



IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION



PHASE 4 TWO-YEAR FOLLOW-UP REPORT

Australia

This report, submitted by Australia, provides information on the progress made by Australia in implementing the recommendations of its Phase 4 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 11 December 2019.

The Phase 4 evaluated and made recommendations on Australia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the 44 members of the OECD Working Group on Bribery on 15 December 2017.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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Summary and Conclusions by the Working Group on Bribery

Summary of findings¹

1. In December 2019, Australia submitted its Phase 4 written follow-up report to the OECD Working Group on Bribery (Working Group). The report outlined Australia's efforts to implement the 13 recommendations and to address the follow-up issues identified during its [Phase 4 evaluation](#) in December 2017. In light of the information provided, the Working Group concludes that Australia fully implemented 6 recommendations, partially implemented 3 recommendations, and did not implement 4 recommendations. The Working Group considers that Australia has deployed efforts to address a number of Phase 4 recommendations, notably to enhance detection of foreign bribery. In particular, the adoption of a law to enhance protection of private sector whistleblowers is a significant accomplishment, which the Working Group hopes will contribute to eradicate retaliation against individuals reporting foreign bribery suspicions. Measures have also been taken to increase reporting by key government agencies, some of which have started to bear fruit, although guidance on laundering proceeds of bribes has yet to be developed. Whilst retaining the multi-agency approach to investigations, the Fraud and Anti-Corruption Centre (FAC Centre) model for investigations has now matured into a specialised team that is funded with AUD 25.9 million over four years solely for foreign bribery investigations. The Working Group also welcomes the publication of the Best Practice Guideline on corporate self-reporting, as well as initiatives to pursue its engagement with the private sector.

2. On the other hand, the Working Group is concerned about the continued low level of foreign bribery enforcement in Australia given the size of Australia's economy and the high-risk regions and sectors in which its companies operate. In total, since the entry into force of Australia's foreign bribery legislation 20 years ago, 2 corporate entities and 6 individuals have been sanctioned in 2 cases. Since Phase 4, the status of foreign bribery enforcement is as follows:

- 1 foreign bribery case has been concluded, resulting in the sentencing of 1 natural person to 2.5 years of imprisonment, with 2 years suspended;
- Prosecutions are ongoing in 2 cases, compared with 1 ongoing and 1 finalised prosecution at Phase 4;
- 8 cases are currently under investigation involving 31 persons, compared to 19 cases under investigation in Phase 4. Out of the 8 cases, 5 were active in Phase 4, 2 are new cases, and 1 was returned to active investigation from the Commonwealth Director of Public Prosecution (CDPP);
- Out of the 19 matters under investigation in Phase 4, 11 have been concluded without prosecution, 5 remain active, 2 are being prosecuted, and 1 other matter has been referred to the CDPP by the Australian Federal Police (AFP); and

¹ The evaluation team for this Phase 4 two-year written follow-up evaluation of Australia was composed of lead examiners from **Canada** (*Mr. Mark Scrivens*, Senior Counsel, Department of Justice of Canada, and *Mr. Ray Moos*, Inspector, Royal Canadian Mounted Police) and **Korea** (*Mr. Seongjin Park*, Public Prosecutor, Ministry of Justice of the Republic of Korea) as well as members of the **OECD Anti-Corruption Division** (*Ms. Elisabeth Danon* and *Ms. Alejandra Tadeu*, Legal Analysts). See [Phase 4 Procedures](#), paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

- 49 allegations, including 24 that have emerged since Phase 4, have been concluded at the evaluation or investigation stage without prosecution.

3. At the time of Phase 4, in 2017, the Working Group welcomed increased foreign bribery enforcement efforts by Australia; it nevertheless noted that “Australia must continue to increase its level of enforcement of foreign bribery and related offences against individuals and companies” and “anticipate[d] that enforcement will further increase by the time of Australia’s two-year written follow-up report.”² Measures noted in Phase 4 to improve Australia’s institutional framework to investigate and prosecute foreign bribery have yet to translate into meaningful progress. On corporate liability, the Working Group finds Australia’s low level of cases against legal persons very concerning and hopes that Australia will address its long-standing challenges in attributing wrongdoing to corporate entities. Two resolutions against companies were concluded in one case in 2011, but not one legal person has been sanctioned for foreign bribery or a related offence since. One company is currently under prosecution. The Working Group is hopeful that the increased budget and new staff dedicated to the investigation of foreign bribery within the AFP will yield positive results and encourages Australia to ensure appropriate funding for foreign bribery prosecutions by the CDPP.

4. In November 2018, the Securrency/Note Printing Australia (NPA) case was concluded, following the sentencing of the last individual prosecuted in this case. In total, from 2011 to 2018, five persons were sanctioned under the foreign bribery offence, including Securrency and NPA, both of which pleaded guilty in 2011. However, the case was subject to suppression orders as it was ongoing, which precluded the Working Group from properly assessing it in previous phases of evaluation.³ This case concerned bribery of foreign public officials in several countries to secure contracts to produce bank notes for Securrency and NPA, both subsidiaries of the Reserve Bank of Australia. The companies and nine of their former executives and sales agents were charged with foreign bribery, conspiracy to commit foreign bribery, and/or false accounting. In previous phases of evaluation, the Working Group found troubling that the case had been subject to suppression orders.⁴ Following its conclusion, the suppression orders were lifted and, therefore, the Working Group had in the present review the opportunity for the first time to closely examine its outcome, which raises serious questions regarding Australia’s record in efficiently pursuing and sanctioning foreign bribery. In particular:

- After charges were laid, “the CDPP was unable to pursue the prosecution against four accused persons whose trials were permanently stayed following unlawful compulsory examinations conducted by the Australian Crime Commission.”⁵
- The five individuals prosecuted pleaded guilty and received prison sentences, all of which were effectively suspended for the entire time imposed.⁶ Securrency’s former Chief Executive Officer received a 2.5 years’ imprisonment sentence but did not serve time in custody, as he was released on the condition of good behaviour for a period of 2.5 years.

² Phase 4 report, Executive Summary.

³ The suppression orders in the Securrency/NPA case were lifted in November 2018.

⁴ Phase 3 Written Follow-Up, para. 2: “[t]he Working Group noted that suppression orders which prevented a full discussion of the Securrency/NPA case at the time of Phase 3 remain in place. In addition, a new suppression order was issued in June 2014 raising further questions for the Group. The existence of these suppression orders continues to prevent in-depth discussion in the WGB of Convention-related issues in the Securrency/NPA case.”

⁵ www.cdpp.gov.au/case-reports/securrency-and-note-printing-australia-foreign-bribery-prosecutions-finalised.

⁶ One person was convicted for foreign bribery and false accounting and two persons were convicted for false accounting.

None of the five individuals received a pecuniary sentence.⁷

- The two companies that pleaded guilty in 2011 were respectively sentenced to fines totalling AUD 480 000 (approx. USD 505 000)⁸ for Securrency and AUD 450 000 (approx. USD 468 000) for NPA.⁹ Considering that the estimated amount of the bribes paid was AUD 7 million (USD 7.21 million) and that the value of the contracts surpassed AUD 100 million (USD 103 million), these amounts seem remarkably low. Confiscation was imposed jointly on the two companies in a pecuniary order amounting to AUD 21 666 482 (approximately USD 22 316 000).
- Even though the pecuniary penalty order imposed on the legal persons was the largest ever in Australia, the overall amount of the sanctions imposed on natural and legal persons in this case appears insufficient, and raised serious doubts as to Australia's ability to impose effective, proportionate and dissuasive criminal penalties in practice. However, the statutory maximum penalty was substantially increased and currently consists of the greater of AUD \$21 million, three times the value of the benefit obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence, or 10% of annual turnover of the company during a 12 month period ending at the end of the month in which the conduct constituting the offence occurred (if the value of the benefit cannot be ascertained).

5. The Working Group's summary and conclusions with respect to specific Phase 4 recommendations are presented below. They should be read in conjunction with the report prepared by Australia.

Regarding the detection of foreign bribery:

- ◆ *Recommendation 1 (a) – Partially implemented:* The Working Group commends Australia on actions taken to improve detection of foreign bribery through its money laundering system, including the Government's recent Bill on restrictions to cash payments. The Australian Transaction Reports and Analysis Centre (AUSTRAC) published one case study on money laundering predicated on foreign bribery but the information contained therein is very limited. AUSTRAC conducted targeted outreach to a selection of reporting entities that provide financial services but no particular guidance was provided in respect to incoming flows of foreign bribery proceeds in the real estate sector. No reporting obligations were introduced for non-financial entities.
- ◆ *Recommendation 1 (b) – Fully implemented:* The new protections for private sector whistleblowers constitute a significant development in Australia's legal framework. In particular, it is now clear that disclosures of the foreign bribery offence are covered under the whistleblower protections. The Working Group also views as very positive the elimination of the good faith requirement for the applicability of these protections. However, the private sector and public sector protections are still not fully aligned. This could be further considered in the course of implementing the recommendations from the Joint Parliamentary Committee on Corporations and Financial Services (JPCFCS) on whistleblower protections and the Moss Review (an independent review of the Public Interest Disclosure Act 2013). The Working Group will follow up on this point and the impact of the new protections in practice, in particular given the significant adverse effects that the whistleblowers in the Securrency/NPA case were subject to before the private sector reforms were enacted.¹⁰ As regards awareness-raising, the Australian Securities and Investments Committee's (ASIC) efforts to broadcast the legislative amendments appear to have been broad-reaching and efficient.

