

Appendix 1

Examples of foreign bribery involving Australian entities

1.1 To provide some context of the scale and magnitude of foreign bribery, some of the most egregious examples involving Australian entities are explored below. A brief outline of the two most well-known scandals is presented; the Australian Wheat Board's (AWB) involvement in the United Nations Oil-for-Food Programme and the Securrency and Note Printing Australia (NPA) scandal.

1.2 In addition, more recent accusations from the private and non-government sectors are also presented to demonstrate some of the perceived shortcomings in the legislation and enforcement of Australia's foreign bribery regime. These include the allegations against Football Federation Australia (FFA), Australian mining companies BHP Billiton, Getax, and OZ Minerals, and Leighton Holdings Limited (now CIMIC Group).

1.3 It is necessary to recognise that information about foreign bribery is difficult to source and often relies on 'inside information' and investigative journalism for exposure. As such, many of the accusations made against the entities listed in this chapter are not easily verifiable unless some type of action has been taken by the Australian Government or the government of another jurisdiction (such as the Government of the United States). While the committee has attempted on multiple occasions to contact the entities named in order to substantiate the accusations and offer a right of reply, very few of these entities have responded to the committee's requests.

1.4 The committee also recognises the important role that whistleblowers play in exposing foreign bribery and corruption.

The Australian Wheat Board

1.5 In August 1990, the United Nations Security Council adopted Resolution 661 imposing an international trade embargo against Iraq to prevent it from augmenting its military capabilities.¹ In response to claims that the embargo was harming Iraqi citizens, the United Nations (UN) established an Oil-for-Food Programme in 1995 which allowed Iraq to sell oil in exchange for food and medical supplies for civilians.²

1.6 In 1999, AWB entered into a contract for inland transportation with a Jordanian company, Alia. Of the associated fees paid to that company, Alia sent the

1 United Nations, Security Council Resolutions, *Resolution 661: Iraq-Kuwait* (6 August 1990) [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/661%20\(1990\)&Lang=E&Area=RESOLUTION](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/661%20(1990)&Lang=E&Area=RESOLUTION) (accessed 14 March 2018).

2 United Nations, *Office of the Iraq Programme: Oil-for-Food*, 4 November 2003, <http://www.un.org/Depts/oip/background/> (accessed 15 March 2018).

majority to the Iraqi government. In all, the UN estimated that AWB paid \$221.7 million for 'inland transportation costs'.³

1.7 After the 2003 invasion of Iraq, the UN undertook an inquiry known as the *Independent Inquiry Committee into the United Nations Oil-for-Food Programme*, or the Volcker Inquiry. The committee found that Iraq derived more than \$1.5 billion in income from kickbacks such as those paid by AWB.⁴

1.8 Following the Volcker inquiry, the Australian Government instigated a royal commission into the role of Australian companies in the affair. The *Inquiry into certain Australian companies in relation to the UN Oil-For-Food Programme* or simply, the Cole Inquiry, was chaired by the Honourable Terence RH Cole and released its final report in November 2006. The commission found possible breaches of the *Crimes Act 1914*, the *Criminal Code 1995* (Criminal Code), the *Crimes Act 1958* (Vic) and the *Banking (Foreign Exchange) Regulations 1959*. It recommended that each of the matters be referred to the appropriate authority for consideration.⁵

1.9 The Australian Federal Police (AFP) commenced an investigation into the conduct of the AWB officials; however, in August 2009, the AFP ultimately decided to discontinue its investigation. The Commonwealth Director of Public Prosecutions (CDPP) advised that the decision was made by the AFP after obtaining independent legal advice from Mr Peter Hastings QC. The CDPP stated in its submission that 'advice was to the effect that *due to a range of factors the prospects of a successful criminal prosecution were limited and not in the public interest*'.⁶

1.10 Investigative journalist Mr Nick McKenzie laments that the scandal did not lead to reform of Australia's anti-bribery laws:

Even the AWB oil-for-food kickback scandal and royal commission in 2006 did not lead to major reform. Indeed, the AWB scandal produced no criminal bribery charges. Justice Terence Cole, who headed the royal commission, found that as the kickback payments were made at the probable direction of Iraqi Government officials, they were in all likelihood legal under Iraqi law. This was a defence for conduct that was illegal here but permitted by the law (even unwritten) in another country. Instead, the allegedly corrupt former AWB executives faced drawn out ASIC civil

3 Hon Terence RH Cole, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, vol 1, November 2006, p. 38, <https://web.archive.org/web/20070830174503/http://www.offi.gov.au/agd/WWW/unoilforfoodinquiry.nsf/Page/Report> (accessed 15 March 2018).

4 Independent Inquiry Committee into the United Nations Oil-for-Food Programme, *Report on Programme Manipulation*, 27 October 2005, p. 4, http://dpl/Books/2005/IIC_ManipulationOilForFood.pdf (accessed 15 March 2018).

5 Hon Terence RH Cole, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, vol 1, November 2006, p. xxxii, <https://web.archive.org/web/20070830174503/http://www.offi.gov.au/agd/WWW/unoilforfoodinquiry.nsf/Page/Report> (accessed 15 March 2018).

6 Commonwealth Director of Public Prosecutions, *Submission 39*, p. 3 (emphasis in original).

prosecutions. Although the former Managing Director and Chief Financial Officer did a deal and settled with ASIC for agreed penalties (disqualification from office and a fine), the saga was far from a catalyst for change. The AWB scandal became another example of Australia's failure to effectively enforce foreign bribery laws and a reminder that simply having laws that prohibit paying bribes does not mean the allegedly corrupt will be detected and punished.⁷

1.11 As this matter was extensively investigated during the Cole Inquiry, it was not a major focus of this inquiry into foreign bribery. However, it is an example of how foreign bribery legislation and/or its enforcement could be improved to more effectively deter such behaviour.

Securrency and Note Printing Australia

1.12 The allegedly corrupt practices of subsidiaries of the Reserve Bank of Australia (RBA), Securrency and NPA, are also well-known. During the 1990s, the RBA decided to sell the technology used to print polymer bank notes. It used subsidiaries Securrency and NPA to market the technology to foreign investors; however, the task of promoting the technology proved difficult.

