Australian Government

Australian Government response to the Senate Legal and Constitutional Affairs References Committee report:

Work undertaken by the Australian Federal Police's Oil for Food Taskforce

FEBRUARY 2016

Introduction

On 26 June 2014, the Senate referred the matter of the work undertaken by the Australian Federal Police's (AFP) Oil for Food Taskforce to the Legal and Constitutional Affairs Committee for inquiry and report by 4 September 2014. On 18 March 2015, the Senate granted an extension of time for reporting until 24 March 2015.

The terms of reference for the Inquiry were:

(a) the work undertaken by the AFP's Oil for Food Taskforce;
(b) the level of resourcing that was provided and used by the taskforce; and
(c) any other related matters.

The Legal and Constitutional Affairs Committee handed down its report 'Work undertaken by the AFP's Oil for Food Taskforce' on 24 March 2015. The report included one majority recommendation and four minority recommendations.

The Australian Government's response to the Report is set out below. The response addresses all five recommendations contained in the Report.

Majority Report Recommendations

Recommendation 1

1.29 Having heard the evidence and read the submissions, the majority of the committee is persuaded that this matter should not further exercise the resources of the Federal Parliament

Agreed.

The Government notes that the matters identified by Commissioner Cole's *Inquiry into certain Australian companies in relation to the UN Oil-for-food Programme* have been investigated through a number of different forums, including an independent investigation by the Australian Securities and Investments Commission (ASIC) which resulted in civil convictions and the imposition of substantial penalties.

The Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity's 2013 inquiry into the *Integrity of overseas Commonwealth law enforcement operations* also discussed the AFP's Oil for Food Taskforce. As part of its inquiry, the Committee questioned both the Department of Foreign Affairs and Trade and the AFP about the Oil-for-Food Programme and the Taskforce. The Committee's final report did not make any adverse findings or recommendations on the work of the AFP's Oil for Food Taskforce.

Chair's Minority Report Recommendations

Recommendation 1

6.29 The Chair recommends the Australian Commission for Law Enforcement Integrity launch a broad inquiry into the structural, recurrent failings of the AFP to properly investigate and prosecute foreign bribery and corruption and the merits of establishing a specialised agency to investigate and prosecute the commission of white-collar crime by Australian individuals or corporate entities regardless of where the alleged crime took place.

Not agreed.

The Integrity Commissioner, supported by the Australian Commission for Law Enforcement Integrity (ACLEI), is responsible for investigating corruption issues involving staff members of law enforcement agencies specified in the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), including the AFP.

Under the LEIC Act, the Integrity Commissioner is responsible for deciding whether or not to commence a corruption investigation or inquiry. ACLEI, on behalf of the Integrity Commissioner, has advised that there is no indication that an investigation is warranted in the circumstances described.

The Government has also established structures to strengthen the Commonwealth's ability to investigate and prosecute corporate offences, particularly fraud and corruption.

For example, in July 2014, the Minister for Justice announced the establishment of the AFP-led Fraud and Anti-Corruption Centre (FAC Centre). The FAC Centre is focused on the following objectives:

- strengthening law enforcement capability to respond to serious and complex fraud, foreign bribery, corruption by Australian Government employees and complex identity crime
- providing a coordinated approach to prioritising the Commonwealth operational response to these matters, and
- protecting Commonwealth revenue.

In 2014 and 2015, the FAC Centre's multi-agency approach and flexible response model contributed to bringing corruption prosecutions to court. For example:

- A Commonwealth employee was charged and prosecuted for attempting to disclose Commonwealth information. The employee was sentenced to six months imprisonment, released on a recognisance to be of good behaviour for two years and fined $1,000.
- A Commonwealth employee was paid to release sensitive data for private gain. The employee and his associate were charged with insider trading, corruption, identity fraud and proceeds of crime offences. The employee received a head sentence of 3 years, 3 months and his associate received a head sentence of 7 years, 3 months.

Recommendation 2

6.37 The Chair recommends that the Commonwealth government consider amendments to section 29 of the Public Interest Disclosure Act 2013 (Cth) to expand the definition of 'disclosable conduct' to include conduct by Australian individuals or corporate entities, regardless of where the conduct took place.

Not agreed.

Protections for whistleblowers in the private sector are found within the *Corporations Act 2001*, *Banking Act 1959*, *Insurance Act 1973*, *Life Insurance Act 1995* and the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

ASIC has responsibility for enforcing the majority of Corporations Act provisions, including those providing protection to corporate whistleblowers. To support the implementation of the Corporations Act protections, ASIC has established an Office of the Whistleblower, which will monitor the handling of all whistleblower reports, manage staff development and training and handle the relationship with whistleblowers on more complex matters. The Office builds on improvements that ASIC has made to its whistleblower arrangements by adopting a centralised monitoring procedure.

The Australian Prudential Regulation Authority (APRA) has responsibility for enforcing the whistleblower protections under the Banking Act, Insurance Act, Life Insurance Act and SIS Act. To support this role, APRA has put robust processes in place for handling whistleblower complaints relating to the institutions regulated under those Acts. Information on APRA's policy and process is available on its website: <http://www.apra.gov.au/aboutapra/pages/information-on-being-a-whistleblower.aspx>.

Recommendation 3

6.43 The Chair recommends that the Senate order the AFP to produce the legal advice provided by Mr Hastings QC to the AFP, or parts thereof, that show the legal grounds and reasons for the closure of the Taskforce.

Not agreed.

The AFP engaged Mr Hastings QC to undertake a review of the Oil for Food Taskforce and provide advice on the likelihood of any successful prosecutions.

The AFP does not waive legal professional privilege on legal advice obtained during the course of an investigation.

Recommendation 4

6.48 The Chair recommends that a federal anti-corruption body be established to investigate and report on corruption and/or gross negligence within the Commonwealth Parliament and government agencies, including the Australian Federal Police.

Not agreed.

The Government has a zero tolerance approach to corruption and is committed to stamping out corruption in all its forms. Transparency International consistently ranks Australia as one of the least corrupt countries in the world. Many other countries also identified as some of the least corrupt in the world do not have national anti-corruption commissions, including Canada, New Zealand and the United States.

At the Commonwealth level, there is an effective multi-agency approach to preventing and combating corruption. Australia's robust multi-agency approach vests specialised functions and responsibilities in a number of agencies including:

- the AFP and the AFP-led FAC Centre which investigate serious and complex crimes against Australian laws including fraud and corruption
- the Integrity Commissioner, supported by ACLEI, who has law enforcement and coercive information-gathering powers and specialised resources to detect, disrupt and deter corrupt conduct in Commonwealth law enforcement agencies
- the Commonwealth Ombudsman's Office, which handles complaints regarding government maladministration, carries out specialised oversight tasks and can receive reports of suspected wrongdoings within Australian Government agencies, and
- the Australian Public Service Commission, which regulates employee conduct in the Australian Public Service.