⁷ www.cdpp.gov.au/case-reports/securrency-and-note-printing-australia-foreign-bribery-prosecutions-finalised.

⁸ All values in USD are calculated as per the average exchange rate as of July 2012.

⁹ Under legislation in force at that time the maximum total fine that could have been imposed was AUD 990 000.

¹⁰ www.cdpp.gov.au/case-reports/securrency-and-note-printing-australia-foreign-bribery-prosecutions-finalised.

- ◆ *Recommendation 1 (c) – Fully implemented:* The Australian Taxation Office Guidelines were amended and currently include an explicit warning about the risk of tipping off taxpayers in the context of covert audits, in line with the Working Group’s recommendation.

Regarding the investigations and prosecution of foreign bribery:

- ◆ *Recommendation 2 (a) – Fully implemented:* The Working Group welcomes the significant increase in the AFP’s budget specifically allocated to foreign bribery investigations in June 2019, and the hiring of specialised, full-time new staff. However, the AFP has only referred three foreign bribery investigations to the CDPP for prosecution since Phase 4. In addition, the mandate of the FAC Centre, which was in charge of evaluating foreign bribery allegations since 2014, shifted to other offences in September 2019. As the point of entry for referrals, the FAC Centre helped streamline the evaluation phase of investigations, and its multidisciplinary team of experts ensured the solidity of referrals relayed for investigation. Australia reports that the additional budget has been allocated in part to fund the composition of a new team within the AFP in charge of evaluating foreign bribery allegations, with the intention of replicating the multi-disciplinary model of the FAC Centre. The Working Group will follow up on the adequacy of resources allocated to the investigation of foreign bribery.
- ◆ *Recommendation 2 (b) – Partially implemented:* The increase in the AFP’s resources and institutional developments did not translate into an increase in foreign bribery referrals to the CDPP for prosecution. The fact that the current number of prosecutions is low should not dismiss the importance of allocating sufficient resources within the CDPP to the prosecution of foreign bribery. Currently, the CDPP has the possibility to request additional budget from the Government if faced with an increase in foreign bribery cases. The Working Group questions whether the *ad hoc* funding model may constrain prosecutorial capacity, as a fixed budget is necessary to ensure that the CDPP can maintain its level of engagement in the pre-prosecution stage and the necessary expertise to handle prosecution of foreign bribery cases. Australia has nevertheless given assurances that this model currently does not create the aforementioned problems. In addition, the lack of transparency in budgetary allocation within the CDPP for foreign bribery prevents the Working Group from adequately assessing the sufficiency of the CDPP’s resources specifically allocated to foreign bribery.

Regarding international cooperation:

- ◆ *Recommendation 3 – Not implemented:* Australia has taken no steps to ensure that it can provide mutual legal assistance to Parties to the Convention that apply civil or administrative liability to legal persons for foreign bribery offences. However, Australia reports that its authorities are not aware of any instance where a foreign state has sought MLA for civil or administrative proceedings against a company for foreign bribery. More broadly, they are also not aware of any instance where this has prevented Australia providing assistance to a foreign state. According to Australian authorities, if a request of this nature were to be sought, they would work with their counterparts to explore opportunities for Australia to provide assistance in a manner that is consistent with its legal system.

Regarding sanctions and confiscation:

- ◆ *Recommendation 4 (a) – Partially implemented:* In Phase 4, the Working Group noted that, in its only concluded foreign bribery case at that time, practical considerations prevented confiscating proceeds derived from the bribe, and Australia did not confiscate an equivalent amount. Since then, Australia has not imposed confiscation in foreign bribery-related cases but, as the suppression orders on the Securrency/NPA case were lifted in 2018, information on the confiscation imposed in 2011 to these two companies came to light. A pecuniary penalty order was imposed on the two companies, which means that the matter was resolved by consent with the prosecution. Securrency and NPA paid a joint amount of AUD 21 666 482 (approximately USD 22 316 000). The Phase 3 Report noted that the value of pecuniary penalty orders is “generally equal to the value of the benefits a person derives from the

offence”.¹¹ Australia reports that this is how the confiscation amount was calculated in this case. The Working Group cannot verify this information because the pecuniary penalty order was not disclosed due to legal professional privilege. However, the Working Group notes that this amount appears very low, given that the amount of the contract was more than AUD 100 million (USD 103 million).

- ◆ *Recommendation 4 (b) – Not implemented:* Australia has taken no steps to issue guidelines to clarify procurement agencies’ discretion in relation to debarment of companies or individuals convicted of foreign bribery offences. Australia reports that this recommendation is currently under consideration.

Regarding the liability of legal persons:

- ◆ *Recommendation 5 (a) – Not implemented:* In Phase 4, despite several allegations of foreign bribery involving legal persons, criminal charges against companies had only been brought in the Securrency/NPA case. Following these resolutions, no further case has been concluded against a legal person for a foreign bribery or related offence. One prosecution against a legal person is ongoing, but this is insufficient to consider that Australia is proactively pursuing criminal charges against legal persons. The Working Group welcomes the reintroduction before Parliament of the Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019 (CLACCC), which had lapsed earlier this year. The bill aims to introduce a deferred prosecution agreement instrument (DPA) and a new offence of failure to prevent foreign bribery.
- ◆ *Recommendation 5 (b) – Fully implemented:* The Working Group welcomes the Best Practice Guideline on Self-Reporting of Foreign Bribery and Related Offending by Corporations (the Guideline), which was released on 20 December 2017, shortly after the adoption of Australia’s Phase 4 Report. The Guideline is a clear and comprehensive document which describes in some detail “the principles and processes law enforcement agencies will adopt following self-reporting by a company”.¹² The Guideline provides for its own re-examination, should a DPA instrument be introduced, which should help ensure that it operates harmoniously with a potential DPA process. The Working Group also commends Australian law enforcement agencies on their efforts to raise awareness of the Guideline.
- ◆ *Recommendation 5 (c) – Fully implemented:* Although further monitoring will be needed, Australia has taken tangible measures to ensure companies know where to go to report knowledge or suspicion of foreign bribery, namely by having several agencies participate in awareness-raising activities.

Regarding engagement with the private sector:

- ◆ *Recommendation 6 (a) – Fully implemented:* Australia has taken a multi-agency approach to engage with the private sector, with numerous initiatives currently underway. The AFP has developed a public-private partnership (PPP) to increase dialogue and knowledge sharing with the private sector and thus strengthen the fight against foreign bribery. Tying this with recommendation 5(c), one of the expected outcomes of this PPP is to enhance companies’ knowledge of where to report foreign bribery.
- ◆ *Recommendation 6 (b) – Not implemented:* In Phase 4, the Working Group welcomed the introduction before Parliament of the CLACCC which, among other things, aimed to create a “failure to prevent foreign bribery” offence. It recommended that, should such an offence be introduced, Australia closely engage with the private sector to prepare guidance on the establishment and implementation of adequate compliance measures with regard to the new offence. The CLACCC lapsed in Parliament in July 2019, but was reintroduced on 2 December 2019. The Working Group notes that, following the reintroduction of the CLACCC, the Australian Government is engaging in a public consultation

¹¹ Para. 39.

¹² <https://www.cdpp.gov.au/publications/best-practice-guideline-self-reporting-foreign-bribery-and-related-offending>.

process for a draft guidance. However, this cannot be taken into account for the purposes of the present assessment, as the bill creating the offence of “failure to prevent” itself has yet to pass in Parliament.

Dissemination of the Phase 4 report¹³

6. The Attorney-General’s Department (AGD) website contains a link to reports on the OECD website, and the report is referenced on AUSTRADE’s website. The Parliament of Australia published a research paper on Australia’s implementation of the OECD Anti-Bribery Convention, including a summary of the Phase 4 evaluation, in August 2019. The report has been included in presentations by the AGD, ASIC and AFP. Australia does not report sharing the Phase 4 Report directly with relevant stakeholders, in particular those involved in the Phase 4 on-site visit.

Conclusions of the Working Group on Bribery

7. Based on these findings, the Working Group concludes that recommendations 1(b), 1(c), 2(a), 5(b), 5(c) and 6(a) have been fully implemented; recommendations 1(a), 2(b) and 4(a) have been partially implemented; and recommendations 3, 4(b), 5(a) and 6(b) have not been implemented. The Working Group invites Australia to report back in writing within two years (i.e. by December 2021) on outstanding recommendations 2(b), 4(a) and 5(a), as well as on the status of foreign bribery enforcement. As per the Phase 4 procedures (para. 60), Australia may also ask for additional recommendations to be re-assessed at that time. The Working Group will continue to monitor follow-up issues as case law and practice develop. Australia will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

¹³ The [Phase 4 procedures](#), para. 50, provide that “the evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation”.

Annex: Written Follow-Up Report by Australia

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 55-67).

*Please submit completed answers to the Secretariat on or before: **22 October 2019**.*

Name of country: **Australia**

Date of approval of Phase 4 evaluation report: **19 December 2017**

Date of information: **31 October 2019, with additional information on 11 November**

PART I: RECOMMENDATIONS FOR ACTION

Regarding Part I, responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Text of recommendation 1 (a):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:
- a) Increase the potential for detecting foreign bribery through its Anti-Money Laundering system by:
 - i. Raising awareness of foreign bribery as a predicate offence for money laundering, including by providing additional guidance with case studies and typologies to reporting entities regarding the detection of foreign bribery predicated on money laundering (in particular, through the real estate sector) [Convention Article 7], and
 - ii. Taking appropriate steps to address the risk that the proceeds of foreign bribery will be laundered through the Australian real estate sector, in line with the FATF standards. These should include specific measures to ensure that the Australian financial system is not the sole gatekeeper for such transactions [Convention Article 7], and

Action taken as of the date of the follow-up report to implement this recommendation:

AUSTRAC's online case studies

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's financial intelligence unit, with regulatory responsibility for AML/CTF. AUSTRAC monitors financial transactions to identify money laundering, organised crime, tax evasion, welfare fraud and terrorism and other serious financial crime. Further information about AUSTRAC is available on its [website](#)¹⁴.