1.13 The ABC's Four Corners current affairs program reported that, over a ten year period, directors of the two subsidiaries oversaw corruption-prone business practices, including the payment of tens of millions of dollars to foreign agents. These foreign agents allegedly used the funds to bribe foreign public officials in Vietnam, Indonesia, Nepal and Malaysia in order to secure lucrative contracts.⁸

1.14 Following an extensive investigation, the AFP charged Securrency and NPA, as well as six former executives, in July 2011 with paying bribes to foreign officials 'in order to win banknote supply contracts'. A number of further individuals were subsequently charged and, as of March 2013, a total of nine individuals had been charged in relation to the Securrency and NPA matter.⁹

1.15 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*.¹⁰ On 20 August 2012, Mr David Ellery, former Chief Financial Officer of Securrency,

7 Mr Nick McKenzie, *Submission 43*, p. 16.

8 Four Corners, *Cover Up*, 30 September 2013, <http://www.abc.net.au/4corners/stories/2013/09/30/3857148.htm> (accessed 16 March 2018); OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p. 8.

9 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Integrity of overseas Commonwealth law enforcement operations*, June 2013, pp. 9–10.

10 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Integrity of overseas Commonwealth law enforcement operations*, June 2013, p. 10.

was sentenced by the Supreme Court of Victoria to imprisonment for six months, wholly suspended for two years.¹¹

1.16 The OECD reports that, in addition to Securrency and NPA, nine former executives and sales agents of the two subsidiaries were charged with foreign bribery, conspiracy to commit foreign bribery, and/or false accounting.¹²

1.17 The trials have been shrouded in secrecy, with the court orders and identities of certain individuals unknown due to suppression orders.¹³ These prosecutions are ongoing and are reported to be the longest committal proceeding in Victorian history.¹⁴

1.18 With respect to the Securrency and NPA trial, investigative journalist, Mr Nick McKenzie observed that:

Our legal system is not well equipped to deal with these sorts of matters. There are a lot of factors at play as to why it's gone so poorly, but it is our first foreign bribery prosecution and, at the moment, it is an absolute disaster.¹⁵

1.19 Meanwhile, former Securrency official Mr Peter Chapman was convicted at Southwark Crown Court in London in May 2016 of paying approximately US\$205,000 in bribes to an agent of Nigerian Security Printing and Minting PLV in order to secure orders for the purchase of reams of polymer substrate from Securrency.¹⁶

1.20 Mr Chapman was sentenced to 30 months on each count (2 years and 6 months), to be served concurrently.¹⁷ Due to time already served, he is serving the remainder of his sentence on licence.¹⁸

1.21 In an update discussing important developments in Australia and overseas in the area of foreign bribery policy, Mr Robert Wyld noted that:

11 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Integrity of overseas Commonwealth law enforcement operations*, June 2013, pp. 10–11.

12 OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p. 8.

13 Mr Neville Tiffen, *Submission 16*, p. 10; Mr Nick McKenzie, *Submission 43*, pp. 13–14.

14 Mr Nick McKenzie, *Submission 43*, p. 13.

15 Mr Nick McKenzie, Private capacity, *Committee Hansard*, 7 August 2017, p. 8.

16 UK Serious Fraud Office, News Releases, Former securrency manager convicted of corruption, 11 May 2016, <https://www.sfo.gov.uk/2016/05/11/former-securrency-manager-convicted-corruption/> (accessed 5 March 2018).

17 UK Serious Fraud Office, Case Information, Securrency PTY Ltd, 31 March 2017, <https://www.sfo.gov.uk/cases/securrency-pty-ltd/> (accessed 5 March 2018).

18 UK Serious Fraud Office, Case Information, Securrency PTY Ltd, 31 March 2017, <https://www.sfo.gov.uk/cases/securrency-pty-ltd/> (accessed 5 March 2018). Serving a sentence 'on licence' means that the for the sentence period the prisoner must obey certain conditions.

In passing sentence, the [Southwark Crown] Court said that while the seriousness of the conduct required a custodial sentence, the total sum of bribes was 'small in comparison' to other bribes Securrency had allegedly paid in other parts of the world.¹⁹

1.22 Mr Wyld went on to highlight that the Court noted that a significant factor in mitigating the sentence in this case, was that Mr Chapman was:

...put under considerable pressure by your superiors to achieve sales and you complained to them about that...senior management from the managing director down gave you the go-ahead (for the bribes).²⁰

1.23 A directions hearing in regard to the Australian Securrency trial was held before the Supreme Court of Victoria on 31 January 2018.²¹

Football Federation of Australia

1.24 The Fédération Internationale de Football Association (FIFA), the governing body of association football, futsal and beach football, has recently been the subject of much scrutiny amidst claims that it engages in corrupt practices.²² The Australian arm, the Football Federation of Australia (FFA), has been similarly scrutinised in the media and in a number of submissions to this inquiry.²³ The FFA is reported to have paid a number of bribes in relation to the organisation's unsuccessful bid for the right to host the 2018 and 2022 FIFA World Cups. The bribes were allegedly paid with a view to inducing particular FIFA officials to support Australia's bid.

1.25 The committee received a submission concerned with this subject from Mr Jaimie Fuller who is the chairman of SKINS, a company that designs and sells compression sportswear. Mr Fuller alleged that the FFA paid the Confederation of North, Central American and Caribbean Association Football (CONCACAF) the sum of US\$462,000 for the upgrade of stadium facilities at the Joao Havelange Centre of Excellence in Trinidad and Tobago in September 2010. Mr Fuller notes that the facility is owned by the then President of CONCACAF and FIFA Executive

19 Mr Robert Wyld, Johnson Winter & Slattery, *Foreign Bribery Update — May 2016*, May 2016, <https://www.jws.com.au/en/acumen/item/775-foreign-bribery-update-may-2016> (accessed 5 March 2018).

20 Mr Robert Wyld, Johnson Winter & Slattery, *Foreign Bribery Update — May 2016*, May 2016, <https://www.jws.com.au/en/acumen/item/775-foreign-bribery-update-may-2016> (accessed 5 March 2018).

