Australian Government

Australian Government response to the Senate Economics References Committee report:

Foreign bribery

FEBRUARY 2021

Introduction

The Australian Government welcomes consideration of the measures governing the activities of Australian corporations, entities, organisations, individuals, government and related parties with respect to foreign bribery by the Senate Economics References Committee.

Australia is committed to combating bribery of foreign public officials (foreign bribery) and other types of corruption. Foreign bribery impedes economic development by skewing competition and causing inefficient allocation of resources. It corrodes good governance and undermines the rule of law. It hurts our businesses, hinders economic growth and jeopardises Australia's international reputation.

The Government has taken significant steps in recent years to strengthen Australia's response to preventing, detecting and prosecuting foreign bribery.

- In the 2019-20 Budget, the Government announced funding of $25.9 million over four years for the Australian Federal Police (AFP) to strengthen its approach to countering and responding to foreign bribery. This funding has enabled the AFP to transition its foreign bribery investigations out of the former Fraud and Anti-Corruption (FAC) Centre, which had a broad crime-type remit, to a multi-agency taskforce specifically focused on foreign bribery and related transnational corruption issues.
- In November 2018 the Government provided an additional $51.5 million to the Commonwealth Director of Public Prosecutions (CDPP) and the Federal Court of Australia to enable further prosecutions of corporate crime, including those matters referred to the CDPP by the Australian Securities and Investments Commission (ASIC).
- In the 2019-2020 Budget, the Government provided over $400 million in additional funding to ASIC, representing on average a 25% per cent increase in its annual funding compared to 2017-18. This followed the Government's announcement on 7 August 2018 of an additional $70.1 million to bolster ASIC's enforcement capabilities and enable it to undertake new investigations.
- In February 2019, Parliament passed the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*. This legislation encourages stronger corporate compliance and strengthens protections for corporate sector whistleblowers who come forward to report on corporate misconduct including foreign bribery.
- In September 2019 the Government introduced the Currency (Restrictions on the Use of Cash) Bill 2019 which proposes to establish an economy-wide cash payment limit of $10,000 for payments made or accepted by businesses for goods or services. This will reduce the ability for individuals to launder the proceeds of foreign bribery through the Australian real estate sector.
- In December 2019, the Government introduced the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 (CLACCC Bill) which proposes to remove undue barriers to successful investigations and prosecutions of foreign bribery and establish a deferred prosecution agreement scheme, providing incentives for companies to self-report wrongdoing. Similar schemes have been used to effectively tackle corporate crime and transform corporate culture in both the United Kingdom and the United States.

The Australian Government welcomes discussion of opportunities to further strengthen our response to foreign bribery and thanks the Committee for the recommendations made in this report.

Background

On 24 June 2015, the Senate referred the matter of the measures governing the activities of Australian corporations, entities, organisations, individuals, government and related parties with respect to foreign bribery, to the Economics References Committee for inquiry and report by 1 July 2016.

The terms of reference for the inquiry were:

a) the measures governing the activities of Australian corporations, entities, organisations, individuals, government and related parties with respect to foreign bribery, with specific reference to the effectiveness of, and any possible improvements to, Australia's implementation of its obligations under:
    i. the OECD [Organisation for Economic Co-operation and Development] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), and
    ii. the United Nations Convention against Corruption (UNCAC); and
b) as part of, or in addition to, paragraph (a), the effectiveness of, and any possible improvements to, existing Commonwealth legislation governing foreign bribery, including:
    i. Commonwealth treaties, agreements, jurisdictional reach, and other measures for gathering information and evidence,
    ii. the resourcing, effectiveness and structure of Commonwealth agencies and statutory bodies to investigate and, where appropriate, prosecute under the legislation, including cooperation between bodies,
    iii. standards of admissible evidence,
    iv. the range of penalties available to the courts, including debarment from government contracts and programs,
    v. the statute of limitations,
    vi. the range of offences, for example:
        A. false accounting along the lines of the books and records head in the US Foreign Corrupt Practices Act,
        B. increased focus on the offence of failure to create a corporate culture of compliance,
        C. liability of directors and senior managers who do not implement a corporate culture of compliance, and
        D. liability of parent companies for subsidiaries and intermediaries, including joint ventures,
    vii. measures to encourage self-reporting, including but not limited to, civil resolutions, settlements, negotiations, plea bargains, enforceable undertakings and deferred prosecution agreements,
    viii. official guidance to corporations and others as to what is a 'culture of compliance' and a good anti-bribery compliance program,
    ix. private sector whistleblower protection and other incentives to report foreign bribery,
    x. facilitation payment defence,
    xi. use of suppression orders in prosecutions,
    xii. foreign bribery not involving foreign public officials, for example, company to company or international sporting bodies,
    xiii. the economic impact, including compliance and reporting costs, of foreign bribery, and

xiv. any other related matters.