¹⁴ <https://www.austrac.gov.au/about-us>

AUSTRAC released [new case studies](#)¹⁵ in 2019 to assist reporting entities to understand indicators of money laundering, including bribery as a predicate offence. One of the cases related to identifying a complex international money-laundering scheme by individuals wanted by Chinese authorities on bribery and corruption charges. The [case study](#)¹⁶ is available on the AUSTRAC website.

Cash Payment Limit reforms

The Australian Government has introduced the [Currency \(Restrictions on the Use of Cash\) Bill 2019](#)¹⁷ into Parliament which proposes to establish an economy-wide cash payment limit of \$10,000 for payments made or accepted by businesses for goods or services. Transactions equal to, or in excess of this amount will need to be made using the electronic payment system or by cheque. Once implemented, the economy-wide cash payment limit will reduce the ability for individuals to launder the proceeds of foreign bribery through the Australian real estate sector as they will no longer be able to purchase property or pay for any part of property in large sums of cash.

The amount of this limit is consistent with the monetary threshold for reporting under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) threshold transaction reporting regime and supports the Government's efforts in the AML/CTF sector.

To give effect to this limit, this Bill will establish new offences for entities that make or accept cash payments that equal or exceed the cash payment limit. The proposed maximum penalty for the strict liability offences in the Bill is 60 penalty units (\$12,600) for individuals and 300 penalty units (\$63,000) for corporations. The proposed maximum penalty for the recklessness-based offences in the Bill are 120 penalty units (\$25,200) or imprisonment for 2 years or both for individuals, and 600 penalty units (\$126,000) for corporations. It is intended that these penalties will serve as an effective deterrent in order to change existing practices that have facilitated participation in black economy and particularly the use of cash payments to conceal income and criminal activity.

Regulation of the real estate sector under the AML/CTF regime

The Australian Government is committed to robust anti-money laundering and counter-terrorism financing (AML/CTF) laws to ensure that Australia's financial system is hardened against criminals and terrorists.

As noted in the Phase 4 Evaluation Report, a Statutory Review of Australia's AML/CTF regime was finalised in 2016. The Statutory Review recommended that a cost-benefit analysis be conducted on the options for regulating additional high-risk entities such as lawyers, accountants, trust and company service providers, high value dealers and real estate agents.

The cost-benefit analysis was completed in June 2017 and is under consideration by the Government in the context of broader reforms to the AML/CTF regime.

Fintel Alliance

AUSTRAC launched Fintel Alliance in 2017. Fintel Alliance is a world first public-private partnership bringing together government, industry, academia and international partners for the purpose of harnessing a new and collaborative approach to combatting and disrupting serious financial crime, including bribery and corruption.

¹⁵ <https://www.austrac.gov.au/indicators-financial-crime-case-studies>

¹⁶ The study is available at: <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/austrac-links-australian-assets-suspects-wanted-crimes-china>

¹⁷ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r64

Membership of Fintel Alliance has expanded to twenty-five partners from the private sector and government agencies. Fintel Alliance partners include major banks, remittance service providers and gambling operators, as well as law enforcement and security agencies from Australia and overseas. Fintel Alliance is integral in equipping industry to be the first line of defence against criminal exploitation by sharing financial intelligence, risk models and insights to reduce criminal activity.

Fintel Alliance partners work together at AUSTRAC's offices, sharing and analysing financial intelligence to investigate and disrupt criminal activity. The Operations Hub is a physical space where partners exchange and analyse financial intelligence face-to-face in close to real time, combining data with tracking tools and best practice methodologies from their organisations.

Since Phase 4, Fintel Alliance partners have investigated foreign bribery and corruption, and risks associated with foreign politically exposed persons. This has involved the identification of suspicious financial transactions, and this information has been passed on to law enforcement agencies for investigation. AUSTRAC and Fintel Alliance have also been developing a program of collaboration with international counterparts in the South-East Asian region. This program has led to intelligence exchanges relating to international bribery and corruption.

Further information about Fintel Alliance is available on the AUSTRAC website¹⁸.

AUSTRAC international engagement

AUSTRAC has engaged with financial intelligence units in neighbouring jurisdictions to examine incoming funds that could involve corruption proceeds entering the Australian economy, including the real estate sector.

AUSTRAC, through the South-East Asia Financial Intelligence Consultative Group (FICG), collaborated with partner financial intelligence units on a 2019 regional assessment of the money laundering threats and typologies related to corruption. One of the assessment's aims is to speed up information exchange to maximise asset recovery related to corruption cases. The assessment is currently being finalised.

The FICG is the operational arm of the Counter-Terrorism Financing Summit, which consists of the heads of intelligence from jurisdictions comprising the Association of Southeast Asian Nations, as well as Australia and New Zealand. It is co-chaired by Australia and Indonesia. The 5th Counter Terrorism Financing Summit will be held on 12-14 November 2019 in the Philippines. The FICG will come together at this Summit to report on progress made towards achieving outcomes that were set out in the Bangkok Communique adopted at the preceding 4th Counter Terrorism Financing Summit, which was held in Thailand in November 2018. The FICG's report at the 5th Summit will include a report on the outcomes of the regional assessment of the money laundering threats and typologies related to corruption. A public version of the report will be made available.

¹⁸ <https://www.austrac.gov.au/about-us/fintel-alliance>

Additional comments about Recommendation 1(a)

In assessing Australia's progress against Recommendation 1(a), it should be noted that in the last two years the Government has also given priority to a number of other important anti-corruption initiatives. For example, in December 2018, the Government announced it would establish a Commonwealth Integrity Commission (CIC) to strengthen integrity arrangements across the federal public sector. This is a significant piece of reform that will establish a centralised and specialist centre for the investigation of corruption in the Commonwealth public sector. Australia is in the process of developing this legislation. Furthermore, in December 2017 the Australian Government established a Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry which produced a final report in February 2019. The Australian Government is continuing to undertake necessary reforms in response to the 76 recommendations made in the final report, including expanding the Federal Court's jurisdiction in relation to corporate crime (including foreign bribery matters). Other reforms discussed elsewhere in this document, such as strengthening protections for corporate sector whistleblowers, have also been prioritised during the past two year period.

We also note the Government was in caretaker mode from 11 April 2019 upon the dissolution of the 45th Parliament of Australia, until 18 May 2019 when a federal election was held.

If no action has been taken to implement recommendation 1 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The above action has been taken to implement recommendation 1 (a).

Text of recommendation 1 (b):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:

- b) Enhance its whistleblower protections by:
 - i. Enacting legislation that provides clear, comprehensive, protections for whistleblowers across the private sector that align (where appropriate) with the protections for public sector whistleblowers in the PIDA. When enacting this legislation, Australia should consider seriously the recommendations made by the September 2017 Report of the Joint Parliamentary Committee on Corporations and Financial Services [2009 Recommendation IX (iii)], and
 - ii. Raising awareness of any new legislation to ensure that employees in all sectors are fully apprised of the new regime [2009 Recommendation IX (iii)].

Action taken as of the date of the follow-up report to implement this recommendation:**Recommendation 1(b)(i)**

The Government responded to the recommendations of the September 2017 Report of the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS Report) in April 2019. Many of the recommendations in the PJCCFS Report that concerned private sector whistleblowers were implemented by the Government through the [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019](#)¹⁹, which passed the Australian Parliament on 19 February 2019 and received Royal Assent on 12 March 2019 (recommendations relating to public sector whistleblowers are discussed further below).

Following the enactment of this statute, on 1 July 2019, the whistleblower protections in Part 9.4AAA the *Corporations Act 2001* (Corporations Act) were expanded to provide greater protections for whistleblowers who report misconduct about companies, company officers and company employees. The corporate sector whistleblower protection regime now:

- includes in the definition of whistleblower both current and former employees, officers, and contractors, as well as their spouses, dependants, and other relatives, and anonymous disclosures;
- extends the protections to whistleblower reports that allege misconduct, an improper state of affairs or circumstances, breach of the law, or danger to the public or financial system (though a report *solely* about a personal work-related grievance is not covered by the protections). This includes reports of any alleged breach of a Commonwealth offence punishable by imprisonment of 12 months or more by any company, company officer, or company employee, and therefore includes alleged breaches of the foreign bribery offence in section 70.2 of the schedule to the Commonwealth *Criminal Code Act 1995* (Criminal Code);
- contains civil penalty provisions, and in addition to the pre-existing criminal offences, for causing or threatening detriment to (or victimising) a whistleblower and for breaching a whistleblower's confidentiality;
- gives protections for whistleblowers in limited circumstances if they disclose to a journalist or parliamentarian after they have reported certain concerns to relevant regulatory authorities, namely the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA). The concerns that are covered are concerns about:
 - substantial and imminent danger to the health or safety of one or more people or to the natural environment; or
 - matters in the public interest (whistleblowers must wait 90 days after first reporting their concerns for public interest disclosures)
- provides whistleblowers with easier access to compensation and remedies if they suffer detriment, including reversal of onus of proof and protections from costs orders unless a court finds the claim to be vexatious or the whistleblower acted unreasonably; and
- requires all public companies, large proprietary companies, and corporate trustees of registrable superannuation entities to have a whistleblower policy from 1 January 2020.