21 Supreme Court Victoria, *Supreme Court List for Wednesday 31 January 2018*, 31 January 2018, see *R v Christian Boillot*, *R v John Leckenby* and *R v Barry Thomas Brady*, https://www.supremecourt.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/02/f0/e8035e0f4/scvdailylistforwednesday31january2018.pdf (accessed 6 March 2018).

22 See, for example, Law Council of Australia, *Submission 10*, p. 11.

23 See, for example, Mr Nick McKenzie, *Submission 43*, p. 1.

Committee member, who would later vote on the World Cup bids.²⁴ The ABC reports that the money was in fact pocketed by the then President of CONCACAF,²⁵ who was later arrested and charged by US prosecutors, along with 13 FIFA colleagues, over allegations of corruption spanning 24 years.²⁶

1.26 Mr Fuller also criticises the FFA over the amounts paid to consultants for their work on the bid. The FFA's Final Report to government shows consultants engaged to facilitate Australia's bid were paid significant sums for their work on the bid which appear not to have resulted in any tangible outcomes.²⁷ Mr Fuller questions why these sums were so large and suggests that the FFA should be required to justify these consultancy fees. He also suggests that a percentage of these sums may have been intended for certain influential individuals.²⁸

Mining company activities in developing countries

1.27 Mining companies have been regularly accused of foreign bribery in developing countries, as demonstrated by the cases described below. In its submission, the Australia-Africa Mining Industry Group (AAMIG) discussed the challenges faced by the Australian mining industry when seeking to develop activities in African countries. Without suggesting corruption, AAMIG freely admits that facilitation payments are an essential element of business in Africa:

In some of the more advanced countries, it is reasonable to expect to be able to conduct business without the need to use facilitation payments. Unfortunately, for most countries this is not the case. Legislative changes designed to govern corporate behaviour, but which treat Africa as a single entity, are likely to be ineffective as they do not take into account the practical realities of doing business there.²⁹

24 SKINS, *Submission 28*, p. 6. See also Peter Rolfe, *Australian whistle-blower Bonita Mersiades says Sepp Blatter shouldn't be allowed to restructure FIFA*, 5 June 2015, <http://www.heraldsun.com.au/sport/football/australian-whistleblower-bonita-mersiades-says-sepp-blatter-shouldnt-be-allowed-to-restructure-fifa/news-story/95a49a8c26cf3288aad1fca861294205> (accessed 21 April 2016).

25 ABC and wires, *FIFA corruption: FFA chairman Frank Lowy wants Senate inquiry to prove Australia's 2022 World Cup bid was clean*, 9 June 2015, <http://www.radioaustralia.net.au/international/2015-06-09/fifa-corruption-ffa-chairman-frank-lowy-wants-senate-inquiry-to-prove-australias-2022-world-cup-bid-/1456616> (Accessed 20 April 2016).

26 Ed Thomas, *Fifa corruption: Document show details of Jack Warner 'bribes'*, 7 June 2015, <http://www.bbc.com/news/world-latin-america-33039014> (accessed 20 April 2016).

27 Football Federation of Australia, *Final Report*, p. 29 of 38, (accessed 23 February 2016).

28 SKINS, *Submission 28*, pp. 4–5. See also Peter Rolfe, *Australian whistle-blower Bonita Mersiades says Sepp Blatter shouldn't be allowed to restructure FIFA*, 5 June 2015, <http://www.heraldsun.com.au/sport/football/australian-whistleblower-bonita-mersiades-says-sepp-blatter-shouldnt-be-allowed-to-restructure-fifa/news-story/95a49a8c26cf3288aad1fca861294205> (accessed 21 April 2016).

29 Australia-Africa Mining Industry Group, *Submission 7*, p. 3.

1.28 However, as discussed in more detail below, allegations have been made that some Australian mining companies go beyond facilitation payments and engage in foreign bribery. Some salient examples are BHP Billiton's conduct as a sponsor of the 2008 Beijing Olympics, Getax's phosphate ventures in Nauru, OZ Minerals' mineral exploration in Cambodia, and Sundance's involvement in the Congo.

BHP Billiton

1.29 In May 2015, the United States Securities and Exchange Commission (SEC) reported that BHP Billiton invited 176 foreign public officials, primarily from countries in Africa and Asia, to attend the Beijing Olympics at BHP Billiton's expense. Sixty guests, as well as spouses and other guests, took up the offer and benefitted from hospitality packages that included event tickets, luxury accommodation, and sightseeing excursions valued at US\$12,000 to \$16,000 per package.³⁰

1.30 The SEC commenced an investigation into the hospitality program, and ultimately found that BHP Billiton had invited government officials who were 'directly involved in, or in a position to influence, pending negotiations, regulatory actions, or business dealings' with the company.³¹ These guests in question were from Burundi, the Philippines, the Democratic Republic of the Congo and the Republic of Guinea; however, not all of these guests ultimately attended.³²

1.31 As a result of its investigation, the SEC found that BHP Billiton failed to adequately detail in its books and records pending negotiations or business dealings between BHP Billiton and invited guests.³³ It further found that BHP Billiton failed to devise and maintain sufficient internal accounting controls over the hospitality program.³⁴ These actions constituted a breach of sections 13(b)(2)(A) and 13(b)(2)(B)

30 United States, Securities and Exchange Commission, *SEC Charges BHP Billiton with Violating FCPA at Olympic Games*, 20 May 2015, <https://www.sec.gov/news/pressrelease/2015-93.html> (accessed 5 March 2018).

31 United States Securities and Exchange Commission, *Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order*, 20 May 2015, p. 7, <https://www.sec.gov/litigation/admin/2015/34-74998.pdf> (accessed 5 March 2018).

32 United States Securities and Exchange Commission, *Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order*, 20 May 2015, p. 9, <https://www.sec.gov/litigation/admin/2015/34-74998.pdf> (accessed 5 March 2018).

33 United States Securities and Exchange Commission, *Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order*, 20 May 2015, p. 9, <https://www.sec.gov/litigation/admin/2015/34-74998.pdf> (accessed 5 March 2018).