The inquiry lapsed following the double dissolution of the 44th Parliament, but was re-referred in the 45th Parliament with the same terms of reference and a reporting date of 30 June 2017.

The Committee tabled its report on 28 March 2018. The report makes 22 recommendations.

The Australian Government's response to the committee's recommendations is provided below.

Recommendation 1

The committee recommends that the Australian Government prioritise the consideration and implementation of the recommendations in the Phase 4 OECD report, and ensure that proposed legislative changes to the foreign bribery offence and related measures to strengthen Australia's foreign bribery regime are implemented or enacted consistent with the Phase 4 OECD report.

The Government agrees in principle with this recommendation.

The Government welcomed the OECD's Phase 4 evaluation of Australia's enforcement of the foreign bribery offence, completed in December 2017. The report, which follows a rigorous peer-review examination, commended Australia on its increased enforcement of its foreign bribery laws in recent years, with seven convictions in two cases and 19 ongoing investigations (the number of convictions has since increased to 10). The report also highlighted that since Australia's Phase 3 evaluation in 2013, Australia has taken substantial steps to improve the detection and investigation of foreign bribery, including by funding enhanced inter-agency cooperation and outreach efforts led by the AFP.

The report identified several other achievements and good practices, including strengthened whistle-blower protections in the public sector, amendments to the foreign bribery offence that were made in 2015 to address previously identified weaknesses, and the creation of new false accounting offences in the *Criminal Code Act 1995* (Criminal Code). In 2017, the Australian Transaction Reports and Analysis Centre (AUSTRAC) also established the Fintel Alliance, a public-private partnership to enhance the fight against money laundering, terrorist financing, and organised crime. Australian agencies make extensive use of AFP liaison officers around the globe to support foreign bribery investigations.

The report made 13 recommendations to further strengthen Australia's anti-foreign bribery regime.

In December 2019, OECD Working Group on Bribery (OECD Working Group) presented its two year follow up report following Australia's Phase 4 evaluation. The follow up report outlined Australia's efforts to implement the recommendations and address the follow-up issues identified during its Phase 4 evaluation. In light of the information provided, the OECD Working Group concluded that Australia had fully implemented six recommendations and partially implemented three recommendations. The Government will carefully consider the four outstanding Phase 4 recommendations as part of continued efforts to combat bribery and corruption, noting that one of these recommendations would be implemented by the passage of the CLACCC Bill 2019.

The OECD Working Group's summary and conclusions, as well as Australia's written follow-up report, is available on the OECD's website (https://www.oecd.org/australia/australia-oecdanti-briberyconvention.htm).

In particular, the OECD Working Group welcomed the introduction of the CLACCC Bill 2019 which proposes a number of amendments to Australia's foreign bribery offences and related measures including the introduction of a deferred prosecution agreement (DPA) scheme.

Recommendation 2

The committee recommends that the AFP's annual report incorporate specific information about the FAC Centre, including de-identified data regarding the number of referrals received, the number of matters allocated to the AFP foreign bribery or FAC team, the number of investigations completed, the resources devoted to these activities, and the number of investigations which led to criminal/civil actions and the timeliness of such enforcement actions.

The Government agrees in principle with this recommendation.

The AFP annual report already provides general information about the AFP's enforcement efforts in relation to foreign bribery. For example, the 2018-19 annual report reported on Operation Rune, Australia's first successful prosecution of foreign bribery offences.

The AFP also currently reports on an annual basis to the OECD Working Group on Bribery with respect to ongoing foreign bribery investigations and related issues. The WGB provides a confidential forum for the AFP to provide detailed updates on active and completed investigations, including investigative steps taken and where relevant, enforcement outcomes. The OECD Working Group plays a scrutiny function in its ability to question the AFP about investigative steps taken and request that AFP report on further aspects of active or concluded cases.