Recommendation 1(b)(ii)

ASIC is responsible for administering the amended corporate sector whistleblower protection regime in the Corporations Act.

On 1 July 2019, to coincide with the commencement of the legislative amendments, ASIC issued a media release [Release 19-164MR](#)²⁰ to raise awareness of the reforms and also released revised ASIC information sheets and website information to explain the new legislative rights and protections to whistleblowers and potential whistleblowers in companies and not-for-profit organisations. This included:

- [ASIC Information Sheet 238](#)²¹ '*Whistleblower rights and protections*';

²⁰<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-164mr-new-regime-for-corporate-whistleblower-protections-commences-today/>

²¹ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-rights-and-protections/>

- [ASIC Information Sheet 239](#)²² ‘How ASIC handles whistleblower reports’;
- Updates to ASIC’s [Whistleblowing](#)²³ website;
- [Summary of the protections for corporate sector whistleblowers](#)²⁴ including a brief comparison with the previous regime;
- [Information for not-for-profit organisations](#)²⁵ that are now subject to the corporate sector whistleblower protection regime;

ASIC also promoted this material on social media.

On 1 July 2019, ASIC Commissioner John Price published an [article](#)²⁶ in the Australian Institute of Company Directors journal on the reforms.

On 7 August 2019, ASIC issued [Consultation Paper 321](#)²⁷ ‘Whistleblower policies’ for the purpose of consulting on proposed regulatory guidance for companies that must have whistleblower policies in place from 1 January 2020 as required by the above reforms. ASIC expects to issue finalised regulatory guidance on whistleblower policies in November 2019.

On 7 August 2019, ASIC Executive Director Warren Day delivered a speech to the conference for the [Whistling While They Work 2](#)²⁸ research project on ASIC’s work to implement the reforms, how ASIC handles whistleblower reports and ASIC’s proposed regulatory guidance on whistleblower policies.

ASIC has also delivered presentations on the legislative amendments to financial services firms and professional services firms, and their employees, and engaged with other stakeholders across the corporate, legal, academic, public, and regulatory sectors on the regime.

ASIC is currently in the process of releasing updated videos on the whistleblower protections on its website and its YouTube channel.

In November and December 2019, ASIC plans further promotions to public companies and large private companies on the upcoming legislative requirement to have a whistleblower policy in place and on associated regulatory guidance that ASIC intends to issue. This timing will ensure that these promotions will take place before the requirement formally commences on 1 January 2020.

With respect to whistleblower protections that apply in the public sector, the Government is separately considering its response to the 2016 independent review of the *Public Interest Disclosure Act 2013* (PID Act) undertaken by Mr Philip Moss AM (Moss Review). The Government intends to respond to the

²²<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>

²³ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>

²⁴<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/protections-for-corporate-sector-whistleblowers/>

²⁵ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-protections-for-not-for-profit-organisations/>

²⁶<https://aicd.companydirectors.com.au/membership/company-director-magazine/2019-back-editions/july/regulator>

²⁷<https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-321-whistleblower-policies/>

²⁸ <https://www.whistlingwhiletheywork.edu.au/>

recommendations in the PJCCFS Report in relation to the PID Act at the same time as it implements the Government response to the Moss Review. Following the enactment of any reforms to the PID Act, awareness raising activities will be undertaken to ensure that employees in the public sector are appraised of the effect of the reforms. Relevantly, sections 62 and 63 of the PID Act provide that the functions of the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security in relation to the PID Act include conducting educational and awareness raising programs.

If no action has been taken to implement recommendation 1 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 1(b) has been implemented insofar as it relates to whistleblower protections in the corporate sector.

Text of recommendation 1 (c):

1. Regarding the detection of foreign bribery, the Working Group recommends that Australia:

- c) Clarify existing guidance to tax auditors to minimise the risk of tipping off taxpayers regarding ongoing and future foreign bribery investigations when interviewing taxpayers and third parties to verify whether tax deductions have been taken for bribe payments [2009 Recommendation III (iii)].

Action taken as of the date of the follow-up report to implement this recommendation:

Guidance issued by the Australian Tax Office (ATO) for ATO tax auditors, modified on 21 March 2019, draw heavily on the [OECD \(2013\) Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors](#)²⁹ (the Handbook) in providing advice on record keeping and audit techniques where bribery is suspected.

The guidelines state that the ATO auditors are required to consult ATO's approach to information gathering when conducting interviews. They give the auditors scope to determine the appropriateness of interview techniques and question construction depending on the circumstances of each case. Notably, ATO auditors take specific measures in covert audits to ensure that the risk of tip-offs is mitigated. The guidelines now also give a specific warning to auditors on the risk of tipping off taxpayers in bribery investigations. In this respect, the guidelines state:

Interviewing

The access manual also provides guidance to tax officers when undertaking formal interviews.

Where there is a risk that evidence regarding ongoing and future bribery investigations may be destroyed, tax officers should minimise the risk of tipping off taxpayers of such investigations when conducting interviews with taxpayers or third parties.

The following information provides further guidance in respect to interviewing techniques.

...

- **Interview techniques**

²⁹https://read.oecd-ilibrary.org/taxation/bribery-and-corruption-awareness-handbook-for-tax-examiners-and-tax-auditors_9789264205376-en#page1

Special attention should be given to interview techniques. It is important that the tax officers always maintain control of the interview and even more so when he has suspicion of bribes. Tax officers should establish the pace and direction of the interview. It is also important to continually assess whether the taxpayer is leading to pertinent information or providing little useful information.

- **Question construction**

When interviewing a taxpayer, four types of questions can be asked: open-ended, closed, probing and leading questions. It will be up to the tax officer to decide which type of questions are the most appropriate in order to detect bribes.

...

[Emphasis added]

For completeness, it is noted that the Handbook states that tax examiners should conduct further inquiries “where it is necessary and does not compromise a possible criminal case”. Consistent with the Handbook, pursuant to broader ATO policy, criminal investigators instruct ATO auditors to cease any inquiries or activities that could compromise the criminal investigation, and this includes situations where audit inquiries could tip off the taxpayer.

If no action has been taken to implement recommendation 1 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 1(c) has been implemented.

Text of recommendation 2 (a):

2. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Australia:

- a) Continue to resource AFP effectively to ensure it can continue its foreign bribery enforcement efforts [Convention Article 5, 2009 Recommendation Annex I B)], and

Action taken as of the date of the follow-up report to implement this recommendation:

The Australian Federal Police (AFP) under the auspices of Operation Integra has continued to focus on its high priority work in preventing, detecting, disrupting and investigating foreign bribery allegations. In countering foreign bribery, 19 investigators, four forensic accountants and six criminal assets litigators are specifically funded by government to investigate instances of foreign bribery. This funding totalling \$25.9 million over four years (ceasing in June 2023) follows on from a Confiscated Assets Account (CAA) funded initiative that commenced in June 2016 which established dedicated foreign bribery investigation teams in Sydney, Melbourne and Perth.

This increase in funding and four year commitment on the part of the Australian Government attests to the priority afforded to effectively counter foreign bribery. This Government investment also anticipates future legislative improvement, with key reforms potentially including a failure to prevent corporate offences and the potential introduction of a deferred prosecution agreement scheme.

Examples of key reforms and initiatives in countering foreign bribery under Operation Integra include:

- a pilot program utilising predictive analytics, artificial intelligence and machine learning has been implemented to better review, analyse and interrogate large, complex data sets that are typical of foreign bribery investigations. Use of this innovative technology has seen a reduction

in the need for investigators to manually examine documents, and in some cases, has reduced the data sets for review by up to 98%;

- the augmentation of the AFP's Advanced Foreign Bribery Investigations program held annually which gathers subject matter experts, law enforcement and prosecution practitioners, with members of the media, civil society and the private sector to develop better capacities and capabilities for foreign bribery prevention, detection, disruption and investigation;
- recognising the importance of prioritising serious financial crime as an enabler of more serious organised crime, Operation Integra has broadened the remit of the foreign bribery Panel of Experts so that advice and expertise can be provided across a range of serious financial crime types;
- based on the success of the AFP-hosted Fraud and Anti-Corruption Centre (FAC Centre) – a multi-agency collaborative approach to foreign bribery and other serious financial crimes – Operation Integra has adopted this partnership model with those with a foreign bribery remit to focus on countering foreign bribery and in supporting investigational outcomes;
 - with a funding injection by Government, the FAC Centre transitioned in October 2019, with the AFP code-named Operation Ashiba leveraging from these collaborative arrangements to focus on countering fraud against the Commonwealth.
- the AFP led public private partnership on foreign bribery outreach (further discussed under recommendation 6 (a)).

If no action has been taken to implement recommendation 2 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 2 (a) has been implemented.

Text of recommendation 2 (b):

2. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Australia:

- b) Continue to resource CDPP so it can effectively prosecute foreign bribery cases at the rate they are expected to be generated by AFP [Convention Article 5, 2009 Recommendation Annex I B)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Commonwealth Director of Public Prosecutions (CDPP) maintains a dedicated group of lawyers in its Commercial, Financial and Corruption national practice group responsible for the provision of pre-brief advice, assessment of briefs of evidence and the prosecution of corporate crime, including foreign bribery. Resourcing in this practice group is currently adequate and is monitored depending on need, for example, partner agencies' projections of referrals of briefs of evidence to the CDPP. The CDPP also has implemented a Foreign Bribery Focus Group, consisting of a number of lawyers who share learnings, law reform and developments concerning this crime type.