34 United States Securities and Exchange Commission, *Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order*, 20 May 2015, p. 9, <https://www.sec.gov/litigation/admin/2015/34-74998.pdf> (accessed 5 March 2018).

of the United States *Securities Exchange Act of 1934*, and BHP Billiton agreed to pay US\$25 million to settle the charges.³⁵

Getax

1.32 The joint submission from Publish What You Pay Australia and the Uniting Church in Australia, Synod of Victoria and Tasmania referred to the activities of Getax, an Australian mineral export company, in Nauru.³⁶ The submission referred to allegations from ABC's 7.30 that Getax paid hundreds of thousands of dollars in bribes to the Nauruan opposition to install a government that would allow Getax to purchase phosphates below market value.³⁷

1.33 The submission also cited claims that the AFP had interviewed two complainants about the allegations concerning the mining permit, but that the investigation could not continue due to a lack of jurisdiction. It stated that this investigation has been reopened and an investigation into Getax is well-progressed.³⁸

1.34 The Phase 3 OECD Report published in 2012 referred to the allegedly corrupt activities of an Australian phosphate mining company in a foreign country.³⁹ In January 2013, an article by Mr Maris Beck and Mr Ben Butler published in *The Sydney Morning Herald* named this company as Getax, and alleged that it had bribed parliamentarians in Nauru in order to obtain a phosphate mining permit.⁴⁰

1.35 In September 2016, the ABC's 7.30 again reported on the matter, alleging that Getax paid tens of thousands of dollars to the family of Nauru's justice minister back

35 United States Securities and Exchange Commission, *Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order*, 20 May 2015, p. 10, <https://www.sec.gov/litigation/admin/2015/34-74998.pdf> (accessed 5 March 2018).

36 Publish What You Pay Australia and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 17*, p. 7.

37 Publish What You Pay Australia and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 17*, p. 7; 7.30, *Nauru President and Justice Minister face bribery allegations involving Australian company*, 8 June 2015, <http://www.abc.net.au/7.30/content/2015/s4251115.htm> (accessed 18 February 2018).

38 Publish What You Pay Australia and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 17*, p. 7.

39 OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p. 24, <http://www.oecd.org/daf/anti-bribery/Australiaphase3reportEN.pdf> (accessed 15 February 2018).

40 Publish What You Pay Australia and the Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 17*, p. 7; Maris Beck and Ben Butler, *Police reopen OZ, Cochlear bribery cases*, 13 January 2013, <http://www.smh.com.au/business/police-reopen-oz-cochlear-bribery-cases-20130112-2cmrt.html> (accessed 18 February 2018).

in 2008.⁴¹ Indeed, the SBS and the ABC also reported that Getax was facing investigation by the AFP.⁴²

1.36 In response to questions taken on notice by the AFP at the Senate Standing Committee on Legal and Constitutional Affairs estimates hearing on 17 October 2016 in relation to this investigation, the AFP stated:

Between February 2012 and March 2013, AFP investigators engaged the Nauru Police Force on a police-to-police basis to determine if the alleged recipients of bribes, paid by Getax Australia Proprietary Limited, were Nauruan public officials at the time. No subsequent requests for assistance were made to the Nauru Police Force after March 2013.⁴³

OZ Minerals

1.37 In 2011, *The Cambodia Daily* paper released an investigative report which alleged that OZ Minerals had been involved in foreign bribery in Cambodia.⁴⁴ The conduct in question related to OZ Mineral's actions in buying out its partner in a Mondolkiri province gold mine in 2009. In particular, the paper alleged that OZ Minerals had paid thousands of dollars to family members of government officials associated with the buyout. It was alleged that OZ Minerals paid \$US4.6 million to buy out Shin Ha, a company which held a twenty per cent share in the Mondolkiri project.⁴⁵

1.38 *The Cambodia Daily* alleged that a memorandum of agreement in its possession showed that the sale required Shin Han to provide OZ Minerals with new exploration licences 'signed by the Cambodian Minister for Mines and Energy'.⁴⁶ This alleged transaction was made possible by three Shin Ha directors, who were all close

41 ABC, *Money trail from Australian phosphate company Getax leads to Nauru minister David Adeang*, 14 September 2016, <http://www.abc.net.au/news/2016-09-14/australian-phosphate-company-getax-payments-to-nauru-minister/7838170> (accessed 5 March 2018).

42 SBS, *Gupta's company under investigation for corruption in Australia, India*, 16 September 2016, <https://www.sbs.com.au/yourlanguage/punjabi/en/article/2016/09/16/guptas-company-under-investigation-corruption-australia-india> (accessed 5 March 2018); and ABC, *Money trail from Australian phosphate company Getac leads to Nauru minister David Adeang*, <http://www.abc.net.au/news/2016-09-14/australian-phosphate-company-getax-payments-to-nauru-minister/7838170> (accessed 5 March 2018).

43 Australian Federal Police, answers to questions on notice, Senate Standing Committee on Legal and Constitutional Affairs estimates hearing on 17 October 2016, Question No. SBE16/011, p. 2.

44 Douglas Gillison and Phann Ana, 'OZ Minerals Deal a Windfall for Officials' Kin', *The Cambodia Daily*, 31 May 2011, <https://www.cambodiadaily.com/news/oz-minerals-deal-a-windfall-for-officials-kin-101770/> (accessed 6 March 2018).

45 Douglas Gillison and Phann Ana, 'OZ Minerals Deal a Windfall for Officials' Kin', *The Cambodia Daily*, 31 May 2011, <https://www.cambodiadaily.com/news/oz-minerals-deal-a-windfall-for-officials-kin-101770/> (accessed 6 March 2018).

