



Australian Government
Attorney-General's Department

April 2017

Attorney-General's Department

Select Committee on a National Integrity Commission

1. Scope of submission

The Attorney-General's Department (the department) thanks the committee for the opportunity to make a submission to its inquiry.

In April 2016, the department made a submission to the previous Senate Select Committee on the Establishment of a National Integrity Commission (the 2016 inquiry). The department's submission was based on consultation with a range of agencies.

Given that the current inquiry has access to the 2016 inquiry's evidence and records, this submission is limited to relevant updates and developments that have occurred since the department provided a submission to the 2016 inquiry. The department has again consulted broadly within Government in drafting this submission.

The department notes that the Australian Commission for Law Enforcement Integrity (ACLEI) will provide an additional submission to this inquiry, to outline further information on ACLEI's roles and functions as a key aspect of the Government's multi-faceted anti-corruption framework.

2. Introduction

The Australian Government takes a zero tolerance approach to corruption in all its forms.

As noted in the department's submission to the 2016 inquiry, Australia is consistently rated by Transparency International (TI) as one of the least corrupt countries in the world. In its 2016 Corruption Perceptions Index (CPI), TI ranked Australia as the 13th least corrupt country of the 176 countries which were assessed. This is unchanged from the 2015 survey and places Australia on par with countries such as Canada (ranked 9th with 82 points), the United Kingdom and Germany (ranked equal 10th with 81 points each), Belgium (ranked 15th with 77 points), and the United States (ranked 18th with 74 points). Of the countries ranked higher than Australia in the 2016 CPI, there is only one country (Singapore) with a national anti-corruption commission.

The Government takes a robust, multi-faceted approach to combating corruption, in which a range of agencies play a role in preventing, detecting, and responding to corruption. This approach is preferable to creating an entirely new anti-corruption agency. Dispersing responsibility for anti-corruption between a range of agencies promotes accountability and transparency and protects against abuse of power within Australia's anti-corruption framework. Agencies responsible for combating corruption have also developed expertise and institutional knowledge for dealing with specific corruption risks.

3. The Australian Government's anti-corruption framework – recent developments

The department's submission to the 2016 inquiry outlined the way that the Australian system of government, separation of powers, the rule of law, a free press, and other important features of our system are safeguards against corrupt behaviour. That submission also outlined the roles played by a broad range of Australian Government agencies in fighting corruption and promoting a culture of integrity.

The purpose of this section of this submission is to outline initiatives and measures that have developed since the previous submission to further strengthen Australia's capacity to prevent, detect, and address corruption. The section covers:

- recent steps to better position Commonwealth agencies to respond to corruption and promote a culture of integrity
- consultations, reviews, and engagement to explore options to enhance the Australian Government's response to corruption, and
- recent legislative developments to bolster the effectiveness of Australia's anti-corruption laws.

Commonwealth agency developments

Establishment of the Australian Criminal Intelligence Commission

On 1 July 2016, the Australian Criminal Intelligence Commission (ACIC) was formed through the merger of the Australian Crime Commission and the CrimTrac Agency. The ACIC, through its investigative, research, and information delivery services, works with law enforcement partners to improve the ability to stop criminals exploiting emerging opportunities and perceived gaps in law enforcement information. The ACIC conducts special operations against the highest threats from serious and organised crime and may use coercive powers in special operations and investigations to obtain information where traditional law enforcement methods are unlikely to be successful. The crime types dealt with by the ACIC include financial crimes, fraud, money laundering, and public sector corruption.

Establishment of the Independent Parliamentary Expenses Authority

On 13 January 2017, the Prime Minister, the Hon Malcolm Turnbull MP, announced significant reform to the parliamentary expenses framework, including the establishment of an independent agency that would have compliance, reporting, and auditing responsibilities for parliamentarians' expenses.

The *Independent Parliamentary Expenses Authority Act 2017* (Cth) (IPEA Act) received the Royal Assent on 22 February 2017, and established the Independent Parliamentary Expenses Authority (IPEA) as a statutory authority. IPEA is designed to be an independent authority, charged with administering and overseeing the travel and work expenses of parliamentarians. It is intended that the IPEA Act will commence from 1 July 2017.

