



TRANSPARENCY INTERNATIONAL AUSTRALIA

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Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: legcon.sen@aph.gov.au

26 July 2007

Dear Ms Morris,

Re: International Trade Integrity Bill 2007

I am writing to you as Chairman of Transparency International Australia (TIOZ).

Unfortunately, TIOZ was not aware of the sittings of the Committee in Sydney on 17 July 2007 therefore was not able to make a submission.

I thank you for the opportunity to make a late and short submission on this important Bill.

We understand that the report of the Committee will be made on 1 August 2007.

Schedule 2-Bribery of Foreign Officials

The part of the Bill which is of chief relevance to us is *Schedule 2—Bribery of Foreign Officials*.

The amendments proposed to both Part 70 of the Criminal Code Act and to the Income Tax Assessment Act are welcome.

They will, when enacted, strengthen the provisions creating the offence of bribery abroad. They serve to implement key points made in the Phase 2 report on Australia's application of its obligations under the OECD Convention and the 1997 OECD Recommendation on combating bribery in international business transactions.

It must be accepted that there are formidable difficulties in successfully mounting a prosecution and imposing sanctions under Part 70 of the Criminal Code due in large part to the fact that the criminal conduct takes place outside Australia. The planned amendments to Section 70 of the Criminal Code will, to a degree, reduce some of the difficulties and make the legislative intent plainer.



However, we have some concern, as a technical drafting matter, that the amendment proposed to the tabulation provision, Subsection 70.3(1), could be enhanced somewhat and made clearer. Michael Ahrens, CEO of TIOZ, is happy to discuss this with the Attorney General's Department officials..

Other related points of amendment

Two other matters bear comment in relation to the present Bill:

1. We had hoped that the opportunity would finally be taken at the same time to increase the level of maximum monetary penalties applicable to an offence under Part 70. At the moment they are \$66,000 for an individual and \$330,000 for a corporation. We consider that these levels are not "effective, proportionate and dissuasive criminal penalties" as required by the Convention, even when combined with the possibility of confiscation of benefits or the rather remote risk of jail. This is an issue referred to in the Phase 2 report. We have long argued that the maximum fine for corporations upon conviction should be increased to \$10 million, roughly a 30-fold increase. This level (with maximum \$500,000 for individuals) is what can be sought by the ACCC in serious cases. I attach a copy of a letter sent by me to the Minister for Justice and Customs on 9 June 2006.
2. While we greatly support the encouragement currently given to those who report suspected bribery of foreign officials to the AFP and the access afforded under the Crimestoppers site, we consider it is urgent that special legislative protection be also afforded to whistleblowers in this context.

US experience over a long period confirms that the willingness of corporate witnesses to come forward will continue to be an important if not an essential ingredient in successful investigation of bribery cases. The well understood reluctance and risk faced by potential witnesses must be offset as far as possible by legislative protection and we would urge that special attention be given by the Committee to this issue in the context of the Bill.

The Challenge of Effective Enforcement.

We fully agree with the statement in the Foreign Bribery Information and Awareness Pack issued recently by Senator the Hon. David Johnston, Minister for Justice and Customs, that "ensuring there are comprehensive and appropriate laws against corruption, and that the laws are effectively enforced, is an ongoing challenge."

The Committee may be aware that TIOZ participates in the annual TI review of the implementation of the OECD Convention by most of the 37 countries that have ratified that Convention. A copy of the latest such review, named *07 Progress Report*, can be found on the website www.transparency.org. The necessity of significant progress in such implementation is a most important matter. It is an issue of high priority to the 90 Chapters of Transparency International around the world. For that reason TI has recently been very critical of the UK Government in stopping the Serious Fraud Office inquiry into the Al Yamamah affair involving arms sales by BAE to Saudi Arabia. By way of contrast our *07 Progress Report* has welcomed the effective action taken in recent high profile cases by the US and German governments.

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We will continue to monitor the effective implementation of the OECD Convention and the United Nations Convention against Corruption

If you have questions on the above matters please contact either myself or the Executive Director of TIOZ, Michael Ahrens on 0411 360 209.

Yours truly,

Frank Costigan QC
Chairman