46 Douglas Gillison and Phann Ana, 'OZ Minerals Deal a Windfall for Officials' Kin', *The Cambodia Daily*, 31 May 2011, <https://www.cambodiadaily.com/news/oz-minerals-deal-a-windfall-for-officials-kin-101770/> (accessed 6 March 2018).

relations to officials in the Cambodian mining ministry. The directors were alleged to have received funds in proportion to their shareholding.⁴⁷

1.39 However, the 2012 Phase 3 OECD Report noted that the AFP elected not to commence an investigation having 'received information from the AFP's overseas network that the transaction had been undertaken with due diligence and that all payments were made at the joint venture partner's request'.⁴⁸

1.40 The OECD was critical of the AFP's decision, writing that:

The AFP did not inquire into key matters that could have corroborated the allegations, such as whether the board members were indeed related to foreign public officials; the due diligence conducted by the company was sound; and the buy-out proceeds were channelled to the board members.⁴⁹

1.41 Following this criticism, the AFP reportedly commenced an investigation proper. OZ Minerals announced in its 2014 annual report that:

The Australian Federal Police (AFP) advised OZ Minerals in September 2014 that it is now conducting an investigation of OZ Minerals' 2009 acquisition of the remaining holding in the Okvau joint venture in Cambodia in relation to foreign bribery claims.⁵⁰

1.42 According to OZ Mineral's 2015 annual report, the scope of the AFP's investigation has since been extended to OZ Minerals' former Cambodian operations generally in relation to foreign bribery allegations.⁵¹

1.43 To date, it appears that no legal action has been taken on this matter and that the AFP investigation is continuing.⁵²

Sundance Resources

1.44 Sundance Resources has worked for over a decade to develop the Mbalam-Nabeba Iron Ore project, a significant iron ore resource which spans the Republic of Cameroon and the Republic of Congo.

47 Douglas Gillison and Phann Ana, 'OZ Minerals Deal a Windfall for Officials' Kin', *The Cambodia Daily*, 31 May 2011, <https://www.cambodiadaily.com/news/oz-minerals-deal-a-windfall-for-officials-kin-101770/> (accessed 6 March 2018).

48 OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p. 23, <http://www.oecd.org/daf/anti-bribery/Australiaphase3reportEN.pdf> (accessed 15 February 2018).

49 OECD Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia*, October 2012, p. 23, <http://www.oecd.org/daf/anti-bribery/Australiaphase3reportEN.pdf> (accessed 15 February 2018).

50 OZ Minerals, *Annual Report 2014*, p. 106, <https://www.ozminerals.com/uploads/media/ozm-ar-2014-web-c2113c7f-2989-48f7-8400-e74c1b15dc8f-0.pdf> (accessed 15 February 2018).

51 OZ Minerals, *Annual Report 2015*, p. 25, http://www.ozminerals.com/uploads/media/oz_minerals_ar2015_web.pdf (accessed 15 February 2018).

52 OZ Minerals, *Annual Report 2017*, p. 119, https://www.ozminerals.com/uploads/media/OZMinerals_2017_Annual_and_Sustainability_Report.pdf (accessed 27 March 2018).

1.45 In August 2016, Fairfax Media raised a number of allegations regarding Sundance's activities in attempting to secure the support of the government of the Republic of Congo to develop the project. It is alleged that exclusive permits over the exploration area were granted in return for gifting shares in Sundance Resources, worth up to \$13 million, to the President's family.⁵³

1.46 To date, it appears that no legal action has been taken on this matter.

Leighton Holdings Limited

1.47 In October 2013, investigative journalists Mr Nick McKenzie and Mr Richard Baker reported that Leighton Holdings Limited (Leighton),⁵⁴ one of Australia's biggest construction companies, had been implicated in a number of instances of foreign bribery. Further allegations of foreign bribery were raised in the media in March 2016.⁵⁵

1.48 To support their claims, the investigative journalists cited internal company files which allegedly documented instances of foreign bribery. Mr Stephen Sasse, a former executive of Leighton, was able to corroborate some of this evidence for the committee.

Construction of a barge in Batam, Indonesia

Allegations

1.49 One case of corruption apparently involved the construction of a barge in Batam, Indonesia. Mr Sasse provided background on the case to the committee:

In 2008-09, the Leighton International business started the process of constructing an offshore pipelay barge, which is a vessel that is designed to fix itself to the seabed using the anchoring system and then weld together and drop pipes on the sea floor for offshore oil installations and facilities...

In around 2009, the same business unit within Leighton International received a tender to build a relatively small steel structure which I described earlier as the RORO—the roll-on roll-off, facility. It was designed to go to the port of Mundra in India, which has a relatively shallow depth. So the role of this RORO was to form, if you like, a little floating bridge between the back of the roll-on roll-off car-carrying ship and the shore—so a

53 Nick McKenzie, Emmanuel Freudenthal, Michael Bachelard, and Richard Baker, 'Sundance Resources took risks in Congo business', *Australian Financial Review*, 24 August 2016, <http://www.afr.com/business/sundance-resources-took-risks-in-congo-business-20160824-gr04h2> (accessed 6 December 2017); Nick McKenzie and Emmanuel Freudenthal, 'Sundance Resources, Snowy Mountain Engineering Co embroiled in bribery scandals in Sri Lanka and Congo', *Australian Broadcasting Corporation*, 25 August 2016, <http://www.abc.net.au/news/2016-08-24/australian-companies-embroiled-in-bribery-scandals/7778324> (accessed 6 December 2017).

54 Now known as 'CIMIC Group Limited'.

55 See, for example, *The Bribe Factory*, Fairfax Media and Huffington Post, [article not dated] <http://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/leighton-news.html> (accessed 6 March 2018).

relatively small piece of steel fabrication. Shortly after the Leighton International group received that tender, managers involved in responding to that tender put in a bid to build that RORO in their own capacity. So what had happened was the company had received an invitation to tender and then, in parallel, executives of that company involved in managing that tender put in their own private tender to build the RORO. They won the tender in their private capacity, and it was fabricated in the same shipyard in Batam as was the pipelay barge known as the *Leighton Eclipse*.