The CDPP is able to approach Government for specific funding in the event of an unexpected increase in foreign bribery cases that impacts on its resourcing. The Government is committed to ensuring that the CDPP remains adequately resourced at all times. In November 2018, for example, the Government announced that an additional \$41.6 million will be provided to the CDPP over eight years to support the CDPP to undertake further prosecutions of corporate crime.

If no action has been taken to implement recommendation 2 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 2 (b) has been implemented.

Text of recommendation 3:

3. Regarding international cooperation, the Working Group recommends that Australia, to the fullest extent possible within its legal system, ensure that a broad range of MLA can be provided to Parties to the Convention that apply civil or administrative (and not criminal) liability to legal persons for foreign bribery [Convention Article 9.1].

Action taken as of the date of the follow-up report to implement this recommendation:

Australia is committed to working together with its international partners to counter foreign bribery, including through mutual legal assistance arrangements. If a foreign state sought to make a request relating to civil or administrative proceedings, Australian authorities would work with their counterparts to explore opportunities for Australia to provide assistance in a manner that is consistent with its legal system.

Australia can make or receive mutual assistance requests to/from any country on the basis of reciprocity, and has entered into bilateral mutual assistance treaties with 29 countries. Australia's mutual assistance regime is consistent with the 2013 G20 High-level principles on Mutual Legal Assistance.

Section 3 of the *Mutual Assistance in Criminal Matters Act 1987* defines a "serious offence" as "an offence the maximum penalty for which is ... (c) a fine exceeding 300 penalty units" [AUD63,000]. Australia can provide mutual legal assistance for foreign bribery offences that meet this threshold.

Australia is not aware of any instance where this has prevented Australia from considering requests for assistance from a foreign state in civil or administrative matters.

Australia can provide assistance in proceeds of crime matters (which may be civil in nature) under the *Mutual Assistance in Criminal Matters Act* and Australia's bilateral agreements with other countries.

Beyond Australia's existing ability to facilitate assistance for cases that meet this threshold, Australia will continue to consider this recommendation, but is not currently considering any additional steps to make changes to the mutual assistance regime specifically in relation to foreign bribery.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The above action has been taken in relation to recommendation 3.

Text of recommendation 4 (a):

4. Regarding sanctions and confiscation, the Working Group recommends that:

- a) Where appropriate, Australian authorities pursue confiscation of bribe payments and their proceeds [Convention Article 3.3], and

Action taken as of the date of the follow-up report to implement this recommendation:

The Australian Federal Police (AFP) has the primary function of instituting confiscation proceedings. As a matter of course in investigations, the AFP considers relevant proceeds of crime mechanisms that may be employed either post-conviction or civilly.

In November 2018, Victoria's Supreme Court lifted suppression orders relating to criminal proceedings against two companies: Securrency International Pty Ltd (Securrency) and Note Printing Australia Ltd (NPA). Following the lifting of these orders, we can advise that, in late 2011:

- both companies pleaded guilty to offences involving bribery of officials in Malaysia and Indonesia;
- Securrency also pleaded guilty to an offence involving bribery of officials in Vietnam;
- NPA also pleaded guilty to an offence involving bribery of officials in Nepal.

Both companies co-operated in a proceeds of crime application that was brought following the successful criminal prosecutions, and pecuniary penalty orders made against them were taken into account at sentencing. The companies paid a combined total of \$21,666,482 in pecuniary penalty orders. This was in addition to a \$480,000 criminal fine paid by Securrency and a \$450,000 criminal fine paid by NPA.

If no action has been taken to implement recommendation 4 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 4(a) has been implemented.

Text of recommendation 4 (b):

4. Regarding sanctions and confiscation, the Working Group recommends that:

- b) Australian procuring agencies put in place transparent policies and guidelines on the exercise of their discretion on whether to debar companies or individuals convicted of foreign bribery [2009 Recommendation XI (i)].

Action taken as of the date of the follow-up report to implement this recommendation:

Australia continues to consider this recommendation in the context of existing mechanisms available under the Commonwealth procurement framework and in parallel with recommendations made by Australia's Senate Economics Reference Committee relating to foreign bribery published in a report entitled *Foreign Bribery* in March 2018.

Australia's Commonwealth Government 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.

If no action has been taken to implement recommendation 4 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

In its report entitled *Foreign Bribery*, the Senate Economics Reference Committee recommended 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 20). The Government is currently considering its response to the report's recommendations, including Recommendation 20.

Text of recommendation 5 (a):

5. Regarding the liability of legal persons, the Working Group recommends that Australia:

- a) Proactively pursue criminal charges against legal persons, where appropriate, for foreign bribery and related offences, such as false accounting, money laundering, fraud and tax evasion, including where an individual perpetrator pleads guilty; [Convention Articles 2 and 8, 2009 Recommendation VIII i)];

Action taken as of the date of the follow-up report to implement this recommendation:

The Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecution service established by the Parliament of Australia to prosecute alleged Commonwealth criminal offences. Where a brief is referred to the CDPP by an investigative agency, it is a matter for the CDPP as to whether the alleged misconduct should be prosecuted. Such decisions are made by the CDPP consistently with the [Prosecution Policy of the Commonwealth](#)³⁰. Provided that the applicable tests set out in this policy are met, including reasonable prospects of conviction and public interest considerations, the CDPP will decide which charges are most appropriate. Each case is dependent on its own facts and the evidence contained in the brief of evidence that is referred to the CDPP.

In the Securrency and Note Printing prosecutions, offences of conspiracy to bribe foreign public officials were prosecuted against these two legal persons, while false accounting offences were prosecuted against two natural persons (see our response to recommendation 4(a)). The decision as to which charges would be brought against these legal and natural persons in this prosecution were made consistently with the applicable tests under the Commonwealth's Prosecution Policy, and took account of the particular facts of the misconduct.

The Government is currently considering the introduction of a new corporate offence for failure to prevent foreign bribery by an associate. If this offence is introduced, Australia would expect to see increased criminal charges against legal persons for foreign bribery offences.

If no action has been taken to implement recommendation 5 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5(a) has been implemented.

Text of recommendation 5 (b):

5. Regarding the liability of legal persons, the Working Group recommends that Australia:

³⁰ <https://www.cdpp.gov.au/prosecution-process/prosecution-policy>

b) Finalise and publish the draft Best Practice Guideline on Self-Reporting of Foreign Bribery and Related Offending by Corporations, and take concrete steps to raise awareness of the Guideline amongst the private sector [Convention Articles 3 and 5], and

Action taken as of the date of the follow-up report to implement this recommendation:

In December 2017, following an extensive consultation process with business and the private sector, and in support of providing corporate entities a clear framework to self-report instances of suspected foreign bribery, the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) published the [Best Practice Guideline: Self-Reporting of Foreign Bribery and Related Offending by Corporations](#)³¹. This guideline was accompanied by a [joint media release](#)³² by the AFP and CDPP with guidance on how to access the guideline online.

This guideline explains the principles and process that AFP and CDPP will apply where a corporation has self-reported activity associated with foreign bribery or a related offence. The guideline also provides details of the Investigation Cooperation Agreement (ICA) process which allow corporations to model best practice corporate governance, demonstrate a commitment to cooperation and provides a clear framework and guidance on the AFP's expectations when assisting in an investigation.

The OECD recommended in its Phase 3 report into Australia's implementation of the OECD Anti-Bribery Convention that Australia develop a clear framework to address the nature and degree of cooperation of a corporation where foreign bribery or related activity is suspected to have taken place.

This guideline delivers on that recommendation and further demonstrates the leadership, both within the Australian government and private sector, to introduce mechanisms to enhance cooperation that upholds the rule of law, protects inherent legal rights and holds both the government and private sector to account.

The guideline is accessible via the AFP and CDPP websites.

In addition to publication and media release, other concrete steps that have been taken to raise awareness of the Guideline amongst the private sector include developing new slides on self-reporting and the Guideline that will be included in the publicly-available foreign bribery [online learning module](#) on the Attorney-General's Department's website³³. The Guideline was also discussed by AFP and CDPP at the three day 'Raising the Bar' foreign bribery forum in May 2019 attended by the private sector including industry representatives. Additionally, ASIC has also participated in awareness-raising around the Guideline, including through ASIC Commissioner Cathie Armour's panel presentation at the Transparency International Australia 2019 conference, 'Tackling Corruption'.

If no action has been taken to implement recommendation 5 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5 (b) has been implemented.

³¹ <https://www.cdpp.gov.au/publications/best-practice-guideline-self-reporting-foreign-bribery-and-related-offending>; <https://www.afp.gov.au/what-we-do/crime-types/fraud/fraud-and-anti-corruption>

³² <https://www.afp.gov.au/news-media/media-releases/new-best-practice-guideline-self-reporting-foreign-bribery>

³³ The module is available at: <https://www.ag.gov.au/Crime/Foreignbribery/OnlineModule/index.html>

Text of recommendation 5 (c):

5. Regarding the liability of legal persons, the Working Group recommends that Australia:

- c) Provide clear information in the public domain about where a company should go in order to make a voluntary report of foreign bribery [2009 Recommendation Annex I B)].

