http://www.finance.gov.au/procurement/docs/cpr_commonwealth_procurement_rules_july_2012.pdf (accessed 23 April 2013).

16 Department of Finance and Deregulation, *Commonwealth Grant Guidelines*, July 2009, <http://www.finance.gov.au/publications/fmg-series/23-commonwealth-grant-guidelines.html> (accessed 23 April 2013).

17 The code addresses particular conduct issues that arise overseas additional or different from those covered in existing legislation and guidelines covering APS conduct in Australia. Department of Foreign Affairs and Trade, *DFAT Code of Conduct for Overseas Service*, http://www.dfat.gov.au/dept/code_of_conduct200598.html (accessed 8 May 2013).

18 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 12.

19 Australia Public Service Commission, 'Accountability', <http://www.apsc.gov.au/publications-and-media/current-publications/foundations-of-governance/chapter-3-accountability> (accessed 26 April 2013).

the application and interpretation of the APS Values and Code of Conduct as well as misconduct and whistleblowing provisions of the *Public Service Act 1999*.²⁰

5.15 There are three sections of the APS Code of Conduct immediately relevant to the context of international operations:

- An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- An APS employee must not make improper use of: (a) inside information or (b) the employee's duties, status, power and authority; in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.²¹

5.16 The APSC advice in relation to working overseas covers matters such as respect for the law of other countries, cultural sensitivity, accepting gifts, use of diplomatic and consular status, personal behaviour, and behaviour of household members.²² To support adherence to the APS Code of Conduct, the APSC provides guidance information to agencies on developing appropriate policies on other matters relevant to international operations including receiving benefits, hospitality, entertainment and sponsored travel.²³

5.17 APS agencies include AGD, DAFF, and DFAT. Statutory agencies which employ staff under the *Public Service Act 1999* include ACLEI, ACC, and Customs.²⁴ Members of agencies and bodies that fall outside of the ambit of the *Australian Public Service Act 1999* (APS Act) and are therefore not subject to the APS Code of Conduct include AFP members and employees of statutory authorities and corporations.

Australian Federal Police

5.18 Under the Commonwealth Fraud Control Guidelines 2011, a matter of sufficient seriousness to warrant referral to the AFP includes the existence of 'bribery, corruption or attempted bribery, or corruption of a Commonwealth employee or

20 Australian Public Service Commission, Role and responsibilities, <http://www.apsc.gov.au/about-the-apsc/the-commission> (accessed 23 April 2013).

21 APSC, Section 4.16 Working overseas, <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/working-overseas> (accessed 26 April 2013).

22 APSC, Section 4.16 Working overseas, <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/working-overseas> (accessed 26 April 2013).

23 APSC, Section 4.12 Gifts and benefits, <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/gifts-and-benefits> (accessed 26 April 2013).

24 Australian Public Service Commission, 'Australian Public Service agencies', updated 17 April 2013, <http://www.apsc.gov.au/publications-and-media/current-publications/australian-public-service-agencies> (accessed 26 April 2013).

contractor to an agency'.²⁵ When a referral is made to the AFP, it can investigate, reject the referral or undertake a joint investigation with the involved entity.²⁶

5.19 In relation to the conduct of its own personnel, the *Australian Federal Police Act 1979* (AFP Act) and the *Australian Federal Police Categories of Conduct Determination 2006* establish the disciplinary regime relevant to AFP employees. The AFP Act provides a framework of four categories of misconduct by AFP employees.

Detecting and investigating corruption-related offences

5.20 Responsibility for oversight and investigation of corruption-related offences is divided at the Commonwealth level between various agencies including the AFP, ACLEI, the Commonwealth Ombudsman, the APSC and ASIC.

Australian Federal Police

5.21 The AFP investigates serious and complex crimes against Commonwealth laws, its revenue, expenditure and property. Commonwealth agencies must refer allegations of corruption to the AFP for investigation in relation to the following offences:

- unauthorised disclosure of information (section 70 of the Crimes Act)
- bribery, including bribery of a foreign public official (sections 141.1 and 70.2 of the Criminal Code Act);
- perjury (section 268.102 of the Criminal Code Act);
- unauthorised access, or modification, to restricted data (section 478.1 of the Criminal Code Act); and
- abuse of public office (section 142.2 of the Criminal Code Act).²⁷

Australian Commission for Law Enforcement Integrity

5.22 ACLEI serves as a central component of the national integrity framework. The Integrity Commissioner is responsible for preventing, detecting, investigating and reporting on corruption issues. ACLEI has provided an 'avenue of forensic investigation of fraudulent or otherwise corrupt conduct that was previously available only for matters referred for police investigation, and if warranted, criminal prosecution'.²⁸

5.23 ACLEI has oversight of the AFP, ACC, the former National Crime Authority and Customs. In July 2013, the expansion of ACLEI's jurisdiction to include

25 Commonwealth Fraud Control Guidelines 2011, p. 17.

26 Australian National Audit Office, *Fraud Control in Australian Government Entities—Better Practice Guide*, p. 63.

27 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 13.

28 Australian Public Service Commission, *State of the Service 2011–12*, p. 58, <https://resources.apsc.gov.au/2012/SOSr1112.pdf> (accessed 23 April 2013).

AUSTRAC, CrimTrac and the DAFF Biosecurity is expected to strengthen the current anti-corruption arrangements in relation to the law enforcement context.

Australian Crime Commission

5.24 The ACC is a statutory authority established to combat serious and organised crime. It conducts special operations and special investigations against the threat of serious and organised crime.

Commonwealth and Law Enforcement Ombudsman

5.25 The *Ombudsman Act 1976* confers on the Commonwealth Ombudsman (the Ombudsman) power to investigate the administrative actions of government departments and prescribed authorities in response to complaints, or on the Ombudsman's own motion. The special title of Law Enforcement Ombudsman conferred on the Commonwealth Ombudsman reflects the role of the Ombudsman to handle complaints about the AFP.

5.26 The Ombudsman reviews complaints received by the AFP which alleged serious misconduct and the AFP's handling of such complaints²⁹ As part of fulfilling this review function, the Commonwealth and Law Enforcement Ombudsman oversees the way that the AFP handles complaints about it and its members under Part V of the AFP Act.³⁰ Similarly, section 15HS of the Crimes Act requires the Ombudsman to inspect the controlled operations records of the AFP, ACC and ACLEI at least every twelve months to determine the extent of compliance with Part IAB of the Crimes Act.³¹

5.27 The Ombudsman has oversight of AFP, ACC and ACLEI in relation to access and interception of communications under the *Telecommunications (Interception and Access) Act 1979* including powers to enter premises occupied by agencies, obtain relevant material, inspect records and prepare reports in relation to the interception of, or access to, communications. The Ombudsman is also required to conduct inspections of the records of the ACC, AFP, ACLEI and state and territory police forces as well as other specified state and territory law enforcement agencies under

29 Commonwealth and Law Enforcement Ombudsman, Submission to the PJC on the Australian Commission for Law Enforcement Integrity, June 2009, http://www.ombudsman.gov.au/files/Inquiry_into_the_operation_of_the_Law_Enforcement_Integrity_Commissioner_Act_2006.pdf

30 Commonwealth and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979—1 July 2011 to 30 June 2012*, http://www.ombudsman.gov.au/files/activities_under_part_v_06.pdf (accessed 23 April 2013).

31 A controlled operation is a covert operation carried out by law enforcement agencies under the Act for the purposes of obtaining evidence that may lead to the prosecution of a person for a serious offence. Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations 2011–12*, September 2012, p.1, http://www.ombudsman.gov.au/files/controlled_ops_2011_12.pdf (accessed 23 April 2013).

section 55 of the *Surveillance Devices Act 2004* to determine the extent of their compliance with the Act.³²

Australian Securities and Investments Commission

5.28 As the corporate, markets and financial services regulator, ASIC has responsibility for regulation of Australian companies, financial markets, financial service organisations and professionals who deal in and provide advice on investments, superannuation, insurance, deposit taking and credit. ASIC has enforcement powers to investigate suspected breaches of the law and seek civil penalties from the courts.

Conduct in the private sector

5.29 Alongside ASIC, there are other agencies that investigate or provide intelligence about corruption in the private sector including AUSTRAC, the Australian Competition and Consumer Commission, APRA, and EFIC. The regulatory framework governing Australia's private sector is covered by legislation including the Corporations Act and the *Australian Securities and Investments Commission Act 2001*.³³

Prosecuting Commonwealth offences

5.30 The Commonwealth Director of Public Prosecutions (CDPP) prosecutes offences under Commonwealth law in accordance with the Prosecution Policy of the Commonwealth and conducts related criminal assets recovery. The main offences prosecuted by the CDPP with relevance to corruption include drug importation, offences against corporate law, fraud on the Commonwealth (including tax fraud, Medicare fraud, and social security fraud), money laundering, people smuggling, people trafficking, terrorism and a range of regulatory offences.³⁴

5.31 In relation to Commonwealth offences committed overseas, the Criminal Code Act recognises a standard geographical jurisdiction as well as four categories of extended geographical jurisdiction for offences that reach outside Australia. Many offences relating to the proper administration of government have extended geographical jurisdiction including:

...property offences, fraudulent conduct, false or misleading statements, false or misleading information or documents, unwarranted demands of or made by a Commonwealth public official, forgery and related offences,

32 Under the *Surveillance Devices Act 2004*, a surveillance device means a data surveillance device, a listening device, an optical surveillance device or a tracking device. Commonwealth Ombudsman, Report to the Attorney-General on the results of inspections of records under s 55 of the *Surveillance Devices Act 2004*, September 2012, p.1, http://www.ombudsman.gov.au/files/surveillance_devices_2012.pdf (accessed 23 April 2013).

33 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 21.

34 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 13.

impersonation of Commonwealth public officials, and obstruction of Commonwealth public officials.³⁵

5.32 Bribery and related offences including bribery of a Commonwealth public official, corrupting benefits given to, or received by, a Commonwealth public official, and abuse of public office have an extended geographical jurisdiction to cover 'anyone for what they do anywhere in the world regardless of whether it is lawful elsewhere'.³⁶

35 Commonwealth Director of Public Prosecutions, *Submission 8*, p. 4.

36 Category D in relation to the extended geographical jurisdiction applies to these offences. Commonwealth Director of Public Prosecutions, *Submission 8*, p. 4.

CHAPTER 6

Measuring public sector corruption and integrity risks

6.1 This chapter considers the concept of 'corruption' and ways in which public sector corruption is measured. It also considers allegations of corruption across Commonwealth agencies.

Defining corruption

6.2 There are many different definitions and interpretations of the concept of 'corruption'. As corruption can take many forms, the UNCAC does not offer a universal definition. However, the national anti-corruption plan discussion paper states that it is most commonly recognised as the 'misuse of entrusted power for private gain'.¹ Public sector corruption specifically is defined by the Australian Institute of Criminology (AIC) as exploitation of public office for personal gain.²

6.3 For the purposes of the LEIC Act, subsections 6(1) to (3) state that a staff member of a law enforcement agency or a staff member of ACLEI engages in corrupt conduct if that individual engages in:

- conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
- conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
- conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.

6.4 Commander Chris McDevitt, Manager of Special References, AFP, highlighted the challenges emanating from a lack of a definition of 'corruption'. He observed that it is a difficult concept which 'means different things to different people' as corruption:

...can start off with processes and procedures being lax and builds itself all the way up to payments and deliberate activities to gain a benefit.³

1 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 7, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/TheCommonwealthsApproachtoAntiCorruption.pdf> (accessed 21 March 2013).

2 Peter Grabosky and Peter Larmour, *Public Sector Corruption and its Control*, Trends and issues in crime and criminal justice, No. 143, Australian Institute of Criminology, January 2000, <http://www.aic.gov.au/documents/5/4/2/%7B542945A1-12F3-4834-9072-FDAF963F6E84%7Dt143.pdf> (accessed 17 April 2013).

3 Commander Chris McDevitt, AFP, *Committee Hansard*, 8 August 2012, p. 26.

6.5 For Commonwealth agencies in determining whether the threshold to notify the AFP of serious corruption has been reached, Commander McDevitt noted that the 'self-integrity test or the newspaper test' would be applied. That is:

...what is the general community going to think if this allegation comes out in the paper? If it is the theft of a stapler or something along those lines or if it is millions of dollars, clearly there are different levels. Quite frankly, it depends on the discretion of the executive that is looking after the matter before it refers it over.⁴

6.6 In its 2011 report on the operation of the LEIC Act, the committee recommended the Integrity Commissioner, Commonwealth Ombudsman, Public Service Commissioner, Auditor-General and AGD 'develop a more detailed and comprehensive definition of corruption' for the purposes of the LEIC Act. The committee noted that the proposed definition should be circulated for public consultation including to the committee no later than November 2011.⁵ In its response to the recommendation, the government agreed in principle to such a review including public consultation on the matter noting that 'the definition has relevance beyond ACLEI'.⁶

6.7 The committee makes note of the fact that the National Anti-Corruption Plan discussion paper does not acknowledge the need for discussion on and clarity in relation to a definition of corruption. While corruption is recognised in broad terms, there is no discussion of the specific legal definitions that will underpin this broad concept. Furthermore, the discussion paper does not make mention of the committee's recommendation or the government's response to it and yet as TIA noted:

...the Anti-Corruption Plan is the logical vehicle through which to take stock of the adequacy or inadequacy of these fundamental definitions, as a necessary precursor to assessment of the adequacy of the administrative and enforcement mechanisms used to carry them out.⁷

6.8 The committee takes the view that the National Anti-Corruption Plan must provide a definition of corruption and guidance regarding the threshold for notification of serious matters to the AFP. That guidance could include case studies and guidance questions to assist agencies in forming a view on whether the threshold has been reached.

4 Commander Chris McDevitt, AFP, *Committee Hansard*, 8 August 2012, p. 26.

5 Parliamentary Joint Committee on ACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Final Report, July 2011, Recommendation 6, p. viii.

6 Australian Government Response to: Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity Final Report, February 2012, p. 5.

7 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 8.

Recommendation 1

6.9 The committee recommends that as a matter of priority, the Attorney-General's Department publish for public consideration, a detailed and comprehensive definition of corruption for the purposes of the *Law Enforcement Integrity Commissioner Act 2006*. The committee further recommends the inclusion of the definition in the National Anti-Corruption Plan together with guidance for Commonwealth agencies on the threshold for notification of serious matters to the Australian Federal Police.

Corruption in the Australian public sector

6.10 According to the ACC, there is no evidence of large-scale direct infiltration of public sector agencies by organised crime groups. Yet, it also acknowledged that corruption 'undoubtedly persists in law enforcement and public sector agencies, but not of the nature or extent to challenge existing institutions'. This may be explained in part by the fact that domestic organised crime groups have traditionally acted to corrupt selected public sector and law enforcement officers on an opportunistic rather than systematic basis.⁸

6.11 TIA asserted that international perceptions regarding Australian public and corporate life as relatively corruption-free were contradicted by corruption scandals which have occurred on an annual or more frequent basis which have affected all levels of government as well as Australian-controlled businesses. TIA cited a series of cases to support its argument including corruption cases within state law enforcement agencies as well as abuse of power and position in the federal immigration and taxation systems. TIA also pointed to the involvement of former and current Commonwealth-owned or controlled entities in alleged or proven international bribery, namely the AWB, Securrency and NPA which bring to light 'enduring questions regarding the failures of governance, oversight, regulation and risk management that have allowed such events to occur'.⁹

6.12 In 2012, the World Bank's Governance Matters ranking placed Australia in the 95th percentile for the government effectiveness indicator which measures perception of the quality of public service. In relation to the control of corruption indicator, which captures perceptions regarding the extent to which public power is exercised for private gain and the 'capture' of the state by elites and private interests, Australia ranked in the 96th percentile. In relation to both indicators, Australia performed better than the United Kingdom and the United States.¹⁰

6.13 One of the matters raised during the inquiry was the need for greater research and analysis in relation to corruption and integrity matters in Australia. TIA noted the

8 Australian Crime Commission, *Submission 6*, pp 1–2.

9 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 3.

10 Australian Public Service Commission, *State of the Service 2011–12*, p. 49, <https://resources.apsc.gov.au/2012/SOSr1112.pdf> (accessed 26 April 2013).