What the whistleblower within Leighton International had been trying to make known throughout the group for the two or three years preceding my involvement was that the steel that was being used to construct the RORO had been purchased and allocated to the *Eclipse*. So we had a situation where not only had the entity constructing the RORO stolen the work, if you like, from its employer but the entire construction of the RORO was funded or procured through the cost code and systems that were building the *Eclipse*.⁵⁶

1.50 The allegation that steel was diverted from the *Eclipse* was also reported by Mr McKenzie, who said that \$500,000 worth of steel was procured but was apparently surplus to requirements and used to build a barge for Indian company Adani.⁵⁷ Indeed, Mr Sasse, alleged the theft was valued at US\$12 to US\$14 million.⁵⁸

Internal investigation by Leighton

1.51 Mr Sasse gave evidence to the committee on his role in the investigation of the allegations. Mr Sasse told the committee that, around the time he joined Leighton, the CEO-elect Mr David Stewart gave him a series of emails dating back to 2008 which dealt with allegations of corruption to do with the Batam barge. The allegations were made by an employee of Leighton International to senior leaders within the company; however, Mr Sasse commented that:

No-one had really responded properly to those concerns and allegations, and in October 2010 I started a process of investigating what had gone on and what was underneath these allegations.⁵⁹

1.52 Mr Sasse reported that he had 'more or less completed' that investigation by April 2011. As part of this process, Mr Sasse had reported the matter to the board and engaged a third-party specialist forensics firm to look into what Mr Sasse categorised as 'a very odd relationship with a Singapore based company that seemed to have an involvement in almost every contract that they bid'.⁶⁰

56 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 1.

57 Nick McKenzie and Richard Baker, *Building giant Leighton rife with corruption: claims*, 3 October 2013, <http://www.smh.com.au/business/building-giant-leighton-rife-with-corruption-claims-20131002-2ut2e.html> (accessed 12 February 2018). The type of currency was not specified in the article.

58 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 2.

59 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 1.

60 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 2.

1.53 No disciplinary action was taken against the employee for the alleged theft; in fact, investigative journalists, Mr McKenzie and Mr Baker report that he was given a bonus and thanked for his work by a former Leighton executive who was aware of this alleged corruption. Following legal advice, Leighton ultimately terminated the employment of the person in question and initiated legal proceedings against him to recover the missing funds.⁶¹

Investigation by law enforcement bodies

1.54 Concerns have been raised that these allegations have not been adequately investigated by Australian authorities. Mr McKenzie and Mr Baker refer to:

...the apparent failure of the corporate watchdog, the Australian Securities and Investments Commission [ASIC], to conduct rigorous investigations in the two years since Leighton alerted federal police that it may have breached foreign bribery laws in Iraq.⁶²

1.55 Despite witnesses expressing concern to the AFP about corporate offences in the company, ASIC is reported not to have spoken to witnesses or suspects. Further, AFP agents are reported to have privately complained about insufficient resources to conduct an adequate investigation.⁶³

1.56 Acting Deputy Commissioner Operations, Mr Ian McCartney, outlined the AFP's approach to the Leighton investigation, explaining that it was cooperating with Australian and international agencies to obtain information:

In this space, we jointly work with ASIC and have a seamless approach. The joint approach has been extremely beneficial. We also leverage off our foreign international partners. The AFP are part of the International Foreign Bribery Taskforce. Obviously, with all the recent reporting on [Unaoil] and Leightons, those are examples where the AFP has engaged, through the taskforce, with our international partners.⁶⁴

1.57 When asked about the progress of the investigation, Mr McCartney informed the committee that the investigation was well underway:

...I do not want to delve into individual investigations. I can say that it is progressing well. I can say it has been an incredibly complex investigation,

61 Nick McKenzie and Richard Baker, *Building giant Leighton rife with corruption: claims*, 3 October 2013, <http://www.smh.com.au/business/building-giant-leighton-rife-with-corruption-claims-20131002-2ut2e.html> (accessed 12 February 2018).

62 Nick McKenzie and Richard Baker, *Building giant Leighton rife with corruption: claims*, 3 October 2013, <http://www.smh.com.au/business/building-giant-leighton-rife-with-corruption-claims-20131002-2ut2e.html> (accessed 12 February 2018).

63 Nick McKenzie and Richard Baker, *Building giant Leighton rife with corruption: claims*, 3 October 2013, <http://www.smh.com.au/business/building-giant-leighton-rife-with-corruption-claims-20131002-2ut2e.html> (accessed 12 February 2018).

64 Mr Ian McCartney, Acting Deputy Commissioner Operations, Australian Federal Police, *Committee Hansard*, 22 April 2016, p. 24.

and that is linked into how long and how protracted it has been, but from our perspective we are positively progressing that investigation.⁶⁵

1.58 The AFP admitted that the investigation began in 2012 and remained open but confirmed that the committee could expect to see some developments in the future.

1.59 ASIC was also given the opportunity to comment on the Leighton case:

ACTING CHAIR: ...In addition to the Unaoil matters that have been through the Fairfax press recently, is there an ongoing investigation into Leighton at the moment? Are you looking at them or are you waiting for the AFP to deal with them first?

Mr Stogdale: There is an investigation on foot at the moment in connection with Leightons which I do not particularly want to talk about. It has been on foot, I think, since March 2014. That is about as much as I can tell you.

ACTING CHAIR: So there is one 'major matter'—you used that word. It has been traversed through the press. So, without you having to speak to it, I think there is a framework understanding of what we are talking about. It relates to matters to do with Leighton Holdings and that investigation has now been going on for two years—correct?

Mr Stogdale: Yes.

ACTING CHAIR: We heard from the AFP this morning that they are conducting their own investigation as to whether criminal activity took place as part of that. They have been in touch with you about that?

Mr Stogdale: Yes, we have liaised with them in relation to our investigation.⁶⁶

1.60 The committee notes the need for discretion in relation to ongoing investigations, and understands that at the time of the hearing it was unclear whether ASIC had spoken to witnesses or suspects, as reported. However, it was apparent that an investigation was underway.

Recent false accounting prosecution against ex-Leighton Holdings Executives

1.61 In 2017, ASIC charged two former Leighton employees for engaging in conduct that resulted in the falsification of the company's books in contravention of the *Corporations Act 2001*.⁶⁷ The trial of the two accused was initially listed to

65 Mr Ian McCartney, Acting Deputy Commissioner Operations, Australian Federal Police, *Committee Hansard*, 22 April 2016, p. 24.

66 Mr George Stogdale, Senior Executive, Corporations and Corporate Governance Enforcement, Australian Securities and Investments Commission, *Committee Hansard*, 22 April 2016, p. 36.

