

Question on notice no. 571

Senator Peter Whish-Wilson: asked the Minister representing the Attorney-General on 21 September 2017—

With reference to the response to question on notice 474 in relation to the investigation of foreign bribery offences:

1. Given that the Australian Federal Police (AFP) Fraud and Anti-Corruption (FAC) business area's 21 employees are currently investigating 37 active cases, is it the AFP's view that this case load is realistic and manageable and is the heavy caseload potentially a contributing factor in the lack of success of the FAC.
2. Can the length of time that each of the FAC's 21 current employees have spent at the FAC be detailed.
3. Given that the Minister has indicated that AFP investigators undergo rigorous training and development, can the training that FAC members have undergone be detailed.
4. Given that the Minister has indicated that FAC members' skills are often supplemented by subject matter experts from a range of sources; if so, what subject matter experts have been used and from where were they drawn.
5. Does the AFP consider that foreign bribery investigations require particular education and experience.
6. Can the qualifications and experience of each of the 10 AFP members of the FAC be provided.
7. Can the qualifications and experience of each of the 11 non-AFP members of the FAC be provided.
8. Do any of the SES employees responsible for the FAC lack prior experience in investigating foreign bribery offences.
9. Given that the AFP has indicated that it helps its team continually develop skills through a range of programs, including the Advanced Foreign Bribery Investigations Program, what is the content of the Advanced Foreign Bribery Investigations Program and who is it delivered by, and is the assessment process externally reviewed.
10. Given that the FAC's mission is described as 'detect, disrupt and combat corruption', what processes does the AFP FAC have in place to detect foreign bribery.

Answer —

Senator Brandis — The answer to the honourable senator's question is as follows:

1. The AFP hosted Fraud and Anti-Corruption Centre (the Centre) includes AFP and Commonwealth agency secondees. In the context of foreign bribery, the Centre's remit is to evaluate allegations of foreign bribery utilising the resources of the multi-agency partners within the centre. The Centre does not investigate allegations of complex fraud or corruption. Where evaluations proceed to investigation they are transferred to investigative teams within the Fraud and Anti-Corruption (FAC) portfolio. FAC currently maintains a capacity of 183 members (inclusive of professional and sworn members) around Australia to investigate both fraud and

corruption allegations. These members possess a range of experiences and backgrounds in the AFP, other government agencies and the private sector. In light of this, the subsequent questions on notice are answered in the context of the FAC portfolio inclusive of the dedicated foreign bribery teams, noting that it would be unrealistic to provide the specific details of each member of the FAC portfolio as requested in questions 2 and 6.

FAC investigative capacity includes 3 dedicated foreign bribery teams (16 investigators) in Sydney, Melbourne and Perth. These teams are funded from a Confiscated Assets Account funding initiative – injecting \$14.7m over 3 years to increase investigative capacity to respond to allegations of foreign bribery. This capacity is in addition to base funded investigative capacity of 140 investigators within the FAC portfolio who also investigate foreign bribery matters where there either is not a geographically dedicated foreign bribery team, or where the resources of the dedicated teams are at capacity with other foreign bribery matters. A further distinction also needs to be made in relation to ‘37 active cases’:

- The Centre currently holds 14 matters which are under evaluation (a process of determining whether the AFP will investigate a matter and assigning it a priority);
- Investigative teams (inclusive of the Foreign Bribery Teams) within the FAC Portfolio currently have:
 - o 18 matters under investigation;
 - o 2 matters before court;
 - o 3 matters referred to the Commonwealth Director of Public Prosecutions.

Foreign bribery investigations are inherently complex. In 2014, the Organisation for Economic Co-operation and Development reported that average time taken to conclude foreign bribery cases internationally was 7.3 years. Noting the challenges posed by this complex crime type, the AFP has taken significant steps to ensure an effective operational response, including the creation of the FAC Centre, the internal panel of experts and close cooperation with domestic and international agencies.

2. Please refer to question 1.

3. All AFP investigators undergo 26 weeks of foundation recruit training. The career pathway for investigators upon completion of recruit training incorporates a detective training program, available after demonstrating a minimum of three years cumulative experience in an investigations area within the previous five years, that comprises a curriculum designed to enhance knowledge and skills to investigate more complex crime types – including fraud and foreign bribery. The FAC portfolio provides a specific fraud and anti-corruption learning pathway. Training modules available to investigators include a basic fraud and anti-corruption program, criminal assets confiscation, an Advanced Foreign Bribery program and a range of programs and forums conducted by foreign law enforcement partners. Recently the AFP conducted a 4 week Management of Serious Crime program for all Commonwealth agencies with an anti-corruption crime type theme.

4. The AFP collaborates with a multitude of partner agencies that have specialist skills across a range of investigations, including ASIC noting that investigations into Corporations Act 2001 offences often occur in parallel to AFP foreign bribery investigations. Other subject matter experts include members of the International Foreign Bribery Taskforce comprising members from the Royal Canadian Mounted Police (RCMP), Federal Bureau of Investigation (FBI) and National Crime Agency

(NCA), specialist legal counsel and internal AFP legal counsel, and specialist data analytical services provided from the private sector.

5. The successful investigation of allegations of foreign bribery and complex fraud is underpinned by sound investigative training for all crime types with that formal learning consolidated in the workplace. The AFP recognises the need to provide crime specific learning and development for some crime types – FAC being one. This is reflected in the level of further training that is made available to investigators upon commencing in FAC, specifically programs such as the Advanced Foreign Bribery program and Management of Serious Crime program.

6. Please refer to question 1.

7. Seconded members from Centre partner agencies come from a range of backgrounds. FAC Centre participating agencies select secondees based on knowledge, skills and experience to best contribute to FAC Centre outcomes and objectives.

8. Experience in foreign bribery investigations is not a pre-requisite for the SES member performing the role of Manager Criminal Assets, Fraud and Anti-Corruption. In fact, exposure across a range of crime types is more beneficial as it promotes innovative and lateral thinking to investigative treatments and responses.

9. The Advanced Foreign Bribery Program is designed to provide investigators and participants from partner agencies with a comprehensive understanding of foreign bribery. The curriculum comprises information, presentations and panel discussions from subject matter experts from a range of domestic and international agencies on topics including the FAC Centre, Panel of Experts, legislation, corporate structures and external agency presentations on foreign bribery. The program is delivered by a mixture of AFP and external agency subject matter experts on foreign bribery. The participants on the program are drawn from the AFP, Australian government agency partners and international partners with responsibility for the investigation and prosecution of foreign bribery on their respective jurisdictions. The program includes a full immersion component however does not include a formal assessment.

The curriculum and delivery methodology should not be considered in isolation – learning is a continuum whereby only a small percentage of learning occurs in formal learning environments and research is clear the greatest learning occurs in the workplace. This is an appropriate and contemporary learning philosophy given core investigative training is provided in other programs within the learning continuum.

10. The AFP engages collaboratively with external agency partners whose core business may bring them into contact with allegations of foreign bribery, in particular, the Department of Foreign Affairs and Trade, AUSTRADE, AusAID and the Export Finance and Insurance Corporation (EFIC). Other sources of referrals include the media, the AFP International Network, referrals from existing investigations where further criminality is identified or uncovered, and referrals from members of the public and civil society through the AFP's crime reporting frameworks. Future proposed processes that will likely provide the AFP with greater visibility of foreign bribery allegations includes the consideration of a Deferred Prosecution Agreement scheme and a self-reporting protocol for corporate entities.