'absence of systematic research and intelligence' needed to understand the full extent of corruption in Australia.¹¹ This concern was also highlighted in submissions in relation to the proposed National Anti-Corruption Plan.¹² The committee notes that the discussion paper on the proposed National Anti-Corruption Plan does not advocate for research and analysis on corruption.

6.14 In terms of currently available research, there are two important studies conducted in Australia relating to corruption in Commonwealth agencies which provide an indication of the 'ethical health' of the APS in Australia and the strength of its individual agency and APS-wide integrity regimes. They include the AIC annual report on fraud and the APSC State of the Service.

Australian Institute of Criminology annual report

6.15 Under the Commonwealth Fraud Control Guidelines, the AIC is required to collect and report on fraud against the Commonwealth.¹³ All Commonwealth agencies are required to provide it with fraud control information for the preparation of an annual report for the Minister of Home Affairs. Using a definition of fraud contained in the guidelines as 'dishonestly obtaining a benefit by decision or other means' including amongst other things theft and bribery, the AIC's most recent *Fraud against the Commonwealth 2009–10 annual report to government* of March 2012 documented 705 942 incidents of internal and external fraud reported to the AIC by 61 agencies.¹⁴ The key findings of the report include:

- 702 941 reports of incidents of fraud alleged against persons external to agencies (external fraud) compared to 3001 reports of fraud against employees and contractors (internal fraud);¹⁵

11 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 4.

12 Ms Alex Taylor, Assistant Secretary, AGD, 'Anti-Corruption in Australia: Reducing the Risk. The National Anti-Corruption Plan', *Speech*, <http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/SpeechMsAlexTaylorAGDAssistantSecretary.pdf> (accessed 22 April 2013).

13 This responsibility was given to the AIC in 2006 as required by the Commonwealth Fraud Control Guidelines. The guidelines that 'all Commonwealth agencies are required to provide the AIC with fraud control information which is used in the preparation of an annual report for the Minister for Home Affairs'. See further AIC, *Fraud against the commonwealth monitoring program*, http://www.aic.gov.au/about_aic/research_programs/nmp/fraud_comm.html (accessed 17 May 2013).

14 Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, p. xi, <http://www.aic.gov.au/documents/B/5/1/%7bB514C8BC-4578-4D7F-A9C8-475FF1269004%7dMR18.pdf> (accessed 26 April 2013).

15 The AIC notes that some of these incidents of external fraud may have involved allegations of non-compliance with regulatory instruments rather than actual incidents of financial crime. Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, March 2012, p. 20.

- 42 per cent of agencies experienced fraud specific to loss which amounted to a total of \$497 573 820.¹⁶
- 47 agencies reported 3001 incidents of internal fraud of which incidents relating to 'financial benefits' affected 30 agencies;¹⁷
- of all external fraud types, fraud involving financial benefits affected the greatest number of agencies and specifically theft of telecommunications and computer equipment;¹⁸
- smaller agencies with 500 or fewer employees were less likely to report fraud incidents than those with more than 500 employees.¹⁹
- 5522 incidents of fraud (including 5428 incidents of external fraud and 94 incidents of internal fraud) were referred for police investigation or prosecution by the CDPP. Of these incidents,
 - 134 external and 34 internal incidents were referred to the AFP;
 - 101 external incidents and 25 internal incidents were referred to state and territory police; and
 - 5193 external and 35 internal incidents were sent to the CDPP.²⁰

6.16 Since the release of the 2009–10 AIC report, the Fraud Control Guidelines were modified. The FMA Regulations require FMA Act agencies to establish a policy framework for fraud control, adhere to the guidelines and provide the necessary data to the AIC for its fraud against the Commonwealth report. Under the 2011 Fraud Control Guidelines, bodies subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) are not subject to the guidelines unless the Finance Minister makes a General Policy Order in accordance with section 48A of that Act specifying mandatory requirements for such bodies under the guidelines. The guidelines further note that CAC Act bodies 'which are not subject to such a GPO should consider applying the Guidelines as a matter of policy'.²¹

6.17 The committee takes the view that all relevant CAC Act bodies as well as FMA Agencies should adhere to the guidelines and provide the necessary information to the AIC for consideration and analysis. As the 2010–11 AIC report is yet to be

16 Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, March 2012, p. xii.

17 Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, March 2012, p. xii.

18 Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, March 2012, p. xii.

19 Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, March 2012, p. xii.

20 Australian Institute of Criminology, *Fraud against the Commonwealth 2009–10 annual report to government*, AIC Monitoring Report 18, March 2012, p. xii.

21 Australian Government, *Commonwealth Fraud Control Guidelines*, 2011, p. 1.

released, it is not clear what CAC Act bodies have applied the guidelines and provided important information regarding corruption and integrity matters to the AIC. Establishing an understanding of the full extent of fraud against the Commonwealth across both FMA Act agencies and CAC Act bodies will be extremely difficult without such information. Furthermore, noting that the scope for misconduct and vulnerability is considerably reduced when agencies operate in accordance with the same standards and obligations, adherence to the guidelines by CAC Act bodies could strengthen national integrity arrangements.²²

Australian Public Service Commission State of the Service

6.18 The APSC State of the Service report provides an evaluation of the extent to which APS agencies have adhered to the APS Values and the adequacy of their systems and procedures to ensure compliance with the Code of Conduct.²³

6.19 Evidence suggests that the level of corruption pertaining to Australian public officials is low. The APSC State of the Service Report revealed that the level of misconduct in the Australian Public Service in 2011–12 and 2010–11 remained low with less than four in every 1000 employees found to have breached the APS Code of Conduct.²⁴

6.20 A single investigation may involve one or more breaches of the Code of Conduct. For example, where an APS employee inappropriately accesses confidential client information that might be investigated as a potential breach of several elements of the code including obligations to:

- act with honesty and integrity;
- comply with lawful and reasonable directions;
- use Commonwealth resources in a proper manner; and
- behave in a way that upholds the APS Values.²⁵

6.21 The APSC noted the following in relation to the rate of misconduct:

For several years, the State of the Service Report has noted that levels of misconduct in the APS are relatively low and that, of the small level of misconduct, the incidence of corrupt or criminal activity is reflected in only a handful of cases each year. The data across years overwhelmingly shows

22 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 2.

23 APSC, *Annual Report 2010–11*, Role and responsibilities, p. 10, <https://resources.apsc.gov.au/2011/AR1011.pdf> (accessed 14 May 2013).

24 Australian Public Service Commissioner, *State of the Service Report 2011–12*, Australian Public Service Commission, p. 50, <https://resources.apsc.gov.au/2012/SOSr1112.pdf> (accessed 17 May 2013); Australian Public Service Commissioner, *State of the Service Report 2010–11*, Australian Public Service Commission, p. 50, http://www.apsc.gov.au/_data/assets/pdf_file/0010/3340/chapt3.pdf (accessed 24 May 2012).

25 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August 2013).

that misconduct in the APS is dominated by individual acts of poor judgement rather than systemic issues.²⁶

6.22 The APSC informed the committee that at 30 June 2011, there were 166 495 employees of the APS of which 796 employees were investigated for suspected breaches of the APS Code of Conduct. Of these, 576 employees (or 72 per cent) were found to have breached the code.²⁷

6.23 In 2011–12, investigations were finalised in relation to 793 employees with breaches of the code found in relation to 481 employees amounting to 61 per cent of all finalised investigations.²⁸ The most common type of behaviour for which a breach of the Code of Conduct was found concerned misuse of internet/email. The survey found that there had been a notable drop in cases of fraud other than theft.²⁹

6.24 The most common type of misconduct in relation to finalised investigations during the review period was that of inappropriate behaviour of employees during working hours. This category includes unprofessional, offensive or disrespectful behaviour and comments to other employees, clients or stakeholders for which 171 employees were investigated of whom 73 were found to have breached the Code.³⁰

6.25 Of all the breaches:

- 25 per cent were identified through agency compliance and monitoring systems;
- 37 per cent were identified through investigations undertaken as a result of the identification by supervisors or managers; and
- 16 per cent by way of identification by colleagues.³¹

6.26 In terms of the identification of trends in relation to misconduct, the APSC noted that while the number of investigations conducted in 2010–11 declined compared to the previous year, the number of cases in which it was determined that a breach of the Code of Conduct had occurred remained steady (590 in 2009–10 compared to 576 in 2010–11). The APSC suggested that the outcome may indicate that agencies have become better at identifying, before any formal investigation, which matters are likely to result in a determination and which matters are better dealt with through other means, for example, by counselling or performance management.³²

26 Australian Public Service Commissioner, *State of the Service Report 2010–11*, Australian Public Service Commission, p. 67.

27 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August 2012).

28 Australian Public Service Commission, *State of the Service 2011–12*, p. 50.

29 Australian Public Service Commission, *State of the Service 2011–12*, pp 52–53.

30 Australian Public Service Commission, *State of the Service 2011–12*, p. 53.

31 Australian Public Service Commission, *State of the Service 2011–12*, p. 50.

32 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 3 September 2012).

Finally, the APSC held that its State of the Service Report had not revealed any trends in APS employee behaviour that suggested systemic issues around corruption. Further, the evidence to date is that 'most misconduct is the result of individuals exercising poor judgement'.³³

Reporting practices

6.27 The Public Service Commissioner noted the variation between agencies in the number of investigations conducted which may reflect different practices and emphasis. It was observed that in some cases and particularly in relation to less serious matters, some agencies may prefer to use other means including training, counselling or performance management.³⁴

6.28 The ATO has had notably high rate of investigations resulting in findings of breaches of the APS Code of Conduct among its staff. The APSC noted in its State of the Service report that the ATO was one of four large agencies which accounted for 76 per cent of employees subject to finalised investigations in 2010–11, and that the ATO found breaches in 97 per cent of cases. This contrasts with DIAC which found breaches in 32 per cent of cases. The Public Service Commissioner noted that a 10 per cent increase in the number of investigated breaches being substantiated in 2010-11 is a result, at least in part, of the ATO's having more sophisticated detection systems and a project targeting unauthorised access to personal information.³⁵

6.29 Mr Howard Whitton questioned the extent of corruption with the APS and the accuracy of reported figures. He raised concerns that misconduct does not occur in an even distribution across the entire APS but that it is managers rather than the low-level employees who abuse their power. He further argued that the actual incidence of misconduct could be higher as the willingness and ability of APS managers to initiate disciplinary action is a key factor and relates to the quality and effectiveness of an agency's Code of Conduct as an enforceable standard for disciplinary purposes.³⁶

6.30 The AFP Assistant Commissioner Kevin Zuccato, held the view that there was underreporting in relation to a wide variety of criminal offences across the board.³⁷ He further noted that analysis of serious misconduct occurring off-shore had not yielded significant evidence of corruption risk trends but has 'enabled improved shaping of prevention and detection responses'.³⁸ Professor Brown argued that agencies which put serious effort into upholding a reporting and integrity culture were more likely to get results. He maintained that the real issue in relation to building a

33 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 3 September 2012).

34 Australian Public Service Commission, *State of the Service 2011–12*, p. 50.

35 Australian Public Service Commission, *State of the Service 2010–11*, p. 68.

36 Mr Howard Whitton, *Submission 9*, p. 5.

37 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 8 August 2012, pp 25–26.

38 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 8 August 2012, p. 1.

strong integrity culture was that of the systems in place for agencies which surround the core law enforcement agencies.³⁹

Allegations of corruption involving Australian agencies overseas

6.31 Over the last three financial years, there were four complaints regarding allegations of corruption in relation to AFP appointees in overseas operations. Three of the complaints were investigated and found not to be established and the fourth is subject to ongoing investigation by ACLEI.⁴⁰ According to the AFP, these corruption incidents have not signified any corruption trends or broader corruption risks. In relation to misconduct, fraternisation features significantly whilst there have been a higher number of misconduct complaints in relation to the AFP's presence in the Solomon Islands which the AFP argues is 'reflective of the large AFP deployment' there in recent years.⁴¹ Given these circumstances, the AFP has one Professional Standards (PRS) investigator deployed in the Solomon Islands. In relation to overseas complaints more broadly, the Assistant Commissioner emphasised that the vast majority of such complaints were internally created and therefore representative of a strong self-reporting culture within the AFP.⁴²

6.32 Under section 19 of the LEIC Act, agencies under ACLEI's purview including the AFP are required to notify the Integrity Commissioner of any allegation that raises a corruption issue 'irrespective of the source of that information'. In terms of dealing with a potential corruption matter overseas, the AFP and ACLEI may meet with the local jurisdiction in order to come to a decision about how best to manage it.⁴³

6.33 Other agencies which provided evidence to the committee concerning internally-generated allegations included DFAT. Thirty-four investigations were conducted overseas in relation to the conduct of DFAT staff of which four involved Australian-based (or A-based) officials, 19 involved local DFAT staff and 11 involved local staff working for other Commonwealth agencies but employed by DFAT. Of the thirty-four investigations, some resulted in local staff being dismissed, however, no A-based staff member was dismissed.⁴⁴

6.34 As of March 2012, AusAID had before it, 174 active cases of fraud and 37 cases involving physical theft. Of the 174 cases, 143 had been reported since 1 July 2009 and all 174 cases were either still under investigation, awaiting referral to the police or police action leading to prosecution or recovery efforts were underway. While less than 2.3 per cent of these cases directly involved AusAID employees, Mr Laurie Dunn, First Assistant Director-General, Program Effectiveness and Performance Division, informed the committee that since 2005, there had been

39 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 8.

40 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 1.

41 Australian Federal Police, *Submission 5*, p. 10.

42 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 5.

43 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 6.

44 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 3.

thirteen allegations reported against AusAID staff of which two were against A-based staff and eleven against local staff. Of the thirteen, six resulted in dismissal, one in prosecution and one officer resigned while two investigations were ongoing and in three cases the allegations could not be substantiated.⁴⁵ Most of the allegations of fraud related to theft of equipment and assets such as laptops while a few of them related to 'either collusion or inappropriate decision-making around programs'.⁴⁶

6.35 Mr Dunn further noted that while there had been an increase in the number of cases of fraud reported:

...a recent independent review of aid effectiveness acknowledged that the increased number of cases probably reflected the growth of the aid program itself and the increased resources we were putting into fraud mitigation and management.⁴⁷

6.36 While the number of fraud cases may result from a greater focus on fraud mitigation, the committee notes the OECD's recommendation that AusAID 'expressly require' that all foreign bribery allegations involving Australian nationals, residents and companies are always reported to the AFP.⁴⁸

6.37 While AusAID held that its focus on fraud mitigation had partly contributed to a higher number of cases, Customs took a contrary view. In March 2012, Customs noted that the fact that it has received only one allegation relating to the attempted bribery of a Customs officer over the previous two financial years 'would indicate that the occurrence of corruption incidents in our overseas operations is rare'.⁴⁹

6.38 While the committee was informed that there had been no incidents involving allegations of misconduct including bribery by EFIC staff, it was informed that EFIC has cooperated with AFP investigations on two separate occasions. Mr John Hopkins, General Counsel of EFIC explained:

One involves the Leighton Group and another involves Tenix Defence. Those relationships with the Australian Federal Police involved the Australian Federal Police contacting us regarding those investigations and issuing warrants to us for particular information about the transactions which those two parties were involved in with EFIC.⁵⁰

6.39 One of the key issues that arose in evidence regarding allegations of corruption and misconduct involving Australian agencies operating overseas was that

45 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, pp 11–12.

46 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 12.

47 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 11.

48 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 52.

49 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012).

50 Mr John Hopkins, EFIC, *Committee Hansard*, 11 May 2012, p. 15.

of analysis and assessment conducted by Commonwealth agencies in relation to corruption risk and exposure. The return of Australian staff from overseas operations provides an important opportunity for agencies to analyse and review their integrity standards and make any necessary changes. Furthermore, as there are specific vulnerabilities associated with officers on their return from an overseas operation, the committee sought to understand what measures agencies have in place in relation to staff when they return home.