Action taken as of the date of the follow-up report to implement this recommendation:***AFP / CDPP initiatives***

Information on where a company should go in order to make a voluntary report of foreign bribery is outlined in the Best Practice Guideline: Self-Reporting of Foreign Bribery and Related Offending by Corporations, which was issued jointly by the Commonwealth Director of Public Prosecutions (CDPP) and also that of the Australian Federal Police (AFP) (see our response to recommendation 5(b)). The guideline is publicly available on the CDPP's and the AFP's websites.

The AFP's website allows people to report instances of foreign bribery to the AFP via the 'Report a Commonwealth Crime' portal. There is also further information on the AFP website on the foreign bribery offences and a further hyperlink to report a Commonwealth crime.

Future outcomes of the AFP's public private partnership with industry as it relates to foreign bribery outreach (see our response to recommendation 6(a)) will further enhance the public's visibility of foreign bribery and the methods with which people can report suspected offending.

ASIC has participated in awareness-raising as to how a company can report suspected foreign bribery, including through ASIC Commissioner Cathie Armour's panel presentation at the Transparency International Australia 2019 conference, 'Tackling Corruption'.

Austrade initiatives

Relevant initiatives are also being undertaken by the Australian Trade and Investment Commission (Austrade), which is the Australian Government's promotion agency for international trade, and for attracting productive foreign investment to Australia. Austrade regularly conducts outreach to the Australian business community, particularly to companies conducting business overseas.

Austrade includes a warning in the footer of every email correspondence and in any contractual agreement – including partnerships, ally arrangements and service agreements – of Australia's anti-bribery laws and that detection will lead to reporting by Austrade to the AFP.

Through internal presentations and training, Austrade regularly communicates information to staff about their obligation to report bribery and of the process for making such reports. Staff are advised to report any credible evidence of bribery, either self-detected or advised by clients, to the Chief Legal Counsel to determine whether a report should be made to the AFP to assess under its case prioritisation criteria. Information to this effect is also contained on Austrade's website.

Through its outreach initiatives, Austrade also regularly reminds clients of the need to report foreign bribery and provides them the necessary information as how to make a report. Similar advice is provided in domestic presentations to State Government and at professional (legal and accounting) meetings. Included in presentations (and in Austrade's website under guidance on Foreign Bribery), is the email address for voluntary reporting along with an expressed preference that reports be made direct to the investigative authorities noting that Austrade exercises neither investigative nor prosecution obligations and to preserve evidence and the rights of the parties.

Attorney-General's Department initiatives

The Attorney-General's Department's website also provides information about how to report foreign bribery. This is partly contained in a publicly available online learning module on foreign bribery hosted on the website. The module is intended for use by industry and government, and provides advice on

Australia's anti-bribery policy, relevant laws and how they apply, and steps that business can take to help promote compliance. The module contains information on self-reporting and reporting suspected foreign bribery, including information about who to report to, what information should be reported, and how to report foreign bribery. The Attorney-General's Department is working to update this module, including additional information on self-reporting and the Best Practice Guideline: Self-Reporting of Foreign Bribery and Related Offending by Corporations.

If no action has been taken to implement recommendation 5 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 5 (c) has been implemented.

Text of recommendation 6 (a):

6. Regarding engagement with the private sector, the Working Group recommends that Australia:

- a) Find additional ways to encourage companies, particularly SMEs, to develop and adopt adequate internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Efforts in this regard could include drawing companies' attention to existing domestic and international guidance, including practical guidance regarding the high-risk sectors and regions in which Australian businesses commonly operate. [2009 Recommendation C i) and ii)]; and

Action taken as of the date of the follow-up report to implement this recommendation:

Austrade initiatives

Austrade has developed guides on bribery and corruption risks in the 50 jurisdictions (including Australia) in which Austrade facilitates trade. These guides contain information on :

- the current corruption perception index ratings compiled by Transparency International
- in-country efforts made to improve and comply with international standards
- applicable laws and penalties
- regulatory bodies that assist in compliance and enforcement
- the different types of corruption that may be encountered, recognising that not every jurisdiction experiences the same risk, and
- on advancements in improving compliance in the relevant country.

These guides are included in a welcome package provided to new exporters and investors seeking assistance from Austrade. They were made available in all Austrade's 89 foreign offices in October 2019.

Austrade has also developed an interactive Business Risk matrix which measures the international ranking of a foreign jurisdiction in terms of country risk of corruption, legal ranking in terms of existing laws and enforcement and cross-referenced with industry risk. The matrix is a more granular examination of the particular, practical risks in-country particularly highlights risks and brings them to the attention of interested parties, particularly for investors and exporters with little international experience or lacking the resources to apply adequate procedures to mitigate the risk of bribery and corruption when entering a foreign market. The matrix will be applied to the 49 foreign jurisdictions in which Austrade offers Australian companies international assistance. Austrade intends to make the matrix publicly available in November 2019.

AFP initiatives

The Australian Federal Police (AFP), supported by the Attorney-General's Department, has established a public private partnership with a number of Australian companies such as BHP, Commonwealth Bank, Qantas, Westpac and Allens Linklaters, along with civil society representation from the Global Compact Network Australia (GCNA) and Transparency International Australia (TIA). Through this partnership, entities are able to leverage their respective skills, understanding and experience across both government and private sectors to jointly engage Australian business in respect of countering foreign bribery issues.

The partnership was established as an outcome of a three day forum held in May 2019, titled 'Raising the Bar', which brought together representatives from over 30 different organisations and government agencies to co-design a new approach to preventing and detecting foreign bribery in Australian business, with a particular emphasis on SMEs. Following this forum, the concept of the Bribery Prevention Network (BPN) was developed which will redefine the way foreign bribery outreach is conducted with Australia's private sector, and provide a sustainable model for access to information and training on foreign bribery risks for business of all sizes.

The BPN will continue with a number of work streams soon to be made public including:

- a free online portal with relevant, reliable resources for the prevention and detection of bribery and corruption and guidance for how to address the risk where issues arise. It will be curated by Australia's leading private sector anti-bribery experts and endorsed by Australian Government agencies as a measure to raise the bar on the prevention of bribery and corruption
- research and development into trends within industries as it relates to foreign bribery including geographic areas of risk and foreign bribery typologies, and
- development of an online resource of case studies from companies involved in foreign bribery investigations to raise awareness among SMEs of the risks of foreign bribery.

The AFP has presented on this partnership at various fora, including of the 'ACT Net Workshop for Law Enforcement Agencies on Effectively Using Corporate Compliance Programs to Combat Domestic & Foreign Bribery', which took place during the APEC SOM III meetings in Chile in August 2019.

The AFP will present on this initiative at the WGB meeting in December 2019.

Relevant initiatives undertaken by ASIC

In August 2018, the Australian Securities and Investments Commission (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 which has to date considered how directors and officers have overseen and managed non-financial risk (namely operational, conduct and compliance risks). The focus of the Taskforce's work is to identify good and poor practices and recommend improvements to lift corporate governance standards. Improving governance and accountability is a key strategic priority for ASIC.

In a report released on 2 October 2019, ASIC set out its observations on a review of 7 large financial services companies and highlighted ways in which governance practices could be improved. ASIC urged companies to apply a greater focus and sense of urgency to the oversight and management of non-financial risk. Although not specifically foreign bribery-related, ASIC's review focused primarily on the oversight and management of compliance risk (which would include compliance with foreign bribery obligations). The review made the following findings:

- All too often, management was operating outside of board-approved risk appetites for non-financial risks, particularly compliance risk. Boards need to actively hold management accountable for operating within stated risk appetites.

- Reporting of risk against appetite often did not effectively communicate the company's risk position. Boards need to take ownership of the form and content of information they are receiving so that they can adequately oversee the management of material risks.
- Material information about non-financial risk was often buried in dense, voluminous board packs. It was difficult to identify key non-financial risk issues in information presented to the board. Boards should require reporting from management that has a clear hierarchy and prioritisation of non-financial risks, and
- The effectiveness of board risk committees (BRCs) could be improved. BRCs should meet more regularly, devote enough time and be actively engaged to oversee material risks in a timely and effective manner.

Annexed to the review was a report by an organisational expert into the effectiveness of the board and how behaviours of the board (including their interaction with management) could assist or hinder the oversight of non-financial risk. This review was informed by the methodology adopted by the Dutch Central Bank into behavioural analysis of boards and included board observations, interviews and document reviews relating to 6 companies (3 financial services and 3 non-financial services companies).

ASIC launched the report on 2 October 2019 and the Chair provided the keynote address at the Australian Institute of Directors (AICD) Essential Director Update conference held in Sydney on that date. In addition to the report being published on ASIC's website, together with a media release which resulted in widespread coverage, ASIC also produced a podcast which discussed the report with the team leader of the Taskforce. In addition ASIC has written to the companies that are the subject of the review providing feedback and asking them to respond in writing and participate in feedback sessions.

Relevant initiatives undertaken by EFA

Australia's export credit agency, Export Finance Australia (EFA), has a comprehensive Anti-Bribery and Corruption Framework on its [website](#)³⁴.

EFA's webpage also provides references to the OECD Council Recommendation on Bribery and Officially Supported Export Credits and includes a link to an online learning module from the Attorney-General's Department (see our response to recommendation 5 (c)). In line with recommendation 6 (a) and the 2019 OECD Recommendation of the Council on Bribery and Officially Supported Export Credits, EFA is currently exploring innovative ways to assist its customers to prevent and detect bribery (both foreign and domestic). Possible initiatives include:

- collaborative learning sessions between EFA, its customers (with a focus on SME customers) and external bribery and corruption specialists;
- an online training module on bribery and corruption; and
- production of anti-bribery and corruption guidance material.