67 ASIC, Media centre, *17-020MR Former Leighton employees charged*, 31 January 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-020mr-former-leighton-employees-charged/> (accessed 5 March 2018).

commence on 27 November 2017. However, on 29 November 2017, the trial was adjourned to 15 October 2018.⁶⁸

Unaoil

1.62 In 2013, it was alleged that Leighton paid a \$42 million kickback to Unaoil, an engineering and construction services firm linked to Iraqi officials, who awarded Leighton a \$750 million oil pipeline contract. It is alleged that an internal memorandum indicated that the Leighton International Managing Director and the Leighton CEO were aware of this kickback, with the CEO himself approving the payment.⁶⁹

1.63 The scale of Leighton's alleged corruption was further revealed in March 2016 with the culmination of a six month investigation by Fairfax Media and Huffington Post. The team of journalists acquired thousands of emails from the account of the chief executive of Unaoil.

1.64 Fairfax alleges that Leighton Holdings, through its international arm, Leighton Offshore, paid a number of bribes to senior Iraqi officials in 2010 in order to win contracts and extensions to an existing contract. Fairfax alleges that these bribes were paid with the knowledge of the former Leighton Offshore chief. Fairfax further alleges that Leighton Offshore backdated an invoice which was then paid through a money-laundering hub in the United Arab Emirates. The value of this alleged bribe was approximately \$6.4 million and included an \$800,000 fee to Unaoil for facilitating the transaction. Leighton Offshore is also accused of setting up its own relationships with corrupt Iraqi officials in the South Oil Company.⁷⁰

1.65 Investigative journalists, Mr McKenzie and Mr Bachelard, wrote that:

The evidence will revive a long-running Australian Federal Police bribery investigation into the company and its former executives, which began in 2011 but is yet to lead to any charges.⁷¹

1.66 Mr Baker and Mr McKenzie also reported in April 2016 on the treatment of a whistleblower employed by Leighton subsidiary, Thiess. The whistleblower raised concerns about a contract in India with Leighton's ethics committee chair. The whistleblower approached Leighton's ethics committee chair in 2014 referring to an internal report prepared for Thiess by its law firm, Ashurst, which is said to reveal Thiess' exposure to an alleged multi-million dollar bribery scandal in India. After the

68 ASIC, Media centre, *17-020MR Former Leighton employees charged*, 31 January 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-020mr-former-leighton-employees-charged/> (accessed 5 March 2018).

69 Nick McKenzie and Richard Baker, *Building giant Leighton rife with corruption: claims*, 3 October 2013, <http://www.smh.com.au/business/building-giant-leighton-rife-with-corruption-claims-20131002-2ut2e.html> (accessed 12 February 2018).

70 Nick McKenzie and Michael Bachelard, 'Leightons' bribery ran into millions', *The Age*, 31 March 2016, p. 9.

71 Nick McKenzie and Michael Bachelard, 'Leightons' bribery ran into millions', *The Age*, 31 March 2016, p. 9.

whistleblower's disclosure, the report was 'buried' and the employee was allegedly 'forced' out of their job. Thiess later settled an unfair dismissal case with the whistleblower for an undisclosed sum.⁷²

1.67 The committee has written to Leighton Holdings, now CIMIC, on a number of occasions to seek a response to the allegations. No response has been received to date.

Procedures for handling allegations of corruption

1.68 Mr Sasse also made other allegations of corruption that he discovered during his time with Leighton,⁷³ but with respect to the RORO investigation he concluded that it:

...turned up numerous other issues that needed to be followed up and tracked down: kickbacks to subcontractors, allegations about payments for the procurement of work—that is, facilitation payments, which fall under the bribery heading. An almost overwhelming collection of issues came out of that core RORO investigation.⁷⁴

1.69 Mr Sasse highlighted the lack of procedures for handling allegations of corruption and provided a damning assessment of Leighton's culture:

The Leighton International business operated without any of the governance structures and frameworks that I expected, having come from one of the other Leighton subsidiaries where I had worked for the better part of a decade. I cannot say specifically that I came across other RORO examples, but there were certainly some very odd practices in terms of governance, reporting and the way jobs were bid... The division had its own board. It did have a mechanism for whistleblowers and, as I mentioned earlier, one of the investigations that that board initiated in relation to the whistleblower's complaints, which was conducted by an external third party, seems to have been done specifically with the instruction not to get to the bottom of it.⁷⁵

Ethics, Compliance and Sustainability Committee

1.70 In 2015 Leighton changed its name to CIMIC Group (CIMIC). As part of its corporate governance structure, CIMIC has constituted an Ethics, Compliance and Sustainability Committee (ECS committee). The ECS committee is bound by a charter, which sets out the role, authority, responsibilities, membership and operations of the committee. The stated objectives of the ECS committee are:

...to assist the Board in fulfilling its corporate governance and oversight responsibilities by:

- (a) monitoring and reviewing:

72 Richard Baker and Nick McKenzie, 'Pressure mounts on ABC director over handling of corruption red flags', *The Age*, 8 April 2016, p. 6.

73 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 3.

74 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 4.

75 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 2.

- (i) the ethical standards and practices generally within the Group and compliance with the Group Code of Conduct; and
- (ii) compliance with applicable legal and regulatory requirements and internal policies, procedures and standards in the areas of work health and safety, the environment, sustainability and business conduct.⁷⁶

1.71 The ECS committee has no set time for meetings; however, committee members may, and the secretary must on the request of a committee member, call a meeting of the committee.⁷⁷

1.72 The ECS committee has a number of powers. Clause 6.1 of the Charter provides that:

The Committee is authorised to review or investigate any activity or function of any Group member and, so far as practicable, its associates, in accordance with its role under this Charter and will advise the Chairman of the Board and CEO accordingly. The Committee is authorised to make recommendations to the Board regarding appropriate actions resulting from such investigations.⁷⁸

1.73 In carrying out such investigations, the ECS committee may 'obtain information, interview management and internal and external auditors (with or without management present), and seek advice from consultants or specialists' but only with the knowledge of the CEO.⁷⁹

1.74 Despite the powers and responsibilities ascribed to the ECS committee, Mr Sasse suggested in his evidence that the committee was not effective in carrying out its functions during his tenure.