Risk analysis and research

6.40 In its submission in relation to the proposed National Anti-Corruption Plan, TIA noted a lack of systematic research and intelligence required to understand the full extent of corruption in Australia which reinforces a reactive rather than proactive approach to corruption. TIA also highlighted the extent of the 'information vacuum in which the Commonwealth's risk analysis must necessarily occur'.⁵¹ TIA continued:

This in turn increases the likelihood of continuing gaps in the response, if 'objective' risk analysis alone is used to determine the response—as opposed to other more overarching and subjective criteria, such as requirements of public confidence.⁵²

6.41 According to TIA, this problem is well recognised internationally, through decisions of governments to frame assessments of anti-corruption strategies around their apparent effectiveness in bolstering integrity in institutions and governance, rather than simply trying to respond to evidence of current or likely corruption.

6.42 In its 2005 publication, *Public Sector Integrity: A Framework for Assessment*, the OECD underscored the importance of measures promoting integrity and countering corruption as a component of good governance.⁵³ Central to assessment, is the ability to analyse risks and review vulnerable areas susceptible to corruption. The OECD highlighted approaches which assess integrity rather than corruption given the complexities in measuring corruption and the effectiveness of anti-corruption interventions given that corruption by its nature is a hidden phenomenon.⁵⁴

6.43 During the inquiry, evidence to the committee brought to light the ad hoc or reactive approach to corruption risks taken by some agencies.⁵⁵ In addition, evidence suggested that few agencies conduct any specific analysis and integrity risk assessment in relation to the corruption risks surrounding Australian officials on their

51 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 4.

52 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 4.

53 OECD, *Public Sector Integrity: A Framework for Assessment*, 2005, p. 3.

54 OECD, *Public Sector Integrity: A Framework for Assessment*, 2005, p. 13.

55 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 6.

return to Australia from overseas which would allow agencies to conduct risk profiling.

6.44 While the AFP has a professional standards program which considers indicators from an integrity assurance viewpoint, it does not conduct analysis of returned staff and whether there are higher incidents of corruption-related complaints or allegations regarding its officers who return from overseas deployment.⁵⁶ The agency is not, therefore, in a position to establish whether there is a higher incidence of misconduct among those who have been deployed overseas upon their return.⁵⁷ Furthermore, whilst ACLEI itself is involved in AFP pre-deployment briefings and in-country inspections, it has not engaged in any post-deployment initiatives with the AFP or any other agency under its jurisdiction.⁵⁸

6.45 Customs noted that while it has a range of sessions which returning officers must undertake with various branches within the department, there is no 'formal face to face debriefing process for officers returning from overseas'.⁵⁹ Customs officers who return from overseas are required to complete a posting report, provide feedback to their relevant line areas on lessons learnt and liaise with the Integrity and Professional Standards Branch. According to Customs, matters pertaining to bribery and corruption would 'in the normal course of events, be addressed whilst the officer remains in country'.⁶⁰ While recognising that its officers may be exposed to a variety of risks whilst deployed overseas, without any specific analysis undertaken including during the period of immediate return to Australia, Customs does not have any information or intelligence to indicate that its returned officers present an increased risk to operations or are otherwise more susceptible to corruption.⁶¹ Similarly, while DIAC staff on return to Australia may go through a formal debriefing process and DIAC supervisors are required to provide an end of post report for individuals returning home, there is no procedure to consider corruption risks and vulnerabilities.⁶² Similarly, AUSTRAC staff must report back to the agency upon return from overseas. As part of AUSTRAC's process, there is scope for its officials to advise if they have been approached by officers of other countries or other individuals in a way that is 'uncomfortable'.⁶³

56 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 4.

57 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 4.

58 Commander Ray Johnson, AFP, *Committee Hansard*, 23 March 2012, pp 4–5.

59 Australian Customs and Border Protection Service, Answer to Question on Notice at a public hearing on 23 March 2012 (received 29 May 2012).

60 Australian Customs and Border Protection Service, Answer to Question on Notice at a public hearing on 23 March 2012 (received 29 May 2012).

61 Australian Customs and Border Protection Service, Answer to Question on Notice at a public hearing on 23 March 2012 (received 29 May 2012).

62 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 15.

63 Ms Jane Atkins, AUSTRAC, *Committee Hansard*, 23 March 2012, p. 10.

Committee view

6.46 Evidence to the committee demonstrates that the post-deployment briefings undertaken by a number of agencies are specific to the work undertaken by that officer and the projects they engaged in while overseas rather than integrity or corruption-risk matters. There is a lacuna in the post-deployment context which should be addressed by way of a post-deployment corruption-risk assessment focused on both the deployment context and critically, the period of the officer's return to Australia. The committee notes in this regard that the AFP recognised the validity of risk profiling in relation to returned staff.⁶⁴

6.47 The committee recognises the need for Commonwealth agencies to give greater attention to Australian officials returning from overseas. It appreciates, however, that a risk assessment approach is required to take into account the variations in Commonwealth deployments including the period, nature and location of overseas deployment. Risk assessments and analysis in relation to such officials are an important component of an effective integrity regime and serve a number of purposes of benefit to the involved agency and wider public sector including that of a preventive strategy against the importation of corruption (a risk detailed in Chapter 3 of this report).

6.48 The committee recognises that any analysis and assessment carried out in relation to Australian officials returning from overseas could contribute to a public sector-wide view of corruption risks, identification of high risk activities in terms of vulnerabilities to corruption, and patterns and trends in relation to misconduct which can lead to corruption. As the APSC does not collect information from agencies specifically on management of corruption risks, such information could inform integrity measures and standards.⁶⁵ Furthermore, it could inform the development of both agency-based and multi-agency strategies to prevent corruption while fulfilling an educational and awareness raising function. Finally, such information will fill a gap in terms of integrity measures in relation to the post-deployment context which should be specifically addressed and managed. Notwithstanding these points, the committee is mindful of the need to consider the variables associated with overseas deployments as well as the resource implications for agencies in establishing a post-deployment risk framework. For these reasons, any such framework should apply a risk assessment approach.

6.49 The committee recommends that the APSC in collaboration with other oversight bodies including the Office of the Commonwealth Ombudsman and ACLEI consider the feasibility of developing integrity-based risk assessment and monitoring tools focused on the post-deployment context for Commonwealth agencies. The risk assessment framework should identify the internal and external influences and vulnerabilities that can result in systemic or individual corruption and serious

64 Commander Ray Johnson, AFP, *Committee Hansard*, 23 March 2012, pp 4–5.

65 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August).

misconduct. Drawing on the work of the OECD and the UNODC as well as international best practices, these tools, including evaluations, assessments and analytical methods should provide both an agency-based as well as public sector-wide insight into corruption risks.

Recommendation 2

6.50 The committee recommends that the Australian Public Service Commission in collaboration with other Commonwealth oversight bodies including the Office of the Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity consider the feasibility of developing an integrity risk assessment framework focused on the post-deployment context for application across Commonwealth agencies.

Continuum theory and conceptualising integrity and corruption

6.51 The continuum theory of corruption recognises corruption at one end of a continuum of undesirable behaviours which may include maladministration and improper conduct; at the other end of the spectrum is the highest standard of ethical behaviour.⁶⁶

6.52 Maladministration and improper behaviour within an agency may indicate an increased risk of corruption and even the development of a corrupt culture. Evidence to the committee suggested that misconduct often leads to corruption and witnesses underscored the importance of dealing with misconduct and other forms of improper behaviour as a means of avoiding corruption.⁶⁷ The Integrity Commissioner noted that misconduct was a lead indicator of corruption as corrupt conduct is often preceded by misconduct.⁶⁸

6.53 Notwithstanding this point, the Public Service Commissioner, Mr Stephen Sedgwick cautioned that misconduct was not an inevitable precursor to corruption:

If you have got misconduct because someone's personal behaviour is intimidating and they learn to adjust their style—well, no. If you have got somebody who is moving down some slippery slope from petty corruption or larceny or something, then you might be in a different world.⁶⁹

6.54 TIA highlighted that the greatest corruption risk in Australia was that of complacency and the assumption that things do not appear to be as bad as elsewhere, that specific corruption risks are lower or effectively managed or simply that no

66 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2012, p. 7.

67 Dr Ken Norman, *Committee Hansard*, 8 August 2012, p. 42; Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 22.

68 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 3.

69 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 22.

significant corruption-related conduct is occurring.⁷⁰ Correspondingly, the Integrity Commission also noted that there was a tendency to underestimate the corruption risk and overestimate the mitigation.⁷¹

6.55 Other witnesses to the inquiry noted that there is a focus on corruption at the expense of integrity matters including misconduct in all its forms. TIA argued in favour of an integrity approach which encompassed misconduct rather than the current anti-corruption approach which is reliant on assumptions that corrupt conduct is criminal.⁷² TIA made the point that high risk misconduct may not amount to criminal conduct and that when it is, 'many matters are not likely to excite the investigative or prosecutorial priorities of the AFP or DPP' while even fewer matters are likely to meet the high evidentiary standards required for proof of criminal activity.⁷³ Furthermore, TIA held that the current system compromises transparency in the identification of 'real' levels of high risk misconduct which reduces the ability for corruption resistance building efforts to be targeted where they may be most needed.⁷⁴

Committee view

6.56 As there is an interrelationship and often overlap between misconduct and corruption as well as a tendency to underplay the former, the committee supports a focus on misconduct in the integrity regime of Commonwealth agencies and its management as a corruption-prevention measure. The committee recognises that a preventive, proactive approach to corruption requires recognition and steps to address misconduct in the emergent stages within a wider ethics framework and integrity regime. To this end, the committee supports the integrity focus of the proposed National Anti-Corruption Plan and emphasises the need for a holistic integrity based approach which seeks consistency across Commonwealth agencies in relation to integrity standards and measures as opposed to an agency-based anti-corruption approach.

70 Transparency International Australia, Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 3.

71 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 3.

72 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 13.

73 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

74 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 4.

CHAPTER 7

Components of an integrity regime

7.1 This chapter considers the key components of a robust integrity regime. It draws on international standards and protocols to consider best practice as well as the current integrity frameworks and standards within Commonwealth agencies.

7.2 The OECD defines public integrity as the 'application of generally accepted public values and norms in the daily practice of public sector organisations'.¹ An integrity framework is made up of institutions, practices, cultures and systems that collectively seek to affirm transparency, integrity and accountability in the public sector.² It is the totality of regulations, codes, policies, procedures, and bodies which foster an environment of transparency and integrity in the exercise of power, provide a framework of checks and balances, and facilitate the identification and addressing of inappropriate behaviour including corruption.³ A strong integrity regime is, therefore, only as strong as its component parts. As part of a strong integrity regime, effective anti-corruption initiatives address the various institutional contexts in which corruption occurs including at the interface between the public and private sectors.⁴ Customs, for example, recognised that the best safeguard against corruption risk is the management of an ethical and professional workplace and maintained that the four foundations of its integrity framework—preparedness, prevention, detection and resolution—contribute to an ethical and professional culture.⁵ An effective integrity system will ensure that 'power is exercised in a way that is true to the values, purposes and duties for which that power is entrusted to, or held by, institutions and individual office-holders—the reverse of corruption'.⁶

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- 1 OECD, *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, Global Forum on Public Governance, 23 April 2009, p. 9, [http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=GOV/P/GC/GF\(2009\)1](http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=GOV/P/GC/GF(2009)1) (accessed 20 May 2013).
 - 2 Public Sector Standards Commissioner, *Review of Victoria's integrity and anti-corruption system*, 2010, vii–viii, http://www.vic.ipaa.org.au/sb_cache/professionaldevelopment/id/193/f/PSSC_Integrity_Review.pdf (accessed 13 May 2013).
 - 3 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 6.
 - 4 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 5.
 - 5 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012).
 - 6 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 6.

Acceptance of risk

7.3 Integrity systems are built from an acceptance of ongoing risk and ongoing assessment and identification of areas of particular vulnerability. In the 2011–12 State of the Service, the APSC noted that:

...while reported incidence of breaches of the Code of Conduct in areas suggesting there may be risks of corrupt conduct—abuse of power or position, fraud, theft or bribery—remain low, the data only tells us about cases where suspected misconduct has been identified. There is no room for complacency and the APS needs to remain vigilant in managing its corruption risks.⁷

7.4 The Integrity Commissioner highlighted the importance of agencies accepting that there are risks of corruption and being prepared to familiarise themselves with the risk and mitigate it appropriately. He drew attention to the thorough treatment by DIAC of the corruption risks that arise when its officials are posted overseas or conduct official business overseas.⁸ DIAC emphasised that the code of conduct applies not only at all times but also in relation to both DIAC staff on overseas postings and DIAC staff travelling overseas on official business.⁹ It drew attention to subsection 13(12) of the APS Act which states that APS staff must 'while on duty overseas, at all times behave in a way which upholds the good reputation of Australia'.

7.5 The inquiry revealed variations in the extent to which agencies accept corruption risks and seek to prevent and mitigate them. The committee found that there was a correlation between recognition of corruption risks and the extent to which risk mitigation strategies are a feature of governance and organisational practices.¹⁰ At one end of the spectrum is a form of 'learned helplessness' in relation to corruption. In this regard, Dr Ken Norman noted that some agencies are not simply complacent but potentially ignorant of the corruption risks to their activities and staff.¹¹

7.6 More broadly, Mr Whitton asserted that Australia's approach to corruption is characterised by a 'disease model' whereby corruption is regarded as monolithic, akin to an infection for which a cure might be discovered. He held the view that this approach can 'seriously mislead thinking about policy responses to corruption'.¹² He argued that Australia's response over the past three decades to perceived corruption and misconduct in both the public and private sector has generally been to establish new independent watchdog regulation institutions. Furthermore, prosecution and conviction, if achieved, are generally 'too uncertain, delayed, uncoordinated, and

7 Australian Public Service Commission, *State of the Service 2011–12*, p. 59.

8 Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 3.

9 Department of Immigration and Citizenship, *Submission 4*, p. 8.

10 Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 March 2012, p.12; Attorney General's Department, *Committee Hansard*, 16 March 2012, p.7; Department of Foreign Affairs and Trade, *Committee Hansard*, 26 March 2012, p.16.

11 Dr Ken Norman, private individual, *Committee Hansard*, 8 August 2012, p. 41.

12 Mr Howard Whitton, *Submission 9*, p. 1.

unfocused to be effective in providing educative outcomes for prevention'.¹³ Mr Whitton cited the AWB matter in which there have been no prosecutions and the Securrency/NPA case where allegations have resulted in prosecutions five years after the events to support his argument. Mr Whitton further noted that:

On top of that, we have the further problem that there is a tradition in the Commonwealth Public Service of allowing privacy provisions to trump everything. So necessary or useful messages about disciplinary outcomes are not made available to the public service at large because of privacy considerations.¹⁴

7.7 The Public Service Commissioner, Mr Sedgwick emphasised the need for agencies to independently identify and manage the risks specific to their own activities. He noted that when agencies conduct their own risk assessment, they are best placed to manage that effort and relocate resources or management to areas where the risk is greatest. He explained that:

One of the reasons why we put those responsibilities so squarely on the heads of the agencies is that the nature of the risk is going to vary with the nature of the business. It is an absolutely fundamental part of managing corruption and a number of other risks within the Public Service.¹⁵

7.8 The ACC developed its own anti-corruption framework to address the risks specific to its work. During ACC operations, ACC staff deal directly with criminal elements. This activity alone presents its own risks. Dr David Lacey, Executive Director, Intervention and Prevention noted that the ACC's anti-corruption framework takes into account the specific environments in which its staff operates as well as having specific fraud control and other measures.¹⁶

7.9 Notwithstanding the need for agency-specific measures, the committee was also made aware of the importance of common integrity standards across the Commonwealth that would underpin agency-specific measures. Inter-agency initiatives throw into sharp relief the need for such standards given the risk of displacement from integrity systems (detailed in Chapter 3) which arises where agencies with strong integrity regimes work in partnership with agencies with weaker systems or integrity cultures.

Organisational leadership

7.10 Another key element in relation to a strong integrity system is that of organisational culture. Professor AJ Brown noted that the extent to which rules are implemented and regulations upheld is dependent on the management and operational culture within an agency. Furthermore, the extent to which a management culture

13 Mr Howard Whitton, *Submission 9*, p. 2.

14 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 34.

15 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 23.