Following the success of the multi-agency approach adopted through the FAC Centre, in October 2019 the AFP transitioned its foreign bribery investigations out of the former FAC Centre to a new multi-agency taskforce (Operation Integra) specifically focused on foreign bribery and related transnational corruption issues. Operation Integra continues the FAC Centre's partnership model but has a narrower crime-type remit that will allow law enforcement agencies to focus on preventing and countering foreign bribery with a view to supporting more effective investigative outcomes.

Recommendation 3

The committee recommends that consideration be given to developing a contingency mechanism that explicitly provides for additional one-off funding to appropriate agencies (Australian Federal Police, Australian Securities and Investments Commission, Commonwealth Director of Public Prosecutions) for large and complex investigation of foreign bribery offences to ensure any allegations are thoroughly investigated, and where appropriate, fully prosecuted.

The Government notes this recommendation.

The Government has mechanisms in place to ensure relevant agencies have access to resources for investigating and prosecuting foreign bribery and other matters. For example, ASIC currently has access to the Enforcement Special Account that was established by a ministerial determination on 13 September 2006 to fund costs arising from investigation and litigation of matters of significant public interest. The Government has also developed a

sustainable cost model for the Commonwealth Director of Public Prosecutions (CDPP), to ensure that it is adequately funded for changes in its workload, including changes arising through future new policy proposals. The model is intended to be flexible, to accommodate changing circumstances and priorities.

In addition to ongoing funding mechanisms, the Government has provided significant additional funding to investigating and prosecuting agencies in recent years to strengthen responses to corporate and financial crime.

In July 2015, the Government announced $127.6 million to establish the Serious Finance Crime Taskforce – an interagency taskforce to lead the Commonwealth's operational response to high priority financial crime.

In the 2016-2017 Budget, the Government provided $15 million to expand and bolster the foreign bribery investigative capability within the AFP.

In the 2017-18 Budget, the Government provided a $321 million injection of funding to the AFP, the biggest injection into the AFP's domestic capability in more than a decade.

In August 2018, the Government announced an additional $70.1 million to (among other things) bolster ASIC's enforcement capabilities and enable it to undertake new investigations.

In November 2018, the Government provided an additional $51.5 million to the CDPP and the Federal Court of Australia to enable further prosecutions of corporate crime, including those matters referred to ASIC.

In December 2018, the Government provided $182.2 million to the Australian Tax Office over four years from 2019-20 to extend the Serious Financial Crime Taskforce to leverage the capabilities and powers of Commonwealth law enforcement and regulatory agencies to target those serious crimes that present the highest risk to Australia's tax and superannuation systems. The AFP was allocated more than $28.5 million as part of this funding measure.

In the 2019-2020 Budget, the Government provided:

- an additional $35 million to support a proposed expansion of the Federal Court's jurisdiction to serious corporate crime
- over $400 million in additional funding to ASIC, representing on average a 25% per cent increase in its annual funding compared to 2017-18. This funding will support (among other things) an accelerated enforcement strategy, and
- an additional $25.9 million over four years to the AFP to combat foreign bribery.

The Government will continue to monitor the level of resources available to agencies for investigating and prosecuting foreign bribery. The Government will consider any additional resourcing for large and complex investigations in accordance with normal Budget processes and as the need arises.

Recommendation 4

The committee recommends that in considering the report of the review of the enforcement regime of ASIC, the government have regard to how any proposed changes will help improve the enforcement of penalties by ASIC for foreign bribery related offences.

The Government agrees with this recommendation.

While ASIC is not responsible for enforcing Australia's foreign bribery offence, it administers provisions which may apply to foreign bribery related conduct – such as the false accounting, falsification of books and records and directors' duties provisions in the *Corporations Act 2001* (Corporations Act).

In March 2019 the Parliament passed the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Penalties Act), which significantly strengthened the penalty regime in ASIC-administered legislation.

The Penalties Act will assist ASIC in its ability to enforce offences related to foreign bribery, including through increased penalties and strengthened powers. For example, the Penalties Act increased the maximum penalty for a breach of section 184 of the Corporations Act (which may be used to prosecute directors personally involved in their company's breach of foreign bribery laws where their conduct is reckless or intentionally dishonest, and contrary to the interests of the company). The penalty for section 184 was also amended to include multiple of benefit gained (or loss avoided) and 10% annual turnover for corporations as alternative methods of calculating the appropriate maximum penalty. The Penalties Act also increased penalties for other foreign bribery related offences, such as books and records offences in sections 1307 and 286 of the Corporations Act.