To establish IPEA as quickly as possible and to ensure a seamless transition of functions from the Department of Finance to IPEA, the body was established as an Executive Agency on 3 April 2017 ahead of the commencement of the statutory authority. IPEA was established as an Executive Agency under the *Public Service Act 1999* (Cth), via an Order made by the Governor-General. It is separately resourced and accountable as a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (Cth), set out in the Public Governance, Performance and Accountability Amendment (Independent Parliamentary Expenses Authority) Rules 2017.

The functions of IPEA are:

- advising parliamentarians on travel expenses, allowances, and related expenses
- monitoring parliamentarians' use of travel expenses, allowances, and related expenses
- administering travel expenses, allowances, and related expenses, including processing of these claims
- reporting on work expenses under the existing parliamentary work expenses framework

- auditing of work expenses claims under the existing parliamentary work expenses framework, and
- making rulings about travel expenses and allowances, where authorised by a law to do so.

Increased funding for investigative agencies

As noted in the department's submission to the 2016 inquiry, the Australian Government has established a dedicated Fraud and Anti-Corruption Centre (FAC Centre) to coordinate the operational response to corruption.

This centre brings together officials from the Australian Federal Police, Australian Taxation Office (ATO), Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission, the ACIC, the Attorney-General's Department, the Commonwealth Director of Public Prosecutions, the Department of Human Services, the Department of Foreign Affairs and Trade, the Department of Immigration and Border Protection, the Department of Defence, and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

In July 2015, the Government announced \$127.6 million funding over four years for a Serious Financial Crime Taskforce, which sits within the FAC Centre. In April 2016, the Government announced that it would invest an additional \$14.7 million to expand the investigative capability of the FAC Centre and bolster Australia's capability to respond to foreign bribery, alongside an additional \$127.2 million over four years to strengthen the investigative capacity of ASIC.

As part of the Open Government Partnership National Action Plan (further detail below), the Government also committed to reviewing the jurisdiction and capabilities of ACLEI and the FAC Centre every two years, and extending these on an as-needs basis.

Establishment of the Fintel Alliance

In March 2017, AUSTRAC established the Fintel Alliance, a centre of excellence for financial intelligence. The Fintel Alliance brings together government, industry, and international partners to take a collaborative approach to combating money laundering, terrorism financing, and other financial crimes. It will optimise the use of over 100 million reports from industry each year to produce powerful financial intelligence to target Australia's high money laundering and terrorism financing risks.

Consultations, reviews, and engagement

Release of the Open Government Partnership National Action Plan

The Australian Government released Australia's first Open Government National Action Plan (the National Action Plan) in December 2016. The National Action Plan was the culmination of joint efforts by Government and civil society (including non-government organisations, business, academia, and community groups), and comprises 15 ambitious commitments that collectively set out an agenda for the next two years to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

The National Action Plan and information on progress towards realising its commitments is available at <http://ogpau.pmc.gov.au/>.

Establishment of the Government Business Roundtable on Anti-Corruption

At the United Kingdom's Anti-Corruption Summit in May 2016, the Minister for Justice, the Hon Michael Keenan MP, announced the Government's commitment to hosting an annual Government

Business Roundtable on Anti-Corruption (the Roundtable). This commitment is also a deliverable under the National Action Plan.

The inaugural Roundtable was held on 31 March 2016. The event provided a forum for closer government-business cooperation and consultation on anti-corruption work, and for discussion on practical steps that can be taken to better protect Australian businesses from the corrosive effects of corruption.

Review of ASIC's enforcement regime

On 19 October 2016, the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, announced a taskforce to review ASIC's enforcement regime (the Review).

The ASIC enforcement review will assess the suitability of the existing regulatory tools available to ASIC and whether there is a need to strengthen ASIC's toolkit. Relevantly, the Review's terms of reference include an examination of legislation dealing with corporations, financial services, credit, and insurance as to:

- the adequacy of civil and criminal penalties relating to the financial system, including corporate fraud
- the need for alternative enforcement mechanisms
- the adequacy of existing penalties for serious contraventions
- the adequacy of ASIC's information gathering powers, and
- any other matters which arise during the course of the Taskforce's review, which appear necessary to address any deficiencies in ASIC's regulatory toolset.