EFA aims to settle and implement these measures by first quarter 2020.

If no action has been taken to implement recommendation 6 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendation 6 (a) has been implemented.

³⁴ <https://www.exportfinance.gov.au/our-organisation/our-corporate-responsibility/business-ethics/anti-corruption>

Text of recommendation 6 (b):

6. Regarding engagement with the private sector, the Working Group recommends that Australia:

b) In the event that Australia enacts a ‘failure to prevent’ offence for companies, closely engage with the private sector to prepare guidance on the establishment and implementation of adequate compliance measures with regard to the new offence [2009 Recommendation i) and ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

In December 2017, the Government introduced the [Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2017](#)³⁵ (the ‘CLACCC Bill’) into Parliament. The CLACCC Bill proposed to:

- amend the substantive foreign bribery offence under section 70.2 of the schedule to the *Criminal Code Act 1995* (the Criminal Code) in order to remove undue impediments to successful prosecution
- introduce a proposed new corporate offence for failing to prevent foreign bribery, and
- introduce a deferred prosecution agreement (DPA) scheme for certain corporate offences including foreign bribery.

Under the proposed new corporate offence, there would be automatic liability where an associate of the corporation commits bribery for the profit or gain of the corporation, and the corporation does not have adequate procedures in place to prevent the commission of the foreign bribery offence (see further discussion in our response to recommendation 7(g)). 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. The responsible government Minister would be required to publish guidance on the steps companies could take to implement effective compliance programs to prevent bribery by their associates.

The Attorney-General’s Department will publish draft ‘adequate procedures’ guidance on the Department’s website and allow at least four weeks from the date of publication to receive feedback. This is consistent with earlier recommendations made by the Senate Economics References Committee report and the Senate Legal and Constitutional Affairs Committee on the CLACCC Bill after it was first introduced 2017.

In addition to inviting public submissions on the draft guidance through the Department’s website, the Department will conduct targeted consultation with business and civil society stakeholders, including Global Compact Network Australia and Transparency International Australia. We anticipate the draft guidance will be launched in mid-November 2019.

Note: The CLACCC Bill was re-introduced into Parliament on 2 December 2019.

If no action has been taken to implement recommendation 6 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The above action has been taken to implement recommendation 6 (b).

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments. Please include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

Text of issue for follow-up 7 (a):

7. The Working Group will follow-up on:

- a) Whether ATO proactively detects and reports to AFP suspected bribe payments to foreign public officials;

The Australian Tax Office (ATO) has protocols in place for ATO auditors who uncover suspected bribery payments when looking through financial and other documentation relating to a taxpayer (for example, where a bribe has been masked as a deduction). Under these protocols, ATO auditors refer such cases to the Australian Federal Police (AFP). The ATO conducts investigations into suspected bribery where the associated criminal cases are not compromised as a result of the tax investigation.

In the past the ATO has referred suspected cases of bribing a foreign public official to the AFP.

Text of issue for follow-up 7 (b):

7. The Working Group will follow-up on:

- b) Whether AUSTRADE, in the course of its trade facilitation role, effectively detects and reports foreign bribery suspicions that involve client companies to AFP;

Austrade has an ongoing program of awareness raising amongst its staff, clients, allies, state governments, civil society, professional and compliance bodies. For example, Austrade's Chief Counsel has presented programs in PNG (March 2019) and Vietnam (Oct 2019) to staff, business clients and various public and private sector groups. Austrade also maintains a publicly-available suite of compliance materials on its website.

Internally, Austrade regularly communicates to its staff that all evidence of bribery is to be reported to the Chief Counsel, by direct email or via the Austrade bribery and corruption email address (bribery@austrade.gov.au). Chief Counsel then assesses the reports for credibility, and applying the case prioritisation criteria of the Australian Federal Police (AFP), reports suspected foreign bribery to the AFP.

Reports of fraudulent and corrupt behaviour made to Austrade by the trading public who wish to make a complaint or seek assistance have increased since 2011/12. In the past two years Austrade has received a number of reports of suspected bribery of which less than 10 matters have been reported to the AFP as possible breaches of Australia's anti-bribery laws.

Anecdotal evidence (related via Australia-based Trade Commissioners and locally-engaged staff) indicates that all levels of business are more aware of Australian and foreign laws and are better equipped to deal with various common practices including solicitation of bribes in tenders or procurement, excessive commissions claimed by local agents and third party benefits. Australian businesses are more aware of corrupt foreign business practices and indicate a willingness to engage with this risk and employ mitigation strategies rather than indirect participation in domestic and international criminal activity. Foreign jurisdictions may also catch this behaviour. Public anti-corruption initiatives driven by governments have made previous behaviours more difficult to maintain in the face of risk of detection.

More work may be required to raise awareness and provide guidance on mitigation of more subtle practices that are being employed country to country to buy influence, particularly in terms of having adequate procedures in place at every level of a supply chain in the face of a potential Australian 'failure to prevent' bribery offence (see our response to recommendation 6(b)).

Text of issue for follow-up 7 (c):

7. The Working Group will follow-up on:

- c) Whether the Department of Defence reports credible suspicions of foreign bribery involving its contractors and potential contractors to AFP;

Australia's Department of Defence has robust and established policies and procedures for the mandatory reporting of allegations of corruption, including foreign bribery, and for the formal referral of such matters to the Australian Federal Police (AFP). These policies and procedures are consistent with the Commonwealth Fraud Control Framework and Australian Government Investigation Standards and include the Department's Incident Reporting and Management Policy Guidance and supporting references within the Procurement Policy Framework.

Defence works closely with the AFP and there are effective mechanisms for cross-reporting allegations of corruption where appropriate, including in relation to foreign bribery. Since December 2017, Defence has received one report of suspected foreign bribery which was referred to the AFP.

Text of issue for follow-up 7 (d):

7. The Working Group will follow-up on:

- d) Australia's ongoing review and monitoring of the defence for facilitation payments, including any recommendations that come out of the ongoing Senate Inquiry Into Foreign Bribery;

In its report on Foreign Bribery (see our response to recommendation 4(b)), the Senate Economic References Committee recommended the facilitation payment defence 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 Australian Government is considering this recommendation and continues to review the operation of this defence. It is important to note the following in this regard:

- The facilitation payment defence available under Australian law is narrow in its operation. Under the Commonwealth 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. Even so, Australian government agencies, wherever possible, strongly discourage businesses from making facilitation payments.
- Facilitation payments are not prohibited under the OECD Anti-Bribery Convention.

Text of issue for follow-up 7 (e):

7. The Working Group will follow-up on:

- e) The steps that Australia has taken to address the recommendations made by the Committee with respect to whistleblowers in both the public and private sectors;

See our response to recommendation 1(b). The Government has not yet implemented the Government response to the PJCCFS Report in respect of recommendations relating to the public sector whistleblower scheme in the PIDA. As noted in response to Recommendation 1(b), the Government will implement the recommendations in the PJCCFS Report in relation to the PIDA at the same time as it implements the Government response to the Moss Review.

Text of issue for follow-up 7 (f):

7. The Working Group will follow-up on:

- f) Investigations into foreign bribery allegations to verify whether the increased foreign bribery capacity is working in practice;

The following trends can be noted regarding foreign bribery allegations referred to the AFP since the last reporting period (June 2017), measured against the statistics reported in June 2017:

- An increase in evaluations/investigations from 57 to 101.
- An increase in allegations finalised after evaluation/investigation from 20 to 62 (this includes seven investigations that were reported as active during the Phase 4 review).
- A reduction in matters under evaluation from 13 to 0.
- An additional six matters have proceeded to investigation since June 2017.

The reported increase in matters finalised is reflected in a change in approach to how the AFP records foreign bribery investigations in anticipation of further information from foreign enforcement agencies (such as law enforcement, financial intelligence units etc.). Notably, during the tenure of the Fraud and Anti-Corruption Centre (see our response to recommendation 2(a)), a number of evaluations were held in place whilst awaiting further information to be obtained. A concerted effort was undertaken post the Phase 4 review in 2017 to finalise such matters where there was no reasonable prospect of obtaining any relevant information from overseas, on the proviso that the matter could be reactivated in the future should further information come to light.

It is also noted that an active investigation from the time of the Phase 4 review has resulted in a further 23 individual referrals of foreign bribery involving the same legal entity. This has somewhat skewed the figures of active investigations to reflect a dramatic increase in foreign bribery investigations.

Text of issue for follow-up 7 (g):

7. The Working Group will follow-up on:

- g) Whether there are any specific issues impacting on CDPP's ability to prove intent;

A number of measures are presently in train to address difficulties associated with proving the fault element in prosecutions for foreign bribery.

On 10 April 2019, the Government commissioned the Australian Law Reform Commission to conduct a review of Australia's corporate criminal responsibility regime. This regime applies to a wide range of offences, including foreign bribery. The Commission is due to report on 30 April 2020. The review will consider matters including the following:

- options for reforming to the Commonwealth Criminal Code and other relevant legislation to provide a simpler, stronger and more cohesive regime for corporate criminal responsibility;
- the availability of other mechanisms for attributing corporate criminal responsibility, including mechanisms that could be used to hold individuals, such as senior corporate officer holders, to account for corporate misconduct; and
- the appropriateness and effectiveness of criminal procedure laws and rules as they apply to corporations.