Recommendation 5

The committee recommends that the definition of 'foreign public official' in section 70.1 of the *Criminal Code Act 1995* (Criminal Code) be amended to include candidates for office.

The Government agrees with this recommendation.

The CLACCC Bill proposes amendments to the definition of 'foreign public official' in section 70.1 of the Criminal Code, to include a candidate for office.

The CLACCC Bill also proposes a further amendment to the defence of lawful authority in section 70.3 of the Criminal Code, to ensure that the defence extends in the same way to candidates for office as it currently does to officials in office.

Recommendation 6

The committee recommends that the foreign bribery offence apply in circumstances where the bribe of a foreign public official was to obtain or retain a personal advantage.

The Government agrees with this recommendation.

The CLACCC Bill proposes an amendment to subsection 70.2(2) of the Criminal Code so that the foreign bribery offence extends to cover bribery to obtain or retain a personal advantage.

Recommendation 7

The committee recommends that the Criminal Code be amended to include a new corporate offence of failing to prevent foreign bribery, and that principles-based guidance be published as to the steps companies need to take in order to establish and implement adequate procedures in relation to the new failing to prevent foreign bribery offence.

The Government agrees with this recommendation.

The CLACCC Bill proposes a new corporate offence for failing to prevent foreign bribery. The new offence (proposed section 70.5 of the Criminal Code) would automatically trigger the liability of a corporation where an associate commits bribery for the profit or gain of the corporation, and the corporation does not have adequate procedures in place to ensure foreign bribery does not occur. An 'associate' would be defined broadly, to include an officer, employee, agent, contractor, subsidiary or controlled entity of the body corporate, or a person who otherwise performs services for the body corporate.

These reforms would be accompanied by Ministerial guidance (a requirement under proposed section 70.5B) on the steps companies can take to implement effective compliance programs to prevent bribery by their associates. This guidance will be principles-based and will be designed to be of general application to corporations of all sizes and in all sectors.
On 2 December 2019, the Government released draft guidance for public consultation and sought feedback by 28 February 2020.

Recommendation 8

The committee recommends that as part of the public consultation on the minister's guidance on adequate procedures in relation to the new failing to prevent foreign bribery offence, the government publish an exposure draft of the guidance and allow a period of no less than four weeks for stakeholders to provide comment.

The Government agrees with this recommendation.

The Government has consulted on an exposure draft of the Minister's guidance. The public consultation period opened on 2 December 2019, and closed on 28 February 2020. Seven

written submission were received. The Government will review feedback received through the consultation process before releasing a final version of the guidance.

The guidance is broadly consistent with the guidance that the United Kingdom Ministry of Justice has published in relation to section 9 of the *Bribery Act 2010* (UK). This is in line with the preference Australian industry has expressed and will enable Australian companies that have already framed their anti-bribery policies on international guidelines to easily incorporate additional policies relevant to the Australian context.

Recommendation 9

The committee recommends that the minister finalise and publish the guidance on adequate procedures with sufficient time before the commencement of the new failing to prevent foreign bribery offence to allow companies to implement the necessary compliance measures.

The Government agrees with this recommendation.

The Government intends to finalise and publish the guidance with sufficient time for corporations to implement necessary compliance measures.

The CLACCC Bill contains a delayed commencement provision. The amendments would commence six months after the amending legislation receives the Royal Assent and is intended to allow sufficient time for businesses to make any adjustments for the new provisions.

Recommendation 10

The committee recommends that the foreign bribery offence be amended to clarify that:

- a person is prohibited from bribing a foreign public official to obtain a business advantage for someone else; and
- the payer of a bribe does not need to intend to obtain or retain any specific business or business advantage to be guilty of the foreign bribery offence.

The Government agrees with this recommendation.

The CLACCC Bill would introduce an amendment to the foreign bribery offence in section 70.2 of the Criminal Code to clarify that a person commits an offence if the person bribes a foreign public official in order to obtain or retain business or a business or personal advantage, for themselves or for someone else (new paragraph 70.2(1)(b)).