The Taskforce will undertake extensive consultation before submitting a final report to Government in September 2017. More information on this Review is available at

<http://www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/ASIC-Enforcement-Review>.

Consideration of whistleblower protections

Whistleblowing is an important mechanism through which evidence of corruption can be identified and investigated. As such, the Government is currently considering a number of initiatives to improve protections for whistleblowers.

In the 2016-17 Budget the Government announced it would introduce new arrangements to better protect tax whistleblowers as part of its commitment to tackling tax misconduct. Legislation is to be implemented by 1 July 2018.

In addition, as part of the National Action Plan, the Government has committed to ensuring appropriate protections are in place for people who report corruption, fraud, tax evasion or avoidance, and misconduct within the corporate sector.

On 20 December 2016, the Treasury released, on behalf of the Government, a consultation paper seeking public comment on appropriate protections for tax whistleblowers and the adequacy of existing whistleblower protections in the corporate sector. In particular, this paper sought comment on whether corporate sector protections and similar provisions under financial system legislation should be harmonised with whistleblower protections in the public sector.

The consultation paper:

- gathered information about existing whistleblower provisions already operating in Australia and overseas in major comparable jurisdictions
- examined existing Australian provisions
- canvassed a range of options for reform of existing protections under the *Corporations Act 2001* (Cth) and similar provisions under other financial system legislation
- canvassed a proposal for tax legislation to introduce specific protections for whistleblowers, and
- identified the variety of legislative approaches that may be taken by the Government to broaden reform in this area generally.

More information on this consultation paper is available at

<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/Review-of-whistleblower-protections>.

This consultation paper is intended to complement the inquiry by the Parliamentary Joint Committee on Corporations and Financial Services into whistleblower protections in the corporate, public and not-for-profit sectors, which is due to report by 30 June 2017.

Additionally, on 15 July 2016 Mr Philip Moss AM delivered his report on the statutory review of the effectiveness and operation of the *Public Interest Disclosure Act 2013* (Cth) (PID Act) to the Minister assisting the Prime Minister for the Public Service, Senator the Hon Michaelia Cash MP. The report is available at <https://www.dpmc.gov.au/sites/default/files/publications/pid-act-2013-review-report.pdf>.

The report found that the PID Act has achieved its objectives of promoting integrity and accountability in the Commonwealth public sector, but that it could be improved. The report made 33 recommendations, which Government will consider in conjunction with the findings from the Parliamentary Committee on Corporations and Financial Services' *Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors*, to ensure future reforms further encourage, support, and strengthen protections for whistleblowers in the public sector.

Consultation on a proposed model for a Deferred Prosecution Agreement scheme

The Australian Government is consulting publicly on a proposed Australian Deferred Prosecution Agreement (DPA) scheme. This would enable prosecutors to reach an agreement to defer a prosecution against a company that has engaged in serious corporate crime, if the company complies with specified conditions to address their misconduct. Consultation on this issue forms part of the Australian Government's exploration of options to facilitate a more efficient and effective response to corporate crime by encouraging companies to self-report incidences of corruption and misconduct.

The Minister for Justice, the Hon Michael Keenan MP, released a consultation paper on the proposal in 2016. The paper received 17 responses, all but two of which endorsed, or conditionally endorsed, the implementation of an Australian DPA scheme. Based on these responses, the Minister released a further consultation paper on 31 March 2017, which outlined a proposed model for how a DPA scheme could operate.

Comments on the proposed model are due by 1 May 2017. More information on this consultation is available at <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx>.

Consultation on foreign bribery reforms

The Government is considering amendments to the *Criminal Code Act 1995* (Cth) to improve its effectiveness in addressing foreign bribery, and to remove possible impediments to a successful prosecution.