16 Dr David Lacey, ACC, *Committee Hansard*, 8 August 2012, pp 30–31.

filters down to staff to become an organisation's culture will vary within an agency. Professor Brown explained that the influence of an organisational culture is particularly likely to vary in relation to small organisational units which are dispersed.¹⁷

7.11 Mr Whitton noted that, regardless of whether officials were operating on behalf of an agency overseas or in Australia, if a system to identify misconduct and manage corruption risks is not straightforward, it will not be used.¹⁸ Similarly, in an address to the GOPAC Conference, Dr John Nye of George Mason University observed that 'limiting corruption is easier if the rules are sensible and sensibly enforced'.¹⁹ The Public Service Commissioner also explained that the approach of the APSC is to provide the 110 APS agencies which operate across numerous contexts with principles and guidance while leaving it to 'common sense, honesty and integrity of agencies and their managers in particular circumstances to be able to correctly make those judgements'.²⁰

7.12 Mr Howard Whitton also emphasised the importance of an organisational culture:

Even where there is a system in place and mandatory zero tolerance is in place with it, unless the organisation supports it in a culture of support for zero tolerance to misconduct and corruption then it will not happen.²¹

7.13 The 'tone at the top' was highlighted as fundamental to a strong organisational culture in evidence. It is one of the six guiding principles identified under guidance developed in relation to UK bribery legislation.²² The importance of the tone set by an agency's leadership was also emphasised by Professor Passer who recognised leadership that 'sets an example in both personal behaviour and day to day running of

17 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 6.

18 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 35.

19 Dr John Nye, 'What about Trust?: Human Capital, Social Capital, and Institutions', Paper presented at GOPAC Conference, January 2013.

20 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 19.

21 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 35.

22 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 11. The other principles include overall program design; risk assessment; due diligence; communication including training; and monitoring and review. These six principles were recognised as broadly similar to best practices for anti-corruption compliance in the United States and elsewhere. UK Ministry of Justice, *The Bribery Act 2010—Guidance*, p. 20, <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf> (accessed 15 May 2013).

government' as an integrity pillar.²³ The ACC underscored the importance of the agency head setting the tone regarding an integrity culture and embedding a sense of responsibility in staff of the need to be 'corruption aware' and to report incidents or suspicions of corruption and misconduct.²⁴ Customs also highlighted the importance of setting an appropriate 'tone at the top'.²⁵ Similarly, Mr Brian Hood, a former Note Printing Australia senior executive who became a whistleblower explained that if the tone from the top was not right then 'not only can some people do the wrong thing but others can turn a blind eye and just allow it to happen and not really intervene'.²⁶

7.14 The heads of Commonwealth agencies have specific responsibilities in relation to reporting suspected criminal conduct such as fraud under the Commonwealth Fraud Control Guidelines 2011. Within the context of overseas operations, the head of mission plays a crucial role in regard to setting the tone on integrity matters and upholding Australia's reputation abroad as Mr Grigson, Deputy Secretary of DFAT explained:

The head of mission has...a particular responsibility for the reputation of Australia and post and it goes to the activity of Australian officers in all fields at all times.²⁷

7.15 Furthermore, heads of mission have 'particular responsibility for the performance and conduct of their locally employed staff'.²⁸ As DFAT recruits local staff on behalf of most other Australian agencies, recruiting over 1500 such staff in 2011, the responsibilities of the head of mission for staff alone is considerable.²⁹

7.16 The extent to which agency heads and managers more broadly fulfil their responsibilities in relation to corruption-related matters was raised in evidence. TIA noted that:

In APS agencies, the system relies too heavily on the interest of APS agency managers in determining appropriate responses to different forms of misconduct for themselves, with insufficient operational oversight or alternatives—especially, when, in relation to corruption related misconduct

23 Scott Prasser, 'Australian integrity agencies in critical perspective', *Policy Studies*, Vol. 33, No. 1, January 2012, p. 23 received as Additional Information, Article 1, 26 July 2012. The Australian Institute of Criminology noted that the example set by senior people is 'most important'. Peter Grabosky and Peter Lamour, 'Public Sector Corruption and its Control', Australian Institute of Criminology, Trends and Issues in crime and criminal justice, No. 143, January 2000, p. 6.

24 Dr David Lacey, ACC, *Committee Hansard*, 8 August 2012, p. 32.

25 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012).

26 Mr Brian Hood, *Committee Hansard*, 4 October 2012, p. 10.

27 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 5.

28 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 2.

29 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 1.

such as abuse of office and conflict of interest, how agencies perceive their institutional self-interest may become especially complex.³⁰

7.17 While the heads of agencies under ACLEI's jurisdiction are required to refer any corruption allegation to ACLEI, other Commonwealth agencies have reporting systems in place which they argue are robust and transparent. Such systems enable these agencies to internally investigate allegations and determine whether a matter is serious enough to refer to the AFP. Many Commonwealth agencies including DFAT and DIAC have their own investigations units based in Canberra.³¹ Where an allegation of corruption or misconduct is made in relation to DFAT in Australia or overseas, it is immediately referred to the agency's Conduct and Ethics Unit. The unit will make a determination as to whether to embark on a formal investigation in accordance with the Australian Government Investigation Standards or refer the matter to the AFP.³² In relation to allegations regarding A-based staff overseas, DFAT highlighted the importance of such matters being referred to its Canberra ethics unit while noting that the 'bar is pretty low, so if we have any doubts we refer them on'.³³ DFAT's Mr Grigson emphasised that while different agencies might have different processes in place which reflect the different operating environments in which they work and their approach in relation to them, 'the end point for each agency is that if there are concerns they are referred to the AFP'.³⁴

Whistleblowing systems and protections

7.18 A whistleblowing system and protections are also fundamental to a strong integrity culture. Professor AJ Brown described whistleblower protection as 'one of the ultimate tests of public confidence in government'.³⁵ Mr Whitton noted that:

If you do not have proper whistleblower protection and mandatory disclosure then you have an enormous black hole in the middle of your integrity system.³⁶

7.19 Professor Brown explained that the purpose of a whistleblowing regime is to make clear the existence of an ethic and ethos underpinned by a supportive management culture. Such a regime would provide alternatives in terms of who whistleblowers can speak to and that any communication is carried out on an

30 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

31 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, pp 2–3; Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 16.

32 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, pp 2–3.

33 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 26.

34 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 26.

35 AJ Brown, 'Whistleblower bill once-in-a-lifetime', *The Australian*, 2 November 2012, <http://www.theaustralian.com.au/business/legal-affairs/whistleblower-bill-once-in-a-lifetime/story-e6frg97x-1226508670645> (accessed 20 May 2013).

36 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 34.

anonymous and confidential basis wherever necessary so that any adverse risks to their careers are minimalised. Professor Brown further noted that:

Good regulation involves creating environments in which agencies or companies know that they can come back and seek advice and that if they fess up early that they have a problem they will end up doing better than if they do not. That is what mandatory reporting obligations under whistleblowing legislation or good anticorruption legislation achieves.³⁷

7.20 The OECD has recognised the importance of clear reporting procedures regarding allegations of wrongdoing as a fundamental component of any public sector ethics management regime. Principle 4 of the OECD *Principles for Managing Ethics in the Public Service* states in this regard that:

Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing.³⁸

7.21 A recent study co-authored by Professor Brown identified the following five components as fundamental to a robust whistleblowing program:

- organisational commitment to good management of whistleblowing;
- encouragement of reporting;
- assessment and investigation of reports;
- internal witness support and protection; and
- an integrated organisational approach.³⁹

7.22 Whistleblower protection in the Commonwealth public sector is provided by law under section 16 of the Public Service Act and section 16 of the *Parliamentary Service Act 1999*. These acts provide that a person must not victimise or discriminate against an APS or Parliamentary Service employee because that employee has reported breaches (or alleged breaches) of the APS Code of Conduct or the Parliamentary Service Code of Conduct to an authorised person. Under section 16 of the Public Service Act, the responsibilities of the Public Service Commissioner include inquiring into whistleblowing reports made by APS employees in certain circumstances and inquiring into alleged breaches of the Code of Conduct by agency heads. Regulation 2.4 of the Public Service Regulations requires agencies to develop procedures for dealing with whistleblowing reports. As previously noted, reports of suspected breaches of the Code of Conduct made by an APS employee are directed to an agency head or authorised person such as the investigative unit within an agency.

37 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 5.

38 OECD, *Principles for Managing Ethics in the Public Service*, Public Management Service, May 1998, p. 3, www.oecd.org/gov/ethics/1899138.pdf (accessed 1 May 2013).

39 Peter Roberts, A.J. Brown and Jane Olsen, *Whistling While They Work*. A good-practice guide for managing internal reporting of wrongdoing in public sector organisations, 2011, p. 10.

The APSC noted in its 2011–12 State of the Service report that all large and medium sized agencies as well as 96 per cent of small agencies reported that they have such procedures in place.⁴⁰

7.23 However, Professor Brown highlighted the 'incredible inconsistency and variability that currently exists between Commonwealth agencies, including law enforcement agencies' but also more broadly in relation to whistleblowing in the integrity process. He highlighted that these inconsistencies and variability are thrown into sharp relief in the context of overseas law enforcement operations.⁴¹

7.24 During the inquiry, the protection of whistleblowers was a key integrity theme that emerged in evidence. Witnesses before the committee supported strengthened whistleblower provisions for both the public and private sector. Mr Brian Hood, NPA Company Secretary from 2004–2008 exposed alleged corruption in NPA and Securrency. He informed NPA, Securrency and RBA officials of his concerns only to be allegedly told by one such official in 2008 that his job had become 'untenable'.⁴² He claimed that he was threatened and harassed after raising concerns about the NPA's payments to a foreign sales agent, told to stop investigating things and to keep quiet or risk losing his job.⁴³ The case not only brought to light concerns regarding private sector whistleblowers, but also raised long-held concerns regarding the adequacy of whistleblower protections in the Commonwealth public sector.⁴⁴ Professor Brown stated that the case highlighted 'massive holes' in the protection of whistleblowers noting that:

Every day, it becomes more obvious why effective federal whistleblowing rules are needed. In recent weeks, we've learned of how the former company secretary of Note Printing Australia, Brian Hood, was ignored and

40 APSC, *State of the Service 2011–12*, p. 54.

41 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 2.

42 Nick McKenzie, Richard Baker, Maris Beck, Outspoken RBA exec 'forced out', *The Age*, 14 September 2012, <http://www.theage.com.au/national/outspoken-rba-exec-forced-out-20120913-25v7u.html> (accessed 20 May 2013).

43 Nick McKenzie, Richard Baker, Maris Beck, 'Whistleblower told to shut up', *Sydney Morning Herald*, <http://www.smh.com.au/business/whistleblower-told-to-shut-up-20120913-25v8t.html> (accessed 20 May 2013); 'Note Printing Australia whistleblower Brian Hood threatened, magistrates court told', *Herald Sun*, 17 September 2012, <http://www.heraldsun.com.au/news/victoria/banknote-whistleblower-threatened-magistrates-court-told/story-e6frf7kx-1226476022069> (accessed 20 May 2013).

44 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 13. Other whistleblower cases before the courts included that of an ATO whistleblower who took action against the ATO in the Federal Magistrates Court under the *Fair Work Act 2009* alleging eight adverse actions as a result of lodging a whistleblower complaint made under the Public Service Act. Chris Seage, 'ATO whistleblower in court: 'they sabotaged my complaints'', *Crikey*, 20 September 2012. In another case, two of three CSIRO employees blew the whistle on alleged 'criminal or civil breaches of the law' by the organisation. All three were later made redundant. Linton Besser, 'Whistleblowers at CSIRO forced out and 'bullying rife'', *Sydney Morning Herald*, 18 September 2012, <http://www.smh.com.au/national/whistleblowers-at-csiro-forced-out-and-bullying-rife-20120917-262hk.html> (accessed 18 September 2012).

sidelined when he pointed out that the Commonwealth-owned business was engaging in illegal foreign bribery. Just as importantly, the key directors with responsibility for the company were senior public servants from the Reserve Bank of Australia—right at the heart of the nation's financial integrity.⁴⁵

7.25 The whistleblower concerns in relation to the NPA/Securrency matter go to the protections provided in the non-government sector regulated by the Commonwealth under Part 9.4AAA of the Corporations Act as discussed in Chapter 2.

7.26 The anti-corruption discussion paper affirmed the government's commitment to introduce a Public Interest Disclosure Bill to 'give effect to the government's response' to a 2009 House of Representatives Standing Committee on Legal and Constitutional Affairs report and to 'introduce the first stand-alone whistleblower protection scheme for the Commonwealth public sector'. The discussion paper further noted that the legislation will facilitate reporting and provide for investigation of alleged wrongdoing in the public sector.⁴⁶

7.27 On 21 March 2013, the government introduced the Public Interest Disclosure Bill 2013. The bill will:

...establish a legislative scheme to investigate allegations of wrongdoing in the Commonwealth public sector and provide robust protections for current or former public officials who make qualifying public interest disclosures under the scheme.⁴⁷

7.28 The same day, the bill was referred to the House of Representatives Standing Committee on Social Policy and Legal Affairs (Social Policy and Legal Affairs Committee) for inquiry. In a media alert, the Social Policy and Legal Affairs noted that the bill would implement many of the recommendations made by the House Legal and Constitutional Affairs Committee in its 2009 report.⁴⁸ The Public Interest Disclosure Bill 2013 was also referred on 21 March 2013 to the Senate Legal and

45 Clancy Yeates, 'Pressure grows to protect those who reveal misdeed', *The Age*, 15 September 2012, <http://www.theage.com.au/opinion/political-news/pressure-grows-to-protect-those-who-reveal-misdeed-20120914-25y3z.html> (accessed 28 September 2012); AJ Brown, 'Everyone backs whistleblowing laws. So why are we still waiting for them?', Opinion, *The Canberra Times*, 2 October 2012, <http://www.canberratimes.com.au/national/public-service/everyone-backs-whistleblowing-laws-so-why-are-we-still-waiting-for-them-20120929-26ryr.html> (accessed 2 October 2012).

46 Australian Government, *The Commonwealth's Approach to Anti-Corruption: Discussion Paper*, Attorney-General's Department, March 2013, p. 18.

47 Explanatory Memorandum, Public Interest Disclosure Bill 2013.

48 House of Representatives Standing Committee on Social Policy and Legal Affairs, Media Alert, 2 April 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill_2013_public_interest_disclosure/media.htm (accessed 24 May 2013).

Constitutional Affairs Legislation Committee which tabled its report on the bill on 13 June 2013.⁴⁹

7.29 In 29 October 2012, two other bills addressing whistleblower protections, the Public Interest Disclosure (Whistleblower Protection) Bill 2012 and the Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill 2012, had been introduced in the House of Representatives by Mr Andrew Wilkie MP and referred to the House of Representatives Social Policy and Legal Affairs Committee on 1 November 2012 for inquiry. The Public Interest Disclosure (Whistleblower Protection) Bill 2012 'aims to strengthen public integrity by encouraging and facilitating the disclosure of corruption, maladministration and other wrongdoing in the Commonwealth public sector'.⁵⁰ The Social Policy and Legal Affairs Committee consolidated evidence from that inquiry and the inquiry into the Public Interest Disclosure Bill 2013 into a single report for the House of Representatives which was tabled on 28 May 2013.⁵¹ The bill is under the consideration of the House of Representatives.

7.30 In February 2013, the Public Service Act was amended as part of the government's response to the report, *Ahead of the game: Blueprint for the reform of Australian government administration*.⁵² The amendment changed the processes associated with whistleblowers who report a breach of the APS Code of Conduct. Then Special Minister of State and Minister for the Public Service and Integrity, the Hon. Gary Gray MP stated the following in relation to whistleblower reports in his second reading speech when introducing the *Public Service Amendment Bill 2012* in March 2012:

The act currently provides protection for whistleblowers in the APS. The regulations provide the framework under which whistleblower reports are handled. The bill makes two small amendments to the scheme. It provides a specific regulation-making power and allows for matters to be excluded from inquiry, including those that relate to an employee's own employment.