Proposed new paragraph 70.2(2)(b) will provide that a person does not need to intend to obtain or retain a particular business or a particular business or personal advantage to be found guilty of an offence. This means the prosecution would not need to prove the particular business or particular business or personal advantage that is related to the bribery.

Recommendation 11

The committee recommends that the government introduce a deferred prosecution agreement scheme for corporations, supported by a strong legislative framework which requires strict compliance and allows for adequate responses in the event of a breach.

The Government agrees with this recommendation.

The CLACCC Bill would introduce a Commonwealth deferred prosecution agreement (DPA) scheme for corporations.

The proposed DPA scheme would require strict compliance with the terms of a DPA and allow for adequate responses in the event of a breach in the following ways:

- If a company materially contravenes a DPA, it may be prosecuted in relation to the matters contained in the DPA. The statement of facts the company agreed to as part of the DPA will be taken to be agreed facts in any such criminal proceedings or subsequent related matters under the *Proceeds of Crime Act 2002*.
- Where a minor or inadvertent contravention of the DPA occurs, the CDPP may agree, with the company, to vary the terms of the DPA as appropriate rather than prosecute the company.

Recommendation 12

The committee recommends that other than in exceptional circumstances, deferred prosecution agreements be published, together with details on how a company has complied with the terms and conditions, and any breach, variation or termination.

The Government agrees in principle with this recommendation.

Under the amendments proposed in the CLACCC Bill, the CDPP would be required to publish an approved DPA on the CDPP's website, unless the Director determines that it is appropriate not to do so in the interests of justice. The same publishing requirements would apply in relation to a varied DPA where a DPA is amended after it has been approved.

Where the Director determines that it is appropriate not to publish the DPA in the interests of justice, the Director would be able to publish a redacted version of the DPA, publish the DPA at a later time or not publish the DPA at all. Circumstances within which the Director may consider it appropriate not to publish the DPA (in full or in part) include, but are not limited to circumstances where publishing the full DPA would:

- pose a threat to public safety
- prejudice an ongoing investigation
- prejudice the fair trial of a person, or
- be contrary to an order of a court.

In most cases, any legal proceedings brought on the basis of a material contravention of a DPA would be public, subject to any contrary court order. Where appropriate, the CDPP would also be able to choose to separately publish notification and details of any breach of

the DPA. However, CDPP's determination to publish such details would be subject to consideration of a variety of factors including, where relevant, the possible impact on any criminal investigation or prosecution (against the company or otherwise).

The Government has consulted on a DPA Code of Practice that provides guidance on when and how the CDPP would publish notification of the conclusion of a DPA after the DPA's terms have been fulfilled, alongside details of the corporation's compliance with a DPA's terms. The Government will use feedback received through this consultation process to inform the content of the final Code of Practice.

Recommendation 13

The committee recommends that the Code of Practice make provision for the appointment and methodology of independent external monitors at the company's expense to monitor compliance with a deferred prosecution agreement.

The Government agrees with this recommendation.

The Government intends that the Code of Practice will make provision for the appointment of independent external monitors at the company's expense. It is anticipated that monitoring mandates will be adapted to the facts and circumstances of each case, but that the Code will provide information on the appointment and likely duties of monitors.

As indicated in the response to Recommendation 12, the Government has consulted on the DPA Code of Practice and will use feedback received through this consultation process to inform the content of the final Code of Practice, including with respect to the information on the appointment and roles of independent monitors.

Recommendation 14

The committee recommends that as part of the public consultation on the draft Code of Practice, the government publish an exposure draft and allow a period of no less than four weeks for stakeholders to provide comment.

The Government agrees with this recommendation.

An exposure draft DPA Code of Practice was released for consultation on 8 June 2018. The consultation process concluded on 9 July 2018. The Government is reviewing feedback received through the consultation process and will make amendments as appropriate before releasing a final version of the Code.

Recommendation 15

The committee endorses the Parliamentary Joint Committee on Corporations and Financial Services report on Whistleblower Protections, and urges the government to work with the expert advisory panel to expeditiously implement the committee's outstanding recommendations.

The Government notes this recommendation.

The Parliament passed the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (EWP Act) in February 2019. The Act commenced on 1 July 2019.

The Government consulted with a number of stakeholders, including the expert advisory panel, in developing this legislation.

The EWP Act addresses many of the recommendations in the Parliamentary Joint Committee on Corporations and Financial Services report on Whistleblower Protections (PJC Report).