These proposed amendments would:

- extend the definition of foreign public official to include candidates for office
- remove the requirements that the benefit/business advantage must be ‘not legitimately due’ and replace it with the concept of ‘improperly influence’ a foreign public official
- extend the offence to cover bribery to obtain a personal advantage
- create a new foreign bribery offence based on the fault element of recklessness
- create a new corporate offence of failing to prevent foreign bribery (and provide that the Minister for Justice must publish guidance on the steps companies can take to prevent an associate from bribing foreign public officials)
- remove the requirement of influencing a foreign public official in the exercise of their official capacity, and
- clarify that the offence does not require the accused to have a specific business or advantage in mind, that business or an advantage can be obtained for someone else.

On 4 April 2017, the Minister for Justice released a public consultation paper on the proposed amendments. The consultation paper is available online at <https://www.ag.gov.au/consultations/Pages/Proposed-amendments-to-the-foreign-bribery-offence-in-the-criminal-code-act-1995.aspx>. Submissions are due to the Attorney-General’s Department by Monday 1 May 2017.

Consultation on a register of beneficial ownership

On 13 February 2017, Treasury released a public consultation paper seeking views on options to increase transparency of the beneficial ownership of companies.

The consultation delivers on commitments made by Australia at the UK Anti-Corruption Summit in May 2016 and in the National Action Plan. Additionally, at the G20 Leaders’ Summit in September 2016, Australia agreed to the G20 2017-2018 Anti-Corruption Action Plan, which stated that transparency over beneficial ownership is critical to preventing and exposing corruption and illicit finance.

The consultation paper sought views on the details, scope, and implementation of a beneficial ownership register for companies. In particular, it sought feedback on what information needs to be collected to increase transparency of the beneficial ownership of companies in order to combat illicit activities, and how this information should be collected, stored, and kept up to date. It also sought feedback on the expected compliance costs for affected parties.

More information on this consultation is available at <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/Beneficial-ownership-of-companies>.

Review of AusTender reporting

The submission to the 2016 inquiry included information on the Commonwealth Procurement Rules (CPRs) - the framework under which entities undertake their own procurement.

The CPRs require entities subject to the *Public Governance, Performance and Accountability Act 2013* (Cth) to report their procurement contracts valued at \$10,000 and above on AusTender, the Australian Government's procurement information system. Finance is currently undertaking a review of Austender reporting's compliance with the Open Contracting Data Standard. The review is a commitment under the Open Government National Action Plan.

Legislative reform and development

Passage of the Fair Work (Registered Organisations) Amendment Act 2016 (Cth)

The *Fair Work (Registered Organisations) Amendment Act 2016* (Cth) (Fair Work Amendment Act) passed the parliament on 22 November 2016. Upon proclamation, the Act will establish the Registered Organisations Commission (the Commission) to monitor and regulate registered organisations. The Commission will have broad investigation and information gathering powers to investigate contraventions of the *Fair Work (Registered Organisations) Act 2009* (Cth), and will also be empowered to receive and investigate protected disclosures.

Upon proclamation, the Fair Work Amendment Act will also significantly strengthen whistleblower protections for people who report corruption in unions and employer organisations. Under the Act, the Courts can award compensation, impose injunctions, and craft other relief to rectify any detriment that may flow from actual or threatened reprisals against whistleblowing. Courts could also make compensation orders even when detriment ensued from a failure by a manager to prevent a reprisal.

Introduction of the Fair Work Amendment (Corrupting Benefits) Bill 2017

The Government introduced the Fair Work Amendment (Corrupting Benefits) Bill 2017 to the parliament on 22 March 2017 to ban corrupt and illegitimate payments made between employers and unions, and to require employers and organisations that are bargaining representatives to disclose financial benefits they stand to gain as a result of an enterprise agreement before the agreement is voted on.

Introduction of information sharing measures in the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017

The Government introduced the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 on 30 March 2017. Under Schedule 7 of this Bill, the Commonwealth will be able to more effectively gather personal information from within the Commonwealth and more broadly (including from the private sector and State and Territory agencies) to reduce the amount of public money lost to, and the damage inflicted by, fraud and corruption.

The amendments also protect privacy by limiting information sharing to circumstances that are necessary for an integrity purpose. This is similar to existing safeguards under the *Privacy Act 1988* (Cth). The amendments also enable guidelines on the operation of these measures to be made which require the approval of the Information Commissioner.