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- 49 Senate Legal and Constitutional Affairs Legislation Committee, Public Interest Disclosure Bill 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/public_interest_disclosure/index.htm (accessed 24 May 2013).
- 50 Public Interest Disclosure (Whistleblower Protection) Bill 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbills%2Fr4913_first-reps%2F0000%22;rec=0 (accessed 20 May 2013).
- 51 House of Representatives Standing Committee on Social Policy and Legal Affairs, Advisory Report, Public Interest Disclosure (Whistleblower Protection) Bill 2012, Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill 2012, Public Interest Disclosure Bill 2013, May 2013, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill_2013_public_interest_disclosure/index.htm (accessed 3 June 2013).
- 52 Advisory Group on Reform of Australian Government Administration, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, March 2010, http://www.dpmc.gov.au/publications/aga_reform/aga_reform_blueprint/ (accessed 20 May 2013).

Such complaints are better directed to the existing review of action scheme.⁵³

Reporting culture

7.31 An agency's integrity regime and the APS integrity framework more broadly are reliant upon officials reporting suspected misconduct. A reporting culture underpinned by the understanding that staff can report without fear or penalty is a fundamental indicator of an agency's integrity as Professor Brown explained:

There is no more important strategic indicator that there are things wrong in an agency, and all the research suggests that there is no faster way to identify when there are integrity risks that are going unmanaged than staff speaking up within agencies themselves about those risks.⁵⁴

7.32 Professor Brown noted that available evidence based on research and experience is that in a substantial number of cases, the 'first people to assess that something is going wrong or that something is in breach of the law are insiders'.⁵⁵ According to evidence before the APSC, of all APS employees who believed that they had witnessed serious misconduct, 44 per cent had not reported it within their agency for reasons including a belief that no action would be taken (46 per cent), that it might adversely affect their career (33 per cent), because they didn't want to upset relationships in the workplace (30 per cent).⁵⁶

7.33 The Public Service Commissioner explained that as the strength of the Commonwealth's integrity system will depend on the strength of the internal integrity culture within each agency in the Australian public service, improvements in the Commonwealth's integrity regime will depend on improvements within the individual agencies. He further noted the importance of establishing an integrity culture whereby officials are willing to raise issues that might be at the 'margin'.⁵⁷ This observation is supported by the findings of the State of the Service report 2011–12 which established that conduct identified by work colleagues rated highly amongst the various means through which suspected breaches of the APS Code of Conduct were identified.⁵⁸

7.34 The ATO also highlighted the importance of internal reporting or referrals, the absence of which makes it difficult, if not impossible, to pursue alleged breaches. Mr

53 The Hon. Garry Gray MP, Special Minister of State and Minister for the Public Service and Integrity, Second Reading Speech, Public Service Amendment Bill 2012, 1 March 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fbda27a36-a8b5-4e6a-a64f-6084b2c53511%2F0016%22> (accessed 20 May 2013).

54 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 2.

55 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 4.

56 Employees were able to nominate more than one reason. APSC, *State of the Service 2011–12*, pp 55–56.

57 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 22.

58 Australian Public Service Commission, *State of the Service 2011–12*, p. 51.

Paul Malone, Assistant Commissioner, Fraud Prevention and Internal Investigation, ATO, explained that:

People must suspect something but then...if they do not come forward it is actually quite difficult to say, 'Well you knew about that,' unless you have got reason to actually believe that to be the case.⁵⁹

7.35 In light of the high number of internal referrals in the ATO, Mr Malone argued that the agency has a strong culture of 'people coming forward where they do suspect that there is something that is not quite right'.⁶⁰

Mandatory reporting

7.36 The committee received evidence which raised the matter of a mandatory rather than voluntary reporting regime.⁶¹ The committee considered whether reporting of certain misconduct offences should be made a legal requirement. The committee was particularly concerned about the treatment of cases of serious misconduct. While the Commonwealth Fraud Control Guidelines place particular requirements upon Commonwealth agencies to report allegations of fraud to the AFP, allegations of serious misconduct (including bribery as well as non-criminal matters such as abuse of office or conflict of interest) are a matter for the agency concerned. Under the Public Service Act reporting misconduct is only 'strongly encouraged'.⁶² This situation raises two important matters for the committee's purposes: first, the scope for variation across agencies regarding how a matter of serious misconduct is interpreted and second, the impact of such variation on the national integrity model envisaged under the proposed National Anti-Corruption Plan.

7.37 According to TIA, the current regime encourages:

...inconsistency and compromises transparency in the identification of 'real' levels of high risk misconduct, reducing the ability for corruption resistance building efforts to be targeted where they may be most needed.⁶³

7.38 This matter was the subject of considerable discussion during the inquiry. The ATO held the position that it is mandatory for staff to report suspected corruption or misconduct.⁶⁴ In terms of penalties for non-reporting in relation to instances of alleged corruption or fraud, Mr Malone argued that under the APS Code of Conduct, action could 'potentially be taken if you did not comply with a legal direction, and the direction is that all fraud, internal and external, has to be reported in our office'.⁶⁵

59 Mr Paul Malone, ATO, *Committee Hansard*, 8 August 2012, p. 10.

60 Mr Paul Malone, ATO, *Committee Hansard*, 8 August 2012, p. 10.

61 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 33.

62 Ms Karin Fisher, APSC, *Committee Hansard*, 8 August 2012, p. 16.

63 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

64 Mr Paul Malone, ATO, *Committee Hansard*, 8 August 2012, p. 9.

65 Mr Paul Malone, ATO, *Committee Hansard*, 8 August 2012, p. 9.

Similarly, DFAT upheld the position that the APS Code of Conduct requires staff to report any information about serious organised crime.⁶⁶

7.39 The committee was informed that there may be a common law duty on managers to report if they see staff they supervise committing misconduct. However, there is no mandatory requirement under the Public Service Act.⁶⁷

7.40 TIA argued that APS agencies rely too heavily on the interests of APS agency managers in determining appropriate responses to different forms of misconduct with 'insufficient operational oversight or alternatives'. TIA noted that this was matter was made particularly complex in circumstances when institutional self-interest considerations arise.⁶⁸ However, in relation to suspected misconduct by APS employees and locally engaged staff, the APSC noted that:

Where an APS employee based overseas is suspected of breaching the APS Code of Conduct, an investigation may be conducted by the employing agency under its procedures established under section 15(3) of the Act. Where an employee's behaviour may be both a breach of the Code and a serious criminal offence the matter may be referred to the Australian Federal Police or local law enforcement authorities as appropriate.⁶⁹

7.41 Further, the APSC guidance material states that:

...the duty to act with integrity and with the highest ethical standards imposes a reporting obligation on all employees with regard to suspected misconduct. In some circumstances, particularly for employees with managerial responsibilities, it could be a breach of the Code for an employee not to report...misconduct.⁷⁰

7.42 The Public Service Commissioner, Mr Sedgwick explained that while there was nothing stipulated in the APS procedures, Senior Executive Service officers are obligated to model the APS values and code of conduct. Therefore:

You would expect that if a manager were to observe particularly serious behaviour—fraud or whatever—that they would report it appropriately. You would expect that.⁷¹

7.43 The Commissioner's Directions stipulate that agency heads are required to take steps to uphold the APS Values, including:

66 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 6.

67 Ms Karin Fisher, APSC, *Committee Hansard*, 8 August 2012, p. 16.

68 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

69 Australian Public Service Commission, *Submission 10*, p. 3.

70 Ms Karin Fisher, APSC, *Committee Hansard*, 8 August 2012, p. 16.

71 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 16.

...that they put in place measures to ensure that employees are encouraged to make whistleblowing disclosures in appropriate circumstances and that managers are aware of the importance of modelling and promoting the highest standards of ethical behaviour.⁷²

7.44 When asked about a mandatory regime for certain types of suspected misconduct, Mr Sedgwick noted the importance of getting the 'balance right in being very clear about what is serious enough to be mandatory without implying that other things should not be reported'.⁷³ Commander McDevitt of the AFP also argued that establishing a mandatory requirement would amount to a complex task not least because the definition of corruption is in some instances misunderstood. He explained:

The reality is that if somebody takes an extra day on their travel when they are not entitled to, is that a corrupt activity and should that be referred to the Federal Police to investigate? It is getting those tiers right—the level of intent of the person that is doing it, the amount of money that is involved, if it is a systemic issue, if it is a systematic course of conduct. Those are the types of things that we take into consideration.⁷⁴

7.45 Mr Whitton noted that mandatory reporting was a requirement in some states in some services including the police services. However, he argued that in the public service, there is tendency to think:

...'It's not my job'—unless someone makes it their job—'so I'm not going to take on the task of disclosing, even though it is mandatory. I'm not going to take the trouble of making myself unpopular, loading myself up with a whole pile of work when I'm already busy and becoming basically totally distracted by this, whatever it is that I'm required to disclose.'⁷⁵

7.46 Mr Whitton emphasised that mandatory disclosure needed to be both targeted and strategic because organised crime is.⁷⁶ He argued that the continued absence of mandatory disclosure provisions in the APS together with the continued 'lack of initiative' taken by some agencies and the absence of a comprehensive whistleblower protection bill created a 'significant black hole at the federal level in...public governance'.⁷⁷

7.47 TIA argued in favour of mandatory reporting whereby agencies would be required to report all suspected corrupt or high risk official misconduct including non-criminal matters to a central body. TIA stated that:

72 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 16.

73 Mr Stephen Sedgwick, Public Service Commissioner, *Committee Hansard*, 8 August 2012, p. 20.

74 Commander Chris McDevitt, AFP, *Committee Hansard*, 8 August 2012, pp 26–27.

75 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 35.

76 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 36.

77 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 33.

One of the most robust elements of Australia's anti-corruption systems is the growing presence, at State level, of coordinated capacity for the independent investigation, oversight and review of serious non-criminal misconduct risks across the entire public sector. All Australian States have now either introduced or are introducing regimes of this kind, including 'mandatory reporting' obligations whereby agencies must centrally report all suspected corrupt or high risk official misconduct, including non-criminal matters, to an agency with power to investigate such misconduct—even though in practice, the investigative load continues to be shared between agencies.⁷⁸

7.48 TIA argued that a robust reporting regime of this nature, which the Commonwealth lacks, is fundamental to an anti-corruption system.⁷⁹ Further, Mr Michael Ahrens, Executive Director of TIA emphasised the importance of a mandatory reporting regime sitting alongside strong whistleblower protections.⁸⁰

Committee view

7.49 The committee notes that its earlier recommendation regarding a clear definition of 'corruption' will assist Commonwealth agencies meeting their obligations to refer such allegations to the AFP. The committee is cognisant of the need for mandatory reporting in relation to corruption matters that do not fall within the remit of current guidelines, namely the Commonwealth Fraud Control Guidelines 2011.

7.50 Furthermore, the committee recognises that a mandatory reporting regime that is specific and targeted at serious misconduct would strengthen the integrity regimes of both individual agencies and in totality as part of a Commonwealth integrity regime. In this regard, the committee acknowledges that it is mandatory for AFP officers and other agencies under ACLEI's purview to report any 'instances of malfeasance' whether corruption or any type of other misbehaviour and whether in Australia or overseas.⁸¹ To this end, the committee recommends that analysis be undertaken on the feasibility of a mandatory reporting regime for Commonwealth agencies. That analysis should inform the development of clear guidelines regarding serious misconduct in all its forms. Drawing on the current reporting regime for ACLEI agencies, the analysis should consider the steps required for agencies to report to a central authority. It should detail the advantages and disadvantages of a mandatory reporting system, taking into account the legislative, resource, and organisational changes required to realise a mandatory Australian Public Service

78 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

79 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

80 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 14.

81 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 8 August 2012, p. 27.

reporting scheme. Consideration of such a regime should also take into account the whistleblower protections contained within the Public Interest Disclosure Bill 2013.

Recommendation 3

7.51 The committee recommends that, subject to existing resources, the Public Service Commissioner conduct a study on the feasibility of a mandatory reporting regime for Commonwealth agencies in relation to allegations of serious misconduct including non-criminal misconduct.

External oversight

7.52 The importance of an external oversight body with investigative powers is a key component of a robust integrity regime. ACLEI has responsibility to 'detect, investigate and prevent corruption' in the agencies under its jurisdiction.⁸² There is no similar body with the same mandate in relation to the entire public sector including politicians. While the Commonwealth Ombudsman is able to investigate Commonwealth departments, it does not have the same powers as ACLEI and its primary responsibility is not investigating corruption allegations.

7.53 In its final report on the operation of the LEIC Act of July 2011, the committee recommended that ACLEI's jurisdiction be extended to a number of agencies including the ATO and DIAC under a second tier of the Act whereby such agencies would be subject to limited ACLEI oversight. More specifically, the committee recommended that the head of an agency or the minister responsible for that agency would be able to refer a corruption issue, on a voluntary basis, for consideration by the Integrity Commissioner.⁸³

7.54 Since the publication of its 2011 report, the committee notes the growing support for a Commonwealth integrity body either by way of the extension of ACLEI's jurisdiction or through the establishment of a new body.⁸⁴ Most recently, in its May 2013 report on criminal intelligence, the Parliamentary Joint Committee on Law Enforcement recommended that this committee inquire into the feasibility of extending the jurisdiction of ACLEI to include oversight of the Australian Securities and Investments Commission, AGD and ATO.⁸⁵

7.55 Evidence to the committee regarding the role of an integrity oversight body is detailed in Chapter 9 of this report.

82 Australian Commission for Law Enforcement Integrity, *Integrity in Law Enforcement*, <http://www.aclei.gov.au/Pages/default.aspx> (accessed 20 May 2013).

83 Parliamentary Joint Committee on ACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Final Report, July 2011, Recommendation 1, p. 9.

84 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 13.

85 Parliamentary Joint Committee on Law Enforcement, *Inquiry into the gathering and use of criminal intelligence*, Recommendation 11, May 2013, p. 93.

CHAPTER 8

Corruption risks and integrity frameworks across Commonwealth agencies

8.1 A multi-agency approach to combating corruption is central to the proposed National Anti-Corruption Plan. This chapter considers key integrity matters raised in evidence such as the approach agencies take to the acceptance of risk and the management of grants. It reveals the divergence of approaches across Commonwealth agencies and considers the consequent challenges for interagency collaboration, a multi-agency response to corruption and efforts to strengthen the Commonwealth's integrity regime.

Acceptance of and approach to risk

8.2 The Acting Commonwealth Ombudsman, Ms Alison Larkins, observed that Commonwealth agencies have a 'very different level of understanding of risk' with some having a more mature understanding of corruption and integrity risks associated with overseas travel and postings.¹ This is contrasted with evidence before the committee which stressed that the geographical location of the individual officer is of declining significance to organised crime given technological and other developments which transcend borders and linguistic barriers. Agencies which send officers overseas even for a short period must, therefore, assume that their staff may be exposed to corruption during their deployment or even on their return home.