Senator EDWARDS: Did you approach the ethics community, or was the ethics committee a new structure after you left as well?

Mr Sasse: No, the board has had an ethics committee for some time. Its primary role was oversight of work health and safety issues, but these issues went to the board pretty much immediately I got to the point that I realised the magnitude of the problem. I think the first written report to the

76 CIMIC, *Ethics, Compliance and Sustainability Committee Charter*, 31 October 2017, p. 1, https://www.cimic.com.au/data/assets/pdf_file/0016/3454/ECSC-Charter_Final.pdf (accessed 5 March 2018).

77 CIMIC, *Ethics, Compliance and Sustainability Committee Charter*, 31 October 2017, p. 2, https://www.cimic.com.au/data/assets/pdf_file/0016/3454/ECSC-Charter_Final.pdf (accessed 5 March 2018).

78 CIMIC, *Ethics, Compliance and Sustainability Committee Charter*, 31 October 2017, p. 3, https://www.cimic.com.au/data/assets/pdf_file/0016/3454/ECSC-Charter_Final.pdf (accessed 5 March 2018).

79 CIMIC, *Ethics, Compliance and Sustainability Committee Charter*, 31 October 2017, p. 3, https://www.cimic.com.au/data/assets/pdf_file/0016/3454/ECSC-Charter_Final.pdf (accessed 5 March 2018).

board was probably about Leighton International and the RORO was probably April or May 2011.

Senator EDWARDS: So it goes back a while. The ethics committee in the organisation was looking after heights of ladders and gangways and things like that, not the corporate culture.

Mr Sasse: It was more around if there was a group fatality, the opco [operating company] would have to come in and essentially present to them on what had happened and what they had done to mitigate the findings of investigations and reports and that kind of thing.

Senator EDWARDS: So there was nowhere really to go for any kind of reporting of commercial inappropriateness or impropriety?

Mr Sasse: If I could put it this way: if the board is not interested, that is kind of the end of the line.⁸⁰

1.75 On this evidence, it appears that the existence of the ECS committee was insufficient to manage the threat of foreign bribery. When allegations were made about discrete instances of foreign bribery, it seems that the will to take immediate and effective action was simply lacking in the organisation.

Internal Code of Conduct

1.76 CIMIC employees are bound by a six page Group Code of Conduct which took effect on 12 August 2015. The Code of Conduct prohibits bribery and corruption:

The Group prohibits, and has zero tolerance for, all forms of bribery and corruption. You must obey all relevant laws and regulations, and must not participate in any arrangement which gives any person an improper benefit in return for an unfair advantage to any party, directly or through an intermediary. This includes facilitation payments (payments of cash or in kind made to secure or expedite a routine service, or to 'facilitate' a routine Government action), even if allowed under local laws or customs.

Further information is set out in the Anti-Bribery and Corruption Policy.⁸¹

1.77 The Code of Conduct sets out the protections available to whistleblowers. The relevant section provides:

All business concerns raised are taken seriously and treated confidentially, and the identity of the Whistleblower who has raised a business concern is only revealed on a 'need-to-know' basis. Any Employee raising a genuinely held business concern has the option to do so on the basis that their identity will be known only by the individual to whom the concern was raised or the Ethics Line provider (as the case may be).

The Ethics Line is an external resource available at zero cost to any Employee who wishes to raise a genuinely held business concern on an

80 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 8.

81 CIMIC, *Group Code of Conduct*, 12 August 2015, reformatted 1 November 2016, p. 3, https://www.cimic.com.au/data/assets/pdf_file/0018/3429/Group-Code-of-Conduct.pdf (accessed 4 March 2018).

independent and confidential basis. Any Employee who feels they have been victimised after raising a concern should contact their Business Conduct Representative, or the Ethics Line.

The Group will not tolerate victimisation of a Whistleblower. Any Employee found to have victimised another will be subject to disciplinary action.⁸²

1.78 Mr Sasse suggested that, during his employment, these processes for handling allegations of corruption were ineffective:

Senator EDWARDS: In that division, was there a person nominated within the company at that time to go to for whistleblowing purposes?

Mr Sasse: The division had its own board. It did have a mechanism for whistleblowers and, as I mentioned earlier, one of the investigations that that board initiated in relation to the whistleblower's complaints, which was conducted by an external third party, seems to have been done specifically with the instruction not to get to the bottom of it.

Senator EDWARDS: So it is like a suggestion box that does not have a lid. It just goes into the ether. It goes into the shredder underneath.

Mr Sasse: If you have an absence of managerial will to get to the root of a problem, then there are lots of ways of making sure you never get there.⁸³

1.79 The committee accepts that, since Mr Sasse left Leighton, the company has undergone a process of change, including the launch of its Code of Conduct and changing its name to CIMIC. Nonetheless, Mr Sasse's evidence provides a damning assessment of Leighton's ability to handle adequately allegations of corruption and it is not clear that these deficits have been ameliorated.

1.80 Further, it seems that whistleblowers will be protected if they 'raise a genuinely held business concern'. However, it is not clear how a 'business concern' is defined, and the glossary to the code offers no guidance. This apparent protection mechanism appears to be at odds with the experience of a Thiess whistleblower, part of the Leighton group, as reported by Fairfax Media on 28 August 2016.⁸⁴

1.81 CIMIC's reluctance to participate in the committee's inquiry means that the committee has neither had the opportunity to fully consider the circumstances of individual cases; nor the policies and procedures that CIMIC has in place to investigate and respond to corporate whistleblowing involving foreign bribery.

82 CIMIC, *Group Code of Conduct*, 12 August 2015, reformatted 1 November 2016, pp. 1–2, https://www.cimic.com.au/data/assets/pdf_file/0018/3429/Group-Code-of-Conduct.pdf (accessed 4 March 2018).

83 Mr Stephen Sasse, Private capacity, *Committee Hansard*, 22 April 2016, p. 2.

84 Nick McKenzie and Michael Bachelard, 'The 'naively noble' man who could not get his voice heard', *Sydney Morning Herald*, 28 August 2016, <http://www.smh.com.au/business/the-naively-noble-man-who-could-not-get-his-voice-heard-20160824-gr0bu5.html> (accessed 6 December 2017).