The Government's response to the PJC Report was tabled in Parliament in April 2019.

Recommendation 16

That the government request the expert advisory panel on whistleblowers to consider whether the scope of Australia's whistleblower protections provides sufficient coverage in foreign bribery cases.

The Government notes this recommendation.

Coverage of 'disclosable matters' under the EWP Act is broad and captures disclosures, including:

- suspected or actual contraventions of laws falling within the remit of ASIC and the Australian Prudential Regulatory Authority (APRA),
- suspected or actual contraventions of offences under Commonwealth laws carrying penalties of imprisonment of 12 months or more (the foreign bribery offence attracts a penalty of up to 10 years' imprisonment), and
- suspected misconduct or an improper state of affairs or circumstances in respect of any regulated entity.

Recommendation 17

The committee recommends that the minister's guidance on adequate procedures in relation to the new failing to prevent foreign bribery offence include the existence of internal corporate whistleblowing systems.

The Government agrees with this recommendation.

The Government has included the existence of internal corporate whistleblowing systems in the draft guidance on adequate procedures. This is in line with the views industry has expressed during previous consultation processes.

Under the EWP Act, public and large proprietary companies and registrable superannuation entities are required to have a whistleblower policy (section 1317AI of the Corporations Act).

Recommendation 18

The committee recommends that the facilitation payment defence currently provided for in section 70.4 of the *Criminal Code Act 1995* (and the associated subsections 26-52(4) and 26-52(5) of the *Income Tax Assessment Act 1997*) be abolished over a transition period, to enable companies and individuals to adjust their business practices and procedures to comply with the law as amended.

The Government notes this recommendation.

The Government agrees with the Coalition Senators' additional comments to the report.

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

Operational experience has indicated that the facilitation payment defence has not been an impediment to the enforcement of the foreign bribery offence. Facilitation payments are not prohibited under the OECD Anti-Bribery Convention. The United States and New Zealand retain facilitation payment defences.

The Government will continue to review the operation of this defence, as required under the OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions 2009. In line with the OECD recommendations, Australian agencies, wherever possible, strongly discourage businesses from making facilitation payments.

The proposed amendments to Australia's foreign bribery laws contained in the CLACCC Bill will be significant, including introduction of a new offence of failing to prevent bribery by associates and the extension of the existing offence to obtain a personal advantage.

Recommendation 19

The committee recommends that ASIC expand the register of beneficial ownership to require companies, trusts and other corporate structures to disclose information regarding their beneficial ownership; and that this information be maintained in a central register.

The Government notes this recommendation.

The Government has committed to improve the transparency of information around beneficial ownership and control of companies available to relevant authorities. The Government is considering how best to give effect to this commitment while not imposing unnecessary regulation on business.

Recommendation 20

The committee recommends that the government introduce a debarment framework that would ensure companies are required to disclose if they have been found guilty of foreign bribery offences and give agencies the power to preclude the tenderer from being awarded a contract.

The Government agrees in principle with this recommendation.

The Government agrees in principle, noting that there are existing mechanisms allowing entities to exclude individuals and organisations convicted of serious illegal activities from winning government contacts.

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

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

The Government will consider developing additional guidance materials to ensure that procuring officials have the necessary tools to consider issues relating to foreign bribery, including the use of existing provisions in the CPRs to deal with these matters, noting that red tape and other regulatory requirements should not be uniformly increased for suppliers in relation to very remote events.

Recommendation 21

The committee recommends that government provide practical guidance to companies to draw attention to domestic and international guidance relating to foreign bribery, and to increase awareness of the high-risk sectors and regions in which Australian businesses commonly operate.

The Government agrees with this recommendation.

The Government has published a range of guidance materials to assist both individuals and corporations to understand Australia's foreign bribery laws.

Since 2012, the Australian Trade and Investment Commission (Austrade) has delivered a targeted outreach program to onshore and offshore Australian businesses for the purpose of educating businesses about the risks of bribery when conducting trade in high risk/low

governance jurisdictions. This outreach is not confined to Australian businesses but also includes local companies, suppliers and agents and local compliance agencies with a stake in addressing bribery and corruption in the public sector. The program helps businesses understand how to respond to the solicitation of bribes or instances where bribery appears a necessary part of doing business in jurisdictions with low governance standards. The program provides information about facilitation payments and conducting due diligence on foreign agents. The program also details the practical assistance Austrade can provide business when confronted with trade impediments created by corrupt foreign officials. The advice is focused on the operation of Australia's anti-bribery laws and the extraterritorial reach of that jurisdiction. It also highlights the standards expected internationally under other countries' laws. This outreach program is supported by anti-bribery governance materials available on Austrade's website and to members via local Australian Chambers of Commerce.