8.3 A number of agencies emphasised that they are not directly involved in law enforcement operations. The tenor of their argument was that as a consequence, they are exposed to less risk than those agencies engaged in law enforcement operations. In relation to engagement overseas, for example, the AGD emphasised that its role is 'purely to facilitate formal government cooperation with foreign countries' and that the AGD has no operational role to the extent that it has no investigative or prosecutorial function.² ASIC held the position that as it has no direct powers in relation to bribery and corruption 'and they are the things that go to integrity,' the agency did not see itself as 'having a role as to integrity across agencies'.³

8.4 In contrast, AUSTRAC made the point that while it has no direct involvement in investigations or law enforcement operations overseas, it recognises specific risks in relation to the 'unauthorised access to intelligence and information held on persons subject to investigations' and has put in place a range of internal measures. It noted further that counterpart countries are required to meet membership requirements of a

1 Ms Alison Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, 11 May 2012, p. 20.

2 Ms Sarah Chidgey and Ms Susie Williamson, AGD, *Committee Hansard*, 16 March 2012, pp 8–9.

3 Mr Warren Day, ASIC, *Committee Hansard*, 11 May 2012, p. 24.

financial intelligence unit around which there are specific rules and protocols regarding the exchange and use of information.⁴

8.5 While some agencies approach corruption risks from a staff perspective in terms of what measures can be put in place to protect, support and guide staff who may be exposed to corruption, others are focused on environmental risks pertaining to the specific country and socio-cultural environment in which they operate. The integrity approach of AusAID addresses the two dimensions of both staff and operating environment as Mr Blair Exell, First Assistant Director-General of AusAID's Corporate Enabling , explained:

There is very much that side of our work which is about our people, both Australians and the overseas based staff that we recruit in the countries where we work, and which is about training and support for those individuals. But then, obviously, our business is about aid activities, our programs overseas. As you know, we work in some of the most difficult operating environments in...countries that have major issues with corruption. In part that is why we are there, trying to work with that. So we have an overarching framework that picks up the people side and also looks very closely, with the countries where we work, at what are the particular risks, how we structure our programs, how we build in specific risk mitigation measures as to corruption and for issues in the programs in the countries.⁵

8.6 The AFP's integrity approach also seeks a balance between staff-centric and environment-centric approaches. With over 85 AFP appointees operating in 30 countries, an estimated ten per cent of the AFP's total workforce is located overseas.⁶ The AFP recognises that the scale and geographical spread of its international operations coupled with the nature of its business create a number of organisational challenges which include operating in remote parts of the world 'within different cultural frameworks, the high level of discretion and exposure to criminality in some areas of the AFP, and the growth in risks associated with terrorism and organised crime'.⁷

Integrity frameworks

8.7 While the approach that agencies take in relation to corruption risk varies on the basis of environmental conditions, specific activities and to some extent, organisational culture, internal integrity processes across Commonwealth agencies comprise internal audits, fraud control plans, financial controls, security clearances of

4 Ms Jane Atkins, AUSTRAC, *Committee Hansard*, 23 March 2012, p. 8.

5 Mr Blair Exell, AusAID, *Committee Hansard*, 11 May 2012, p. 9.

6 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 5; Australian Federal Police, *Submission 5*, p. 4.

7 Australian Federal Police, *Submission 5*, p. 9.

staff and systems directed at adherence to the APS Code of Conduct and Values (or equivalent code of conduct) as well as Australian law.⁸

Australian Federal Police

8.8 The integrity system of the AFP is the most rigorous and robust of all Commonwealth agencies which gave evidence to the committee. All AFP staff outside of Australia are subject to the same integrity regime as those in Australia under the AFP professional standards and complaint management framework drawn from Part V of the AFP Act.⁹ The AFP is not an APS agency for the purposes of the Public Service Act but rather has its own internal integrity arrangements including investigators and is subject to ACLEI oversight.¹⁰ The AFP Fraud and Anti-Corruption Plan recognises nine strategic risks which create vulnerabilities across all functions of the AFP. The nine risks go to issues including theft, dishonest conduct, dishonest use of official information and other AFP resources and powers, dishonest disclosure or lack of disclosure relating to personal circumstances, and conspiring with others to exploit any of the other risks.¹¹ AFP employees are obliged to report any suspected incidents concerning AFP appointees involved in any behaviour contrary to the AFP code of conduct regardless of where such conduct takes place. Whilst various mechanisms are in place to provide for reporting, a number of detection strategies are also in place for offshore operations, including auditing of compliance with reporting guidelines and random drug testing.

8.9 Prior to deployment overseas, AFP officers must clear an 'integrity gateway' to establish whether there are any outstanding or past misconduct issues which could impact on their role overseas or the reputation of the AFP. They are required to complete a pre-deployment program and enter into an agreement and sign a code of conduct to indicate that they are fully aware of the expectations upon them and processes in place to investigate any allegations of misconduct stemming from their work overseas.¹² While overseas, staff members undergo targeted education and awareness programs relating to the AFP's integrity regime and specific location of deployment. 'Commanders' orders' are developed to address key issues associated with the deployment and operating environment including the need for cultural sensitivity

8 Mr Greg Williams, ATO, *Committee Hansard*, 8 August 2012, p. 6.

9 The AFP noted that Part V of the AFP Act is 'unique in the Commonwealth in providing a number of alternative remedies to criminal prosecution where misconduct occurs and places an emphasis on improving work conduct in appointees rather than apportioning punishment'. Answer to Question on Notice from the Australian Federal Police at a public hearing on 8 August 2012 (received 3 September 2012).

10 In addition to being bound by relevant criminal law, non-APS Commonwealth bodies including the AFP are subject to the requirements of enabling legislation and the *Commonwealth Authorities and Companies Act 1997*. Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August 2012).

11 Australian Federal Police, *Submission 5*, p. 10.

12 Australian Federal Police, Answer to Question on Notice in response to Chair's letter of 18 January 2012 (received 24 February 2012).

and awareness of vulnerabilities. Orders may, for example, be issued to avoid fraternisation otherwise described as the 'development of a sexual relationship with a local'.¹³ Furthermore, deployment extensions are granted on the basis of performance and adherence to integrity standards.

AUSTRAC

8.10 Following a 2011 internal fraud risk assessment which identified risks associated with staff adherence to internal policies and procedures, AUSTRAC implemented a series of controls including the establishment of an internal governance working group responsible for identifying and developing strategies associated with areas of operational practice which might pose a risk when technical assistance and training (TA&T) operations are conducted overseas. The initiatives introduced included:

- development of a number of standard operating procedures for TA&T officers when entering into international transactions associated with the procurement of goods and service delivery agreements in line with the FMA Act;
- implementation of international travel standing operating procedures and protocols associated with the management of travel allowances, gifts and benefits; and
- assurances that TA&T officers cannot access AUSTRAC's intelligence and information systems thereby limiting any potential misuse of information.¹⁴

Department of Agriculture, Fisheries and Forestry

8.11 Along with a fraud control plan which must be adhered to, DAFF staff undergo operational and security briefings before international deployment.¹⁵ Staff who engage in security environments require security clearances and are 'subject to a whole range of analysis managed by various other agencies'.¹⁶ While officers are trained in integrity and are subject to monitoring, the corruption prevention strategies employed by DAFF include the frequent movement of staff as Ms Rona Mellor, Deputy Secretary, explained:

We also train officers in integrity and obviously have monitoring processes. We have not done specific analysis of the kind you might be looking for. We have not identified in our fraud control plan and risk planning a very large risk here. The officers do not live in one workplace all the time—they move around a lot—so they are not only airport or port staff. They can be moved to other activities.¹⁷

13 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, pp 2–3.

14 Australian Transaction Reports and Analysis Centre, *Submission 3*, pp 2–3.

15 Ms Rona Mellor, DAFF, *Committee Hansard*, 16 March 2012, p. 17.

16 Ms Rona Mellor, DAFF, *Committee Hansard*, 16 March 2012, p. 17.

17 Ms Rona Mellor, DAFF, *Committee Hansard*, 16 March 2012, p. 12.

Department of Foreign Affairs and Trade

8.12 DFAT has a large network of officers which operate in a range of contexts and a complex resource and financial management system which creates a variety of challenges in managing corruption risk overseas where 'language barriers and different legal and cultural environments can heighten the opportunities for fraud and obscure detection'.¹⁸ Due to the complexity of its operating environment, DFAT has constructed a three-tiered approach to risk mitigation which includes risk controls (checks, systems controls and audit measures), prevention training, and prompt and fair investigation of allegations.¹⁹

8.13 According to DFAT, risks in relation to its overseas operations rest with those who are responsible for handling cash, passport management and commercial-in-confidence information.²⁰ In terms of managing those risks, DFAT have a fraud control plan in place. According to Mr Peter Scott, Director of DFAT's Sanctions and Transnational Crime Section, the agency's integrity process was put in place as a 'specific response' to the AWB inquiry and 'similar allegations of misconduct in relation to its involvement with the oil-for-food program'. Mr Scott further emphasised that the agency is undergoing continual review of its own integrity systems and:

...on each instance that it becomes apparent that an Australian company is alleged to have been involved in serious criminal misconduct, we examine the degree to which it would reasonably have been detectable by DFAT staff who may have come into contact and whether our systems are rigorous enough to have prevented that, or at least to have enabled staff to report.²¹

8.14 In relation to the management of staff at DFAT posts, there are a range of measures including a requirement to comply with key guidelines. Security clearance, reporting and training are key components of DFAT's integrity regime together with the APS Code of Conduct.²² Mr Scott informed the committee that under this regime:

We provide specific training; we have a specific reporting process for that which gives us a certain degree of confidence that, if a matter has not been reported by our staff who may have been assisting companies with liaison and with our foreign governments—which is of course one of DFAT's responsibilities in terms of an overseas presence—no DFAT officer knew or was involved in any misconduct.²³

18 Department of Foreign Affairs and Trade, Answer to Question on Notice at a public hearing on 11 May 2012.

19 Department of Foreign Affairs and Trade, Answer to Question on Notice at a public hearing on 11 May 2012.

20 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 4.

21 Mr Peter Scott, DFAT, *Committee Hansard*, 11 May 2012, p. 7.

22 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 6.

23 Mr Peter Scott, DFAT, *Committee Hansard*, 11 May 2012, p. 6.

8.15 As part of the reporting regime, A-based post-management staff conduct monthly checks to ensure that the guidelines are being adhered to by all staff including locally engaged staff. In addition, there is an audit program whereby an extensive audit of all administrative procedures is undertaken at post. Mr Paul Grigson, Deputy Secretary, DFAT explained that where issues are uncovered:

...depending on the degree to which a mistake has been committed or fraud has been committed, we will then look possibly to what we call implementing code of conduct measures, which are that, if the fraud is serious, we will ensure that we send in the investigators to see to what extent a fraud has been committed and what action needs to be taken to correct it.²⁴

8.16 In relation to an allegation of misconduct, DFAT's Conduct and Ethics Unit has two investigators who will decide in the first instance whether to embark on a formal investigation or refer the matter to the AFP. However, where the investigation involves locally engaged staff, the post's management will consult with lawyers in the country in question to ensure that, amongst other things, DFAT adheres to local labour law while a decision will ultimately be made by the head of mission as to the level of sanction to be applied. In the case of dismissal, such a decision must be cleared with DFAT in Canberra as a means of ensuring that the decision of dismissal does not contravene local labour laws which might otherwise result in litigation.²⁵ DFAT officials emphasised to the committee that providing for an investigation process that is not carried out by the mission but rather referred back to Canberra for separate consideration goes to the 'reputational element as an essential element for a head of mission of those investigations'. In this regard, Mr Grigson highlighted that credibility is a key issue which is 'best served by having allegations investigated away from the post'.²⁶

AusAID

8.17 Risk and fraud training for AusAID staff is mandatory. To support the dedicated risk and fraud branch within the agency, fraud positions were established in Papua New Guinea, the Philippines and Indonesia where a higher incidence of issues arise. In these three countries where greater rigour is required, AusAID applies what it termed an incident-based, rather than a trend-based approach as Mr Dunn explained:

...general issue around developing countries is the thinness of the capacity of their own institutions. More specifically, the countries we mentioned have significant issues around fraud and corruption, with corruption in a number of countries being widespread and systemic. In those cases, we need to take specific mitigation measures around how we deliver the aid program. The third aspect, I would say, is often to do with the culture and operating environment in those countries. There are different sorts of family, kin, relationships that need to be taken into account, particularly

24 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 2.

25 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 3.

26 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 7.

where we have a role that is being played by either our own locally engaged staff or staff employed through projects that we support. So it would be on three different levels.²⁷

Export Finance and Insurance Corporation

8.18 The Anti-Corruption Policy and Procedures of EFIC address compliance with Australian law, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UNCAC. It includes anti-bribery and corruption procedures, corruption allegation procedures, a whistleblower policy and procedure, and fraud control plan. EFIC noted that following the revelations regarding Securrency, a number of these policies and procedures were reviewed and updated.²⁸

Managing allegations of misconduct

8.19 Commonwealth agencies under the purview of ACLEI are required by the LEIC Act to refer any matters involving possible serious misconduct or criminal activities to the Integrity Commissioner. Customs explained that where its internal Integrity and Professional Standards Branch has assessed that a matter falls within the scope of corruption under the LEIC Act, it is reported to ACLEI through the Customs CEO.²⁹ Customs noted that:

ACLEI's law enforcement oversight functions in addition to their current range of powers and involvement in investigating corruption related matters would ideally place them to investigate any corruption matters relevant to the overseas operations of Customs and Border Protection.³⁰

8.20 DFAT refers allegations to its Conduct and Ethics Unit to make a decision about whether to refer a matter to the AFP.³¹ Where allegations of bribery are received, DFAT made clear that they would involve the police:

For bribery allegations, whether it involves our own staff or non-DFAT staff—either embassy staff or external individuals—the process is the same. You are not to undertake any investigations yourself, you are not to make any judgements about the validity of it or not; you are to report it to Canberra where it is considered by the conduct and ethics unit of the legal area, and they will make a judgement about referring it on to the AFP. As I said before, it is a very low bar.³²

27 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 10.

28 Answer to Question on Notice from Export Finance and Insurance Corporation at a public hearing on 11 May 2012 (received 25 May 2012).

29 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012).

30 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012).

31 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 26.

32 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 28.

8.21 While AusAID and Austrade are within the DFAT portfolio, they 'each have separate agency processes for dealing with claims made about their staff'.³³ AusAID supplements the APS Code of Conduct with specific codes of conduct for overseas operations, a risk and fraud management strategy and a fraud control plan which operate agency-wide. These are updated every two years. Mr Dunn informed the committee that in addition, post is also required to produce an annual post risks and fraud plan which addresses the specific operating environment that applies in the country and the risks specific to the aid program 'in terms of not just how the program is delivered but also the activities of our own staff'. As part of this process, risk assessments are conducted and address issues such as reputational risk, fiduciary risk and development-effectiveness risk.³⁴ Mr Dunn noted that these assessments would consider the institutional capacity of the partner government, issues in regard to fraud and corruption in that particular operating environment which can influence the delivery method used by the agency. Furthermore, the assessments take account of the social and cultural settings that apply in the relevant country.³⁵

Locally engaged staff

8.22 DIAC noted that locally engaged staff are a 'particularly high risk group for allegations of corruption, particularly when their cultural values may be in conflict with the APS Code of Conduct'.³⁶ AusAID also noted that the vulnerabilities in relation to locally engaged staff and staff employed through projects.³⁷

8.23 With the exception of Austrade and AusAID, DFAT employs locally engaged staff 'on behalf of most other agencies'.³⁸ In June 2011, DFAT employed 1644 locally engaged staff. The integrity framework that applies to locally engaged staff within the context of DFAT operations comprises the following:

- a locally engaged staff code of conduct for all locally engaged staff employees drawn from the APS Code of Conduct which locally engaged staff are required to sign;
- a manual for dealing with conduct and ethics issues; and
- training at post for locally engaged staff.³⁹

8.24 Regardless of which agency local staff work for, if they are employed by DFAT then DFAT will deal with any conduct or ethics issues that affect them. As

33 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 26.

34 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 9.

35 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 12.

36 Department of Immigration and Citizenship, *Submission 4*, p. 9.

37 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 10.

38 These include Customs, the AFP, DAFF and DIAC. Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 28; Mr Michael Pezzullo, Customs, *Committee Hansard*, 23 March 2012, p. 25.

39 Mr Paul Grigson and Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, pp 1–2.

DFAT advised the committee, 'if they are contracted to us, we take responsibility for allegations made about their conduct'.⁴⁰

8.25 DFAT emphasised the importance of training for locally engaged staff following a rigorous security clearance process including checks on the individual's financial situation to ensure that the person in question is not susceptible to bribery and other forms of corruption. At the same time, DFAT managers at posts are required to appraise the performance of locally engaged staff throughout the year to ensure that they are conducting themselves in a manner appropriate to their responsibilities. In this regard, upholding a good reputation through maintaining a high level of integrity and appropriate behaviour is emphasised during the training process.⁴¹

8.26 As part of managing the integrity risks in relation to locally engaged staff, such staff employed by DFAT who work for other Commonwealth agencies undertake work primarily in administration.⁴² These agencies recognise locally engaged staff as DFAT employees.⁴³ In January 2012, the AFP engaged 96 local staff to support the International Network. As DFAT employees, they are not covered by the AFP professional standards framework but rather fall under DFAT's professional standards regime. Locally engaged staff working for the AFP include administrators and office managers, drivers, investigative assistants and interpreters.⁴⁴

8.27 DAFF officials informed the committee that local staff 'do not take decisions on permitting goods to move' and that the purpose of such staff 'generally is to work at a government to government level to negotiate the conditions or help negotiate the conditions'. In this sense, local staff play a 'facilitative role' and would not be involved in taking decisions 'around what those conditions should look like or whether an importer or exporter was eligible'.⁴⁵

8.28 In the case of DIAC, local staff are also expected to abide by the DIAC code of conduct because as Mr Frew explained, 'the environment in which we are operating has further layers of responsibility for employees'.⁴⁶ DIAC engaged 1073 locally engaged staff across 61 overseas posts as at December 2011.⁴⁷ While the majority were delegated to make visa decisions under the *Migration Act 1958*, the ability to use such delegations is 'usually administratively restricted'. In high risk countries, for

40 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 28.

