

# Recommendations

## Recommendation 1

**2.66** 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.

## Recommendation 2

**3.105** The committee recommends that the Australian Federal Police's (AFP) annual report incorporate specific information about the Fraud and Anti-Corruption Centre (FAC), 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.

## Recommendation 3

**3.106** 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 Investment 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.

## Recommendation 4

**3.107** The committee recommends that in considering the report of the review of the enforcement regime of Australian Securities and Investment Commission (ASIC), the government have regard to how any proposed changes will help improve the enforcement of penalties by ASIC for foreign bribery related offences.

## Recommendation 5

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

## Recommendation 6

**4.39** 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.

## **Recommendation 7**

**4.102** The committee recommends that the Criminal Code Act 1995 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.

## **Recommendation 8**

**4.103** 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.

## **Recommendation 9**

**4.104** 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.

## **Recommendation 10**

**4.118** 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.

## **Recommendation 11**

**5.72** 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.

## **Recommendation 12**

**5.73** 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.

## **Recommendation 13**

**5.74** 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.

#### **Recommendation 14**

**5.75** 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.

#### **Recommendation 15**

**6.85** 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.

#### **Recommendation 16**

**6.86** The committee recommends 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.

#### **Recommendation 17**

**6.87** 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.

#### **Recommendation 18**

**7.104** 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.

#### **Recommendation 19**

**8.24** The committee recommends that Australian Securities and Investment Commission 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.

#### **Recommendation 20**

**8.54** 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.

### **Recommendation 21**

**8.83 The committee recommends that the 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.**

### **Recommendation 22**

**8.84 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.**