Furthermore, as explained in our response to recommendation 6(b), in December 2017, the Government introduced the CLACCC Bill into Parliament. This Bill proposed to create a new corporate offence for failing to prevent foreign bribery. Under this offence, a corporation would be held criminally liable where an associate of the company commits bribery for the profit or gain of the corporation. This would be an absolute liability offence, so no intent or other fault element would need to be proven. In other words, there would be no need to prove that the company, intentionally or otherwise, directed, encouraged or endorsed the misconduct of the associate in question (a defence would be available where the company could show that it had adequate procedures in place to prevent foreign bribery). The enactment of this offence would significantly address any difficulties that would otherwise be faced in proving corporate intention.

The CLACCC Bill also proposed to remove potential impediments to the successful prosecution of the substantive foreign bribery offence contained under section 70.2 of the Criminal Code. The CLACCC Bill proposed to

- extend the definition of foreign public official to include candidates for public office
- expand the offence to capture bribery to obtain a personal (i.e. non-business) advantage
- remove the requirement that a benefit and business advantage be 'not legitimately due' and replace this requirement with the concept of 'improperly influencing' a foreign public official, and
- remove the requirement that the foreign official must be influenced in the exercise of the official's duties.

Note: The CLACCC Bill was re-introduced into Parliament on 2 December 2019.

Text of issue for follow-up 7 (h):

7. The Working Group will follow-up on:

- h) Whether the proposed new corporate offence of failing to prevent foreign bribery is enacted;

Under the proposed new corporate offence, a company would be automatically held liable for failing to prevent foreign bribery where its associate (such an employee, contractor, agent or subsidiary) engages in conduct constituting a foreign bribery offence for the profit or gain of the corporation. A full defence is available where a corporation can demonstrate that it had 'adequate procedures' in place. This legislation will also provide that the Attorney General must publish Adequate Procedures guidance.

The Attorney-General's Department will publish draft guidance on the Department's website and allow at least four weeks from the date of publication to receive feedback. This is consistent with earlier recommendations made by the Senate Economics References Committee report and the Senate Legal and Constitutional Affairs Committee on the CLACCC Bill after it was first introduced 2017.

In addition to inviting public submissions on the draft guidance through the Department's website, the Department will conduct targeted consultation with business and civil society stakeholders, including Global Compact Network Australia (GCNA) and Transparency International Australia. We anticipate the draft guidance will be launched in mid-November 2019.

Note: The CLACCC Bill was re-introduced into Parliament on 2 December 2019.

Text of issue for follow-up 7 (i):

7. The Working Group will follow-up on:

- i) Whether external auditors who discover indications of a possible illegal act of bribery are reporting the discovery to management and, as appropriate, to corporate monitoring bodies;

The Best Practice Guideline: Self-reporting of foreign bribery and related offending by corporations, provides a clear framework for companies to self-report suspected incidents of foreign bribery (see our response under Recommendation 5 (b)).

We note ASIC has not received any reports from external auditors relating to possible acts of bribery since the Phase 4 evaluation in 2017. In the same period ASIC has received over 1400 reports from external auditors under the *Corporations Act 2001* but none have related to bribery. Under section 311 of the Corporations Act an auditor is required to notify ASIC in writing if the auditor has reasonable grounds to suspect that a contravention of the Corporations Act has occurred and believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors. Note that the contraventions are restricted to the Corporations Act (no foreign bribery offences).

Text of issue for follow-up 7 (j):

7. The Working Group will follow-up on:

- j) Sanctions and confiscation in foreign bribery cases;

Australia has had two foreign bribery investigations that have proceeded to prosecution and have been finalised. The results of these prosecutions have previously been reported to the WGB through the *Tour de Table* and are provided below for completeness.

Securrency and Note Printing Australia prosecution, 2018-2019

The background to this prosecution is provided in our response to recommendation 4(b). The sanctions that were imposed on the natural and legal persons are as follows:

Radius Christanto (NP) - Conspiracy to bribe foreign public official

- Mr Christanto was sentenced to two years imprisonment, and was released to be of good behaviour for two years. The sentencing judge took into account 42 days imprisonment that Mr Christanto served in Singapore prior to his extradition to Australia, his early plea of guilty and associated remorse and extensive cooperation that he undertook to provide to Australian authorities. Had Mr Christanto not pleaded guilty or offered future cooperation, he would have

been sentenced to five years imprisonment, with a minimum non-parole period of three years and four months.

David Ellery (NP) - False accounting (Victorian state offence)

- Mr Ellery was sentenced to six months imprisonment, with the term suspended for a period of two years. Were it not for his plea of guilty, he would have been sentenced to one year of imprisonment with a non-parole period of nine months.

Myles Curtis (NP) - Conspiracy to bribe a foreign public official; False accounting (Victorian offence)

- On the conspiracy to bribe foreign public officials charge, Mr Curtis was sentenced to two years and six months imprisonment, but released to be of good behaviour for two years and six months. On the false accounting charge, Mr Curtis was sentenced to six months imprisonment, wholly suspended for one year. Were it not for his plea of guilty, he would have been sentenced to three years imprisonment with a non-parole period of two years on the conspiracy charge, and one year imprisonment with a six month non-parole period on the false accounting charge.

Clifford Gerathy (NP) - False accounting (Victorian offence)

- Mr Gerathy was sentenced to three months' imprisonment, wholly suspended for six months. If he had not pleaded guilty, he would have been sentenced to four months immediate imprisonment.

Christian Boillot (NP) - Conspiracy to Bribe Foreign Public Official

- Mr Boillot was sentenced to two and a half years imprisonment, but released to be of good behaviour for two years. Were it not for his plea of guilty he would have been sentenced to three years imprisonment with a minimum non-parole period of two years.

Securrency (LP) - Conspiracy to bribe a foreign public official – Three counts (Indonesia, Malaysia, Vietnam)

Note Printing Australia (LP) - Conspiracy to bribe a foreign public official – Three counts (Indonesia, Malaysia, Nepal)

Securrency was sentenced to fines totalling \$480,000 and NPA was sentenced to fines totalling \$450,000. The fines would have been more substantial were it not for both companies pleading guilty and undertaking to cooperate with the authorities in relation to the prosecutions of their employees and agents.

Securrency and NPA cooperated in a proceeds of crime application that was brought as a result of the successful company prosecutions. The companies paid a combined total of \$21,666,482 in pecuniary penalty orders. At the time of writing, the pecuniary penalties against NPA and Securrency are the largest ever ordered.

Lifese prosecution, 2017

As the Phase 4 report noted, three natural persons were convicted of conspiracy to bribe a foreign public official. All three persons were sentenced to four years' imprisonment with a fixed non-parole period of two years. Two persons were fined \$250,000 each.

Text of issue for follow-up 7 (k):

7. The Working Group will follow-up on:

- k) Australia's enforcement of foreign bribery cases that may be politically sensitive; and

As we have stated above (see response to Recommendation 5 (a)), the CDPP is an independent prosecution service. Consistent with paragraph 2.13 of the Prosecution Policy of the Commonwealth, a decision whether or not to prosecute must not be influenced by:

- the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved
- possible political advantage, disadvantage or embarrassment to the Government or any political group or party, or by
- the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

Text of issue for follow-up 7 (l):

7. The Working Group will follow-up on:

- l) Australia's enforcement of false accounting offences related to foreign bribery.

Depending on the facts of the misconduct, AFP will usually give consideration to false accounting offences as part of an investigation into alleged foreign bribery. For example in the Securrency and Note Printing Australia prosecution for foreign bribery, three natural persons were also convicted of false accounting offences under the Victorian *Crimes Act 1958*.

It should be noted that ASIC would also consider false accounting offences in any foreign bribery-related investigation together with any relevant *Corporations Act 2001* breaches, for example, falsifying company books.

PART III: ADDITIONAL ISSUES FOR INFORMATION

Foreign bribery and related enforcement actions since Phase 4

To this end, we would kindly ask you to please provide information on:

- *The foreign bribery investigations and prosecutions mentioned in [relevant paragraphs and/or Annex 3] of the Phase 4 Report; and*
- *The foreign bribery cases in the Matrix extract here attached.*

Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 4.

Information may be provided below or in a separate document.

Action taken as of the date of the follow-up report:

An update on the foreign bribery prosecutions of Securrency, Note Printing Australia and Lifese has been provided in our responses to recommendation 4 (a) and follow-up issue 7 (j). An update on AFP's active foreign bribery investigations is provided in our response to recommendation 4 (a). Updates to the matrix will be provided separately.

Efforts made to publicise and disseminate the Australia Phase 4 report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit [*Phase 4 Evaluation Procedures, para. 50*]

Action taken as of the date of the follow-up report:

The Attorney General's Department (AGD) website contains a link to reports on the OECD website, and the report is referenced on websites of other government agencies such as Austrade. The Parliament of Australia published a research paper on Australia's implementation of the OED Anti-Bribery Convention, including a summary of the Phase 4 evaluation, in August 2019.

The AGD presented on the Phase 4 report, specifically recommendation 6 (a), during the Raising the Bar foreign bribery forum held in May 2019, which was attended by representatives from over 30 organisations and government agencies including Transparency International Australia and Global Compact Network Australia (GCNA). The report has also been the subject of presentations made by:

- the AGD at conferences including the GCNA inaugural flagship conference 'Rebuilding trust in corporate Australia – Business as an Agent of Sustainable Change' which brought together 250 local and global leaders from business, civil society, academia and Government, and
- ASIC and AFP at conferences including a joint panel presentation at the 2019 Transparency International Australia conference 'Tackling Corruption'.