41 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 5.

42 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 12; Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 4.

43 Mr Todd Frew of DIAC explained, 'locally engaged staff are required to comply with the DFAT code of conduct because they are DFAT employees'. *Committee Hansard*, 23 March 2012, p. 13.

44 Australian Federal Police, *Submission 5*, pp 10–11.

45 Ms Jo Evans, DAFF, *Committee Hansard*, 16 March 2012, p. 18.

46 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 13.

47 Department of Immigration and Citizenship, *Submission 4*, pp 6–7.

example, some locally engaged staff make no visa decisions. In addition to routine visa processing, locally engaged staff primarily 'undertake client services, integrity and administrative tasks. They also provide local knowledge and language skills at relatively low cost'.⁴⁸ As part of measures to counter the possibility of corruption, there are strict rotation policies in place in some locations so local staff will move from operating the visa counter one day to opening mail or another activity on another day because, as Mr Frew noted, in some extreme environments 'if someone has fore knowledge of where they are going to be then that might be obvious to others'. Moreover, often rather than being in a position to corruptly provide someone with a visa for return for a fee, 'it can almost be just a perception of influence' that has to be countered.⁴⁹

8.29 Noting the particular vulnerability of local staff to allegations of corruption, DIAC integrity processes include regular training sessions for such staff conducted by 'A-based staff' who endeavour to 'set a good example for this category of employee to follow in order to minimise these risks'.⁵⁰ Mr Frew explained the arrangements set out to minimise the risk of corruption in relation to locally engaged staff:

We work very closely to manage any risks that might be presented in that circumstance. There is much managerial time and effort spent on training, supervision and quality assurance—checking of the work that these folk are doing. In particular environments there are office structures that prevent individuals doing a particular piece of work on a repeated basis so that others outside could establish a pattern and determine that an individual might be a person of influence.⁵¹

8.30 Further, continuous education assists in developing a strong anti-corruption culture. In this regard, DIAC noted that:

One-off induction training on commencement at posts is complemented by ongoing training, regular reminder emails, team discussions and leadership by example.⁵²

8.31 DIAC maintains a network of Australian Migration Integrity Officers (MIOs) overseas who are responsible for 'overseeing integrity and fraud controls frameworks'. Generally, MIOs are located in areas where there is a risk of higher levels of fraud and non-compliance with visa conditions. MIOs have a role in capacity building with officials from the host country whilst the risks of corruption are monitored by DIAC staff in Australia and Australian-based staff overseas.⁵³

48 Department of Immigration and Citizenship, *Submission 4*, pp 9–10.

49 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 17.

50 Department of Immigration and Citizenship, *Submission 4*, p. 9.

51 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 12.

52 Department of Immigration and Citizenship, *Submission 4*, p. 9.

53 Department of Immigration and Citizenship, *Submission 4*, p. 10.

8.32 DIAC emphasised that while corruption risks are more prevalent overseas for reasons including issues arising from different cultural attitudes and ethical values, 'cultural deference is not a defence when those customs are in conflict with the APS Values and the Code of Conduct'.⁵⁴

Management of complaints regarding locally engaged staff

8.33 From the 2009–10 financial year to 31 December 2011, there were 92 allegations received by DIAC in relation to locally engaged staff operating in an overseas environment. Of these allegations, 72 were unsubstantiated, three were referred internally or to an external agency, six were not investigated and in six other cases, locally engaged staff resigned before an investigation was completed. During this period, only two allegations involving locally engaged staff were substantiated and they are currently under investigation by the AFP.⁵⁵ In relation to the circumstances involving the locally engaged staff who resigned, Mr Frew informed the committee that:

The group of five, or it may have been four of the five, were in a particular post in a particular country where we have all kinds of difficulties with corruption because the local environment is like that. In that post we have probably spent more in anticorruption measures and resources over the last couple of years than for any other single post just because that is the nature of the beast. The four who were involved resigned as they can do because under local labour laws they are foreign nationals employed by DFAT under contract. Frankly, if an investigation by ourselves or by DFAT gets to a point, they can resign and leave and then we have no capacity to deal with them.⁵⁶

8.34 In terms of complaints, a specific investigation unit within DIAC is responsible for handling allegations made against DIAC staff and either dealing with them internally (by way of public service sanctions) or, if the matter is of a criminal nature, referring it to the AFP.⁵⁷ In instances where a complaint concerns a bribe in relation to a visa application, the investigators can travel to the post to interview relevant staff and the complainant and to examine computer systems. All information gathered during such an investigation is put before a 'breach decision maker' who is more senior in the department and will consider the investigation report, analyse all the information provided and come to a view as to whether or not a breach has taken place. If it is determined that a breach has taken place, the officer against whom the breach is found is provided with an opportunity to comment on the findings that there is a breach. A determination will then be made about what sanction to apply. Sanctions range from dismissal to a reprimand. In response to the suggestion that the process is convoluted, Mr Frew explained that:

54 Department of Immigration and Citizenship, *Submission 4*, p. 9.

55 Department of Immigration and Citizenship, *Submission 4*, pp 11–12.

56 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 17.

57 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 13.

It is as fast as it can be...It could be very short if it is a straightforward matter. Of course, every time we go back to the person and say, 'So what do you think about this,' we lose control of that timing, but I think they get seven days in which to respond. It is not without precedent that people say, 'I would like a little longer because I wish to take advice,' or something like that. If it is a convoluted process, the steps in the process are designed to ensure rigour in the investigation, fairness to the affected party and fairness—relative to all other things—in a sanction.⁵⁸

8.35 Where allegations of bribery are received, DFAT's Mr Grigson made it clear that the department would involve the police regardless of whether the allegation involved its own embassy staff or non-DFAT individuals.⁵⁹

Grants, contracts and other financial arrangements

8.36 In order to maintain the integrity of their activities, Commonwealth agencies operating overseas must have robust financial arrangements in place to manage the awarding, provision and oversight of contracts and grants.

8.37 Mr Dunn of AusAID informed the committee that the measures in place to manage grants under Australia's aid program start from the very origins of a program when it is designed to considerations of how it will be implemented. Choices regarding delivery method and partners are influenced by where the activities are to be implemented and what operating environment exists within that context. Mr Dunn continued:

So the actual choice of delivery method or delivery partner has at its start an assessment of the risk around that particular activity and the different delivery methods. Again that risk looks at reputational, fiduciary and development effectiveness and an assessment is made around the balance of risk and the way in which we would be implementing it. It can mean that we implement programs in a very different way in different countries. In countries where we have made an assessment of partner government systems that they are not robust enough or not of a standard we could use to fund through, we will not use those systems. We will put in place a delivery method, whether it is through a stand-alone project, that has additional assurance methods around it.⁶⁰

8.38 Some agencies such as DIAC do not provide any direct funding to host governments in the form of grants, contracts or other arrangements.⁶¹ Others provide grants and funds including the AFP through country-specific police development programs and the Law Enforcement Cooperation Program. Financial distribution and delegations are provided in accordance with the AFP Commissioner's Financial Instructions. In relation to other initiatives such as the Vanuatu Australia Police

58 Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, p. 16.

59 Mr Paul Grigson, DFAT, *Committee Hansard*, 4 October 2012, p. 28.

60 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 10.

61 Department of Immigration and Citizenship, *Submission 4*, p. 7.

Project, funding is provided by AusAID and delivered by the AFP.⁶² When asked about the management of these funds, the AFP's Assistant Commissioner Zuccato informed the committee that:

The AFP not only has the project management office but a range of committees that oversee the expenditure of these types of funds, from the strategic investment committee to the finance committee. Also, in relation to the Law Enforcement Cooperation Program we have a committee, on which I sit, which oversees all of those programs. The chief financial officer also has a lot of visibility over the expenditure on the funding, the reason being that a lot of this money is tied funding.⁶³

8.39 In terms of DFAT's management of grants and procurement procedures, Mr Grigson informed the committee that:

There is a very strict process for procurement built around business cases and supervisors signing off on procurement made at posts. In terms of direct grants to other countries, ambassadors and high commissioners do have a program that is called the direct assistance program. These are very small grants that are made to charities in the host country, from a few thousand dollars to some tens of thousands of dollars but rarely more than, say, fifty. There is a fraud control plan and a corruption control plan around them. I have run two of those. The requirements of them are quite rigorous. Apart from procurement and small grants, DFAT does not provide grants directly to other countries as such.⁶⁴

62 Australian Federal Police, *Submission 5*, pp 14–15.

63 Assistant Commissioner Kevin Zuccato, AFP, *Committee Hansard*, 23 March 2012, p. 4.

64 Mr Paul Grigson, DFAT, *Committee Hansard*, 11 May 2012, p. 8.

CHAPTER 9

Strengthening integrity measures

9.1 This chapter considers a number of initiatives directed at strengthening or building upon existing integrity measures.

9.2 Maintaining high standards of integrity and ethics amongst public officials requires comprehensive and coordinated efforts. This includes clear guidance and rigorous oversight to instil accountability within the system. As a fundamental requirement all public officials must be subject to internal scrutiny and external investigation. The level of scrutiny should increase with the level of integrity risk and be commensurate with public expectations.¹

9.3 The contemporary approach is characterised by a series of 'scandals' and issues that come to light, such as the AWB matter followed by reforms. Evidence to the committee also highlighted that this reactive approach has led to ad hoc measures rather than a systematic approach to corruption and integrity across the Commonwealth. The committee highlights, therefore, the need for a pro-active, preventative approach which recognises and manages the precursors to corruption and provides for integrity oversight.

9.4 The committee appreciates the need for an integrity regime which encompasses good systems as well as ethical individuals. The scope for misconduct and vulnerability to corruption are considerably reduced when common integrity standards and ethics are widely applied and subject to effective oversight.² The committee recognises that adherence to common integrity standards including transparent and clear reporting requirements and consistency regarding the handling of allegations regarding breaches of such standards would make it easier for officials who move between agencies or engage in joint or multi-agency initiatives to adhere to the rules.³ If all agencies operate under the same standards including obligations to report suspected breaches of the law or other wrongdoing, the integrity standards in relation to Commonwealth agencies and therefore Australia's operations overseas would only be strengthened.

Strengthening oversight of Commonwealth agencies

9.5 In evidence to the committee, some witnesses argued that the integrity of Commonwealth agencies would be strengthened by the widening of ACLEI's jurisdiction or establishment of a separate body to oversight all non-law enforcement

1 Griffith University & Transparency International 2005, Chaos or coherence? Strengths, opportunities and challenges for Australia's integrity systems. National Integrity Systems Assessment Final Report, Key Centre for Ethics, Law, Justice and Governance, Griffith University & Transparency International, Australia.

2 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 2.

3 Ms Alison Larkins, Office of the Commonwealth Ombudsman, *Committee Hansard*, 11 May 2012, p. 20.

Commonwealth agencies.⁴ Mr Whitton questioned whether the lack of a dedicated Commonwealth institution with responsibility for taking an active role in prevention of forms of corruption other than crime implied that Australia might not be compliant with its obligations under UNCAC.⁵ The key concerns underpinning these recommendations include the need for greater oversight of matters which have not reached the threshold of corruption and other crimes as well as the 'significant jurisdictional gaps' that arise 'depending on whether a Commonwealth agency is or is not an APS agency'.⁶ Professor Brown argued that an overall oversight agency would be the backdrop for making sure that the welfare of whistleblowers is kept in mind in the management of these procedures and systems.⁷

9.6 Evidence to the committee has suggested that without an all-encompassing anti-corruption body, integrity arrangements nationally will remain 'ad hoc'.⁸ While the committee appreciates these concerns, it recognises that the establishment of a national integrity oversight body is a matter which requires wide and extensive consultation including consideration of international best practice. Notwithstanding this point, the multi-agency approach which underpins the proposed National Anti-Corruption Plan should not be interpreted as an opportunity to affirm the status quo or avoid the need to coordinate efforts including establishing common standards and reporting obligations.

Mandatory training in integrity for the APS

9.7 Most agencies require their staff to undergo mandatory training in ethics and corruption matters before international deployment. For example:

- DFAT staff must undertake a conduct and ethics training course in Canberra before deployment overseas. The training focuses on the DFAT Code of Conduct which officials are obliged to sign.⁹
- DIAC's pre-departure training covers the APS Code of Conduct and DFAT Code of Conduct as well as overseas staff management arrangements and raising awareness of corruption risks and mitigation strategies.¹⁰
- AusAID staff undergo mandatory risk and fraud training.¹¹

4 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 13.

5 Mr Howard Whitton, *Submission 9*, p. 3.

6 Transparency International, 'A Ten-Point Integrity Plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan', May 2012, Additional Information received at a public hearing on 8 August 2012, p. 12.

7 Professor AJ Brown, *Committee Hansard*, 4 October 2012, p. 8.

8 Scott Prasser, 'Australian integrity agencies in critical perspective', *Policy Studies*, Vol. 33, No. 1, January 2012, p. 25 received as Additional Information, Article 1, 26 July 2012.

9 Mr Luke Williams, DFAT, *Committee Hansard*, 11 May 2012, p. 6.

10 While overseas, staff receive Code of Conduct and Ethics training on a regular basis. Mr Todd Frew, DIAC, *Committee Hansard*, 23 March 2012, pp 12–13; Department of Immigration and Citizenship, *Submission 4*, p. 9.

- AFP pre-deployment training focuses on the AFP Fraud and Anti-Corruption Plan and considers the AFP professional standards as well as a session with ACLEI staff on the responsibilities of officials in relation to ACLEI.¹²
- Customs officials complete a mandatory pre-post briefing program for up to four weeks before deployment as well as mandatory briefings facilitated by DFAT.¹³
- Austrade A-based staff posted overseas must undergo training on integrity matters including anti-bribery and ethics and upholding the APS Code of Conduct as well as the agency's specific code for A-based staff and locally-engaged staff.¹⁴
- DAFF staff are provided an operational and security briefing prior to international deployment.¹⁵
- EFIC staff must also complete, as part of their annual mandatory compliance training, a specific module on combating bribery and corruption. Mr John Pacey, Chief Credit Officer, EFIC informed the committee that:

This training is provided by an external law firm that reviews the compliance training module on bribery and corruption on a regular basis to ensure that all references and laws are correct and up to date.¹⁶

9.8 However, while some agencies make it an essential requirement for their staff to undertake APS Code of Conduct training as a matter of course (regardless of whether they are to be deployed internationally), others do not. Training in the application of the APS Code of Conduct and Values is generally voluntary. Mr Whitton noted a practice whereby:

People tend to go at the beginning of their career and that is the last time they take that kind of activity.¹⁷

9.9 Evidence to the committee suggested that other public services are contemplating mandatory training in integrity matters as a condition of advancement within their service.¹⁸ Mr Whitton informed the committee that most recently the ACT had been looking at providing and requiring mandatory training for officials before

11 Mr Laurie Dunn, AusAID, *Committee Hansard*, 11 May 2012, p. 10.

12 Australian Federal Police, *Submission 5*, p. 11; Mr Philip Moss, Integrity Commissioner, *Committee Hansard*, 16 March 2012, p. 4.

13 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012).

14 Ms Marcia Kimball, Austrade, *Committee Hansard*, 11 May 2012, p. 27.

15 Ms Rona Mellor, DAFF, *Committee Hansard*, 16 March 2012, p. 17.

16 Mr John Pacey, EFIC, *Committee Hansard*, 11 May 2012, p. 14.

17 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 34.