The Department of Foreign Affairs and Trade (DFAT) also conducts outreach sessions to businesses and industry groups on Australia's foreign bribery laws, and on best practice in compliance and risk management. DFAT's outreach activities target a broad audience, including industry, small and medium enterprises, legal and accounting professionals, financial institutions, universities and Commonwealth, state and territory governments. Outreach is conducted in a variety of formats, including DFAT-hosted events, in partnership with non-government or private sector organisations, individual briefings, and conference addresses.

AUSTRAC has developed material to assist companies to be more aware of high-risk sectors and regions where money-laundering is prevalent. AUSTRAC released new case studies in 2019 to assist reporting entities to understand indicators of money laundering, including bribery as a predicate offence. Furthermore, AUSTRAC contributed to an Indonesian and Malaysian-led Regional Threat Assessment on Laundering of Corruption Proceeds, released at the November 2019 Regional Counter Terrorism Financing Summit in Manila. Following on from this, AUSTRAC will work with regional financial intelligence agencies in 2020 to develop a corruption indicators report for use by the private sector.

The Attorney-General's Department (AGD) maintains a publicly available training module on foreign bribery on its website. This module provides information to individuals, businesses and government on the foreign bribery offence, and guidance on steps individuals and companies can take to minimise foreign bribery risks.

The Government agrees that further practical guidance for Australian individuals and companies will be beneficial. The publication of guidance on adequate procedures required by the CLACCC Bill will assist companies to understand the types of policies and procedures they may put in place to address foreign bribery risks and to create a culture of compliance. This guidance will provide references to domestic and international resources on foreign bribery.

The Government is also working on other outreach avenues to strengthen education on foreign bribery risks. For example:

- The AFP, supported by AGD, has established a public-private partnership with a number of leading Australian companies alongside civil society representation. Through this partnership, participants will leverage their respective skills, understanding and experience across the government and private sectors to jointly

engage Australian business in respect of countering foreign bribery issues. This partnership redefines the way in which foreign bribery outreach is conducted with Australia's private sector.

- In August 2018, ASIC received funding to conduct targeted reviews into corporate governance practices of large listed entities to gain practical insight in this area. ASIC established a Corporate Governance Taskforce to consider how directors and officers have overseen and managed non-financial risk (namely operational, conduct and compliance risks). The focus of the Taskforce's work was to identify good and poor practices and recommend improvements to lift corporate governance standards. The Taskforce released its 'Director and officer oversight of non-financial risk report' on 2 October 2019. The report sets out its observations on director and officer oversight of non-financial risk. It considers how directors and officers of large and complex financial services companies are discharging their duties in relation to oversight and monitoring of non-financial risk, and highlights ways that governance practices could be improved.

Recommendation 22

The committee recommends that clear information be provided in the public domain about how and where an individual or a small company should go to make a voluntary report of foreign bribery.

The Government agrees with this recommendation.

The AFP has published a fact sheet on its website which provides information about reporting avenues that any person or company can utilise to report suspected foreign bribery matters. The AFP's website allows people to report instances of foreign bribery to the AFP via the 'Report a Commonwealth Crime' portal.

The AFP and CDPP's Best Practice Guideline: Self-reporting of foreign bribery and related offending by corporations (published in December 2017) provides information about the principles and processes Australian investigating and prosecuting agencies will apply where a corporation self-reports conduct involving a suspected breach of Division 70 of the Criminal Code, bribery of foreign public officials or a related offence. While the Guideline is not directed at individuals, many of its principles and processes are relevant to any entity (including unincorporated business and individuals) seeking to make a voluntary report of foreign bribery.

Once published, the DPA Code of Practice will provide information to assist individuals and companies to understand how to make a voluntary report of foreign bribery, with a view to seeking consideration of a DPA.

Australian Coalition Senators' Additional Comments

The Government supports the Coalition Senators' additional comments.