18 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 34.

they took up a position of responsibility.¹⁹ The committee recognises the need for all APS staff to undertake training in the APS Code of Conduct and Values as a matter of course. The committee recognises that all employees should undergo such training regardless of whether they are engaged in international operations. The committee recommends, therefore, that the Public Service Commissioner conduct a review to identify the number of APS employees who undertake the training and the frequency with which it is undertaken. Such analysis should also consider the feasibility of establishing a mandatory training regime for all APS employees.

Recommendation 4

9.10 The committee recommends that the Public Service Commissioner conduct a review of Australian Public Service Code of Conduct training which considers the feasibility of a mandatory APS Code of Conduct training regime for all Australian Public Service employees.

Integrity regimes across the Commonwealth

9.11 The Ombudsman argued that the range of codes and guidelines under which Commonwealth agencies operate provides 'opportunities for misunderstanding or difficulties'.²⁰ The OECD Working Group on Bribery recommended the alignment of the 'APS Guide with its practice of requiring Australian civil servants who work overseas to report suspicions of foreign bribery to the AFP in all cases'.²¹ The working group further recommended that Australian public servants, officials and employees of independent statutory authorities 'be subject to equivalent reporting requirements'.²² Noting that allegations of bribery in relation to the NPA/Securrency matter were initially referred to a private law firm and that it took at least two years before they were then referred to the AFP, the committee strongly supports these recommendations.²³

9.12 The OCED Working Group also recommended that AusAID expressly require allegations of bribery involving Australian nationals, residents and companies to be reported to the AFP, and support this requirement with training and appropriate procedures.²⁴

19 Mr Howard Whitton, *Committee Hansard*, 8 August 2012, p. 34.

20 Ms Diana Merryfull, Office of the Commonwealth Ombudsman, *Committee Hansard*, 11 May 2012, p. 20.

21 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 52.

22 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p. 52.

23 Mr Michael Ahrens, TIA, *Committee Hansard*, 8 August 2012, p. 11.

24 OECD Working Group on Bribery in International Business Transactions, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia: Final Report*, October 2012, p.46.

9.13 The committee recognises implementation of these recommendations as necessary steps towards strengthening the national integrity framework. The committee also considers that a standard public sector-wide policy on the receipt of gifts and agency notification procedures should be developed. To this end, the discretion provided for under the APS Code of Conduct guidelines on the acceptance of gifts should be reconsidered. The committee recommends that the Public Service Commissioner should liaise with Commonwealth agencies on their gift policies with a view to establishing uniform guidelines for all Commonwealth agencies.

Recommendation 5

9.14 The committee recommends that the Public Service Commissioner review and amend the Australian Public Service Code of Conduct guidelines on the acceptance of gifts for consistent application across the Australian Public Service.

Mr Darren Cheeseman MP
Chair

ADDITIONAL COMMENTS AUSTRALIAN GREENS

It is very clear that the time is ripe for a National Integrity Commissioner and strengthened whistleblower protections to help rebuild public confidence in Australia's international reputation and standing.

The Australian Greens support the Committee's view that the experience of the Australian Federal Police, Note Printing Australia and Securrency is case in point for reform of the way in which Commonwealth law enforcement agencies operate overseas, and that it raises issues of corruption risks, integrity standards, organisational culture and the protection of whistleblowers. The Australian Greens recommend that the parliament consider supporting our National Integrity Commissioner bill and our moves to strengthen national whistleblower protection laws.

A National Integrity Commissioner

The Australian Greens have a bill to create a national integrity and anti-corruption commission through the establishment of the National Office of Integrity Commissioner, comprising three elements - the National Integrity Commission, the existing Australian Commission for Law Enforcement Integrity (ACLEI) and a new Office of the Independent Parliamentary Advisor. The National Integrity Commission is established as an independent statutory agency.

The bill would provide a comprehensive legislative framework, through the establishment of a National Integrity Commission, to enable the investigation and prevention of misconduct and corruption in all Commonwealth departments, agencies, federal parliamentarians and their staff. The bill brings together and co-locates this function with the independent oversight functions of the Law Enforcement Integrity Commission for the investigation and prevention of corruption in the Australian Federal Police and the Australian Crime Commission, thus creating an integrated federal approach to misconduct and corruption in the parliament and public service.

There is currently no national anti-corruption agency with the powers or the jurisdiction to investigate claims of misconduct and corruption across Commonwealth agencies. This is an essential component for the prevention of corruption and maintenance and promotion of integrity and ethical conduct in the toolkit of all jurisdictions. The argument that the existing agencies and mechanisms are sufficient or appropriate for fighting graft ignores the important role of prevention, the promotion of ethical conduct, and the integration of integrity systems across federal and state jurisdictions.

Prior to the establishment of the Commonwealth Law Enforcement Integrity Commissioner in 2006, there were calls that its role be extended beyond investigating and preventing corruption in federal law enforcement agencies. In particular, the federal police and lower house independent, the late Peter Andren, wanted it to be expanded to include politicians and public officials. These calls were not heeded but this bill addresses that oversight.

The bill lists kinds of “corrupt conduct”, such as blackmail, bribery and fraud, for the purposes of adversely affecting the exercise of functions by the Parliament, a Commonwealth agency or public officials, and provides for retrospective application in that the National Integrity Commissioner can investigate corrupt conduct that occurred before the commencement of the bill or before a person became a public official or outside Australia. Importantly the bill provides the capacity to investigate cases where corrupt conduct is foreseeable in the future making the National Integrity Commissioner’s role proactive in addressing corruption. Furthermore, it is clear in this bill that investigations of corruption can be commenced even if the identity of the public official alleged to be engaging in corrupt conduct is unknown. This ensures that corruption issues cannot be ignored because the person concerned has not been identified at the outset.

This bill provides the legislative framework for a comprehensive proactive and responsive national approach to corruption and misconduct. At a time when the Australian public are increasingly skeptical and mistrustful of its federal politicians and public servants, the National Integrity Commissioner bill provides a bulwark against its concerns now and into the future.

Whistleblower Protection

The Australian Greens note the Committee’s support for reform of whistleblower protections. We want a comprehensive whistleblower scheme that gives confidence to those who are considering disclosing maladministration and corruption that they will be legally protected if they do come forward.

The Australian Greens have moved to improve private sector protections and make whistleblowing a workplace right under our industrial relations legislation. We have moved to amend the Fair Work Act, which covers 80% of public and private sector employees in Australia, to protect those who make a public interest disclosure from an adverse action taken against them by their employer, fellow employees or contractors. These moves were blocked by both the major parties.

The Committee’s inquiry demonstrates the need for further strengthening and reform of our national integrity system and protection of whistleblowers.

Senator Milne

Leader of the Australian Greens

APPENDIX 1

Submissions received by the committee

Submission

Number	Submitter
1	Australian Commission for Law Enforcement Integrity
2	CrimTrac
3	Australian Transaction Reports and Analysis Centre
4	Department of Immigration and Citizenship
5	Australian Federal Police Attachment 1 Attachment 2
6	Australian Crime Commission
7	Confidential
8	Commonwealth Director of Public Prosecutions
9	Mr Howard Whitton, Fellow, ANZSOG Institute for Governance, University of Canberra
10	Australian Public Service Commission
11	Dr Ken Norman
12	Confidential
13	Confidential
14	Confidential

Additional Information Received

1	Australian Taxation Office - Public hearing dated 8 August 2012, Opening Statement
2	Transparency International Australia - Public hearing dated 8 August 2012, A Ten-Point Integrity Plan for the Australian Government
3	Correspondence from Scott Prasser - Article 1, received 26 July 2012
4	Correspondence from Scott Prasser - Article 2, received 26 July 2012
5	Transparency International Australia Progress Report 2012, received 5 September 2012
6	Austrade - Outline of Austrade governance changes - 2010 to present, received at a public hearing dated 4 October 2012
7	Reserve Bank of Australia - Public Hearing 30 November 2012, Opening Statement

- 8 Australian Securities and Investments Commission - Public Hearing 30 November 2012, Opening Statement
- 9 Austrade - Senior Trade Commissioner, Manila - received 14 February 2013

Answers to Questions on Notice

- 1 Answer to Question on Notice from the Australian Federal Police in response to the Chair's letter of 18 January 2012 (received 24 February 2012)The AFP made a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade into Australia's overseas representation [http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/overseas representation/submissions/sub24.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/overseas%20representation/submissions/sub24.pdf)
- 2 Answer to Question on Notice from Australian Customs and Border Protection Service in response to the Chair's letter of 6 February 2012 (received 7 March 2012)
- 3 Answer to Questions on Notice from the Attorney-General's Department at a public hearing on 16 March 2012 (received 13 April 2012)
- 4 Answer to Question on Notice from Australian Customs and Border Protection Service at a public hearing on 23 March 2012 (received 17 April 2012)
- 5 Answers to Questions on Notice from Australian Customs and Border Protection Service at a public hearing on 23 March 2012 (received 29 May 2012)
- 6 Answer to Question on Notice from Export Finance & Insurance Cooperation at a public hearing on 11 May 2012 (received 25 May 2012)
- 7 Answer to Question on Notice from AusAID at a hearing on 11 May 2012 (received 28 May 2012)
- 8 Answer to Questions on Notice from the Department of Foreign Affairs and Trade at a public hearing on 11 May 2012 (received 30 May 2012)
- 9 Answers to Questions on Notice from Austrade at a public hearing on 11 May 2012 (received 31 May 2012)
- 10 Answers to Questions on Notice from the Reserve Bank of Australia in response to the committee's request on 23 May 2012 (received 1 June 2012)
- 11 Answers to Questions on Notice from the Office of the Commonwealth Ombudsman at a public hearing on 11 May 2012 (received 1 June 2012)
- 12 Answer to Question on Notice from AusAID at a public hearing on 11 May 2012 (received 4 June 2012)
- 13 Answer to Question on Notice from AFP at public hearing on 23 March 2012 (received 18 June 2012)
- 14 Answer to Question on Notice from the Australian Federal Police at a public hearing on 23 March 2012 (received 29 May 2012)

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- 15 Answer to Question on Notice from the Australian Crime Commission at a public hearing on 8 August 2012 (received 27 August 2012)
 - 16 Answer to Question on Notice from the Attorney-General's Department at a public hearing on 8 August 2012 (received 29 August 2012)
 - 17 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August 2012)
 - 18 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August 2012)
 - 19 Answer to Question on Notice from the Australian Public Service Commission at a public hearing on 8 August 2012 (received 30 August 2012)
 - 20 Answer to Question on Notice from the Australian Federal Police at a public hearing on 8 August 2012 (received 3 September 2012)
 - 21 Answer to Question on Notice from the Australian Federal Police at a public hearing on 8 August 2012 (received 3 September 2012)
 - 22 Answers to Questions on Notice from the Export Finance and Insurance Corporation in response to the committee's request on 20 August 2012 (received 31 August 2012)
 - 23 Answer to Question on Notice from Export Finance & Insurance Corporation in response to the committee's request on 6 September 2012 (received 7 September 2012)

APPENDIX 2

Witnesses who appeared before the committee

Friday, 16 March 2012 – Canberra, ACT

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Stephen Hayward, Executive Director

Mr Nicholas Sellars, Director Strategic Support

Ms Marie Gomes, Assistant Director Strategic Support

Attorney-General's Department

Ms Sarah Chidgey, Assistant Secretary, Criminal Law and Law Enforcement Branch

Ms Susie Williamson, Acting Director, Mutual Assistance Unit, International Crime Cooperation Central Authority

Department of Agriculture, Fisheries and Forestry

Ms Rona Mellor, Deputy Secretary

Ms Jo Evans, First Assistant Secretary, Trade and Market Access

Mr Simon Veitch, Director, Northern International Fisheries

Friday, 23 March 2012 – Canberra, ACT

Australian Federal Police

Assistant Commissioner Kevin Zuccato, National Manager Serious and Organised Crime

Mr Peter Whowell, Manager Government Relations

Commander Ray Johnson, Manager Professional Standards

Australian Transaction Reports and Analysis Centre

Mr David Becker, Director, International Technical Assistance and Training

Ms Jane Atkins, Executive General Manager, Intelligence

Mr Bradley Brown, Acting General Manager Policy

Department of Immigration and Citizenship

Mr Gavin McCairns, First Assistant Secretary, Risk, Fraud and Integrity

Mr Todd Frew, First Assistant Secretary, Visa and Offshore Services Division

Ms Vicki Parker, First Assistant Secretary, Refugee, Humanitarian and International Policy Division

Mr Keith Bender, Assistant Secretary, People Services Branch

Australian Customs and Border Protection Service

Mr Michael Pezzullo, Chief Operating Officer

Mr Steven Groves, National Director Strategy, Finance and Integrity

Friday, 11 May 2012 – Canberra, ACT**Department of Foreign Affairs and Trade**

Mr Paul Grigson, Deputy Secretary

Mr Peter Scott, Director, Sanctions and Transnational Crime Section

Mr Luke Williams, Director, Management Strategy, Conduct and Diversity Section

AusAID

Mr Laurie Dunn, First Assistant Director-General, Program Effectiveness and Performance Division

Mr Blair Exell, First Assistant Director-General, Corporate Enabling Division

Export Finance and Insurance Corporation

Mr Mathew Hocken, Senior Adviser, Government and Industry Relations

Mr John Hopkins, General Counsel

Mr John Pacey, Chief Credit Officer

Office of the Commonwealth Ombudsman

Ms Alison Larkins, Acting Ombudsman

Ms Diane Merryful, Senior Assistant Ombudsman

Ms Margaret Chinnery, Director, Law Enforcement

Australian Securities and Investments Commission

Mr Warren Day, Regional Commissioner

Mr Pascal Marcelis, Manager, Government Relations

Australian Trade Commission

Mr Peter Yuile, Executive Director, Education and Corporate Operations

Mr Brendan Jacomb, General Manager, Legal, Security and Procurement

Mr David Crook, Group Manager, Governance, Analysis and Planning

Ms Marcia Kimball, Chief Human Resources and

Wednesday, 8 August 2012 – Canberra, ACT**Commonwealth Director of Public Prosecutions**

Mr James Carter, Deputy Director

Ms Jaala Hinchcliffe, Senior Assistant Director

Mr Roderick Jensen, Principal Legal Officer

Australian Taxation Office

Mr Greg Williams, Deputy Commissioner, Serious Non-compliance

Mr Paul Malone, Assistant Commissioner, Fraud Prevention and Internal Investigations

Transparency International Australia

Mr Michael Ahrens, Executive Director

Australian Public Service Commission

Mr Stephen Sedgwick, Commissioner

Ms Karin Fisher, Acting Merit Protection Commissioner

Australian Federal Police

Assistant Commissioner Kevin Zuccato, National Manager, Serious and Organised Crime

Commander Ray Johnson, Manager, Professional Standards

Commander Chris McDevitt, Manager, Special References

Mr Peter Whowell, Manager Government Relation

Australian Crime Commission

Dr David Lacey, Executive Director

Mr Warren Gray, National Manager

Mr Howard Whitton, Fellow, ANZSOG Institute for Governance, University of Canberra

Dr Kenneth Norman (Private capacity)

Thursday, 4 October 2012 – Sydney, NSW

Professor AJ Brown, Professor of Public Law, Griffith Law School, Griffith University

Mr Brian Hood (Private capacity)

Australian Trade Commission (Austrade)

Mr Peter Yuile, Executive Director, Education and Corporate Operations

Mr Brendan Jacomb, Group Manager, Legal, Security and Procurement

Ms Carolyn Lloyd, Group Manager, Governance, Analysis and Planning

Ms Marcia Kimball, Chief Human Resources and Change Management Officer

Department of Foreign Affairs and Trade

Mr Paul Grigson, Deputy Secretary

Mr Peter Scott, Director, Sanctions and Transnational Crime Section

Ms Katherine Twomey, Executive Officer, Resources and Business Liaison Section

Friday, 30 November 2012 – Canberra, ACT

Mr Ric Battellino (Private capacity)

Reserve Bank of Australia

Mr Glenn Stevens, Governor

Mr Frank Campbell, Assistant Governor, Corporate Services

Australian Securities and Investments Commission

Ms Belinda Gibson, Deputy Chairman

Mr Mark Pangbourne, Senior Specialist

