



AUSTRALIA: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

APRIL 2015

This report, submitted by Australia provides information on the progress made by Australia in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 3 April 2015.

The Phase 3 report evaluated 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.

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

1. In December 2014, Australia presented its written follow-up report to the Working Group on Bribery (the Working Group), outlining its responses to the recommendations and follow-up issues identified by the Working Group at the time of Australia's Phase 3 evaluation in October 2012. Australia has taken steps to implement a number of recommendations, with 16 out of 33 recommendations fully implemented, 9 partially implemented and 8 not implemented.

2. With regard to enforcement, 15 new foreign bribery allegations have surfaced since Phase 3. The number of foreign bribery investigations has increased to 17 (from 7 in October 2012). Australia still has only 1 prosecution in the *Securrency/NPA case*; this has been before the courts since prior to Phase 3. The Australian Federal Police (AFP) has transmitted 1 investigation to the Commonwealth Director of Public Prosecutions (CDPP) for the purposes of assessment and prosecution, and more investigations are expected to be transmitted in 2015. The 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*. The WGB expressed its intent to follow this up in the context of future monitoring, once the case is completed and the suppression orders are lifted.

3. Australia has made good progress on addressing a number of important recommendations. In particular, the AFP has been active in improving its policy and operations regarding foreign bribery. Australia has reviewed its overall approach to enforcement, resulting notably in the establishment of an inter-agency Fraud and Anti-Corruption Centre (FAC Centre) (*recommendation 1*). The Centre is hosted by the AFP with officials seconded from the Australian Taxation Office (ATO), Australian Securities and Investments Commission (ASIC), Australian Crime Commission, Australian Customs and Border Protection Service, Department of Human Services, Department of Immigration and Border Protection, Department of Defence, and Department of Foreign Affairs and Trade (DFAT). The FAC Centre will in particular ensure the involvement of Australia's confiscation authorities in foreign bribery cases and the routine consideration of confiscation of foreign bribery proceeds (*recommendation 5*). The FAC Centre has improved coordination between the AFP and ASIC (*recommendation 6*). The coordination between these two agencies was further increased through staff secondments, knowledge-sharing, and an inter-agency MOU setting out the roles and responsibilities of the two agencies (*recommendation 6 and 7a*). The AFP has also entered into an MOU with the Australian Prudential Regulation Authority (APRA) (*recommendation 7a*). It is further intended that the FAC Centre will ensure the ATO is informed of foreign bribery convictions, although it remains to be seen how this is carried out in practice, once foreign bribery cases are finalised (*recommendation 14b*).

4. An AFP Foreign Bribery Panel of Experts was also established, which considered all of the Working Group's recommendations to the AFP (*recommendation 8b*). AFP officers have benefited from foreign bribery training by the Panel of Experts, in addition to other foreign bribery training (*recommendation 10a*). The AFP has also engaged with state-level law enforcement to establish guidelines on reporting foreign bribery (*recommendation 7b*) and to raise awareness of the foreign bribery offence (*recommendation 12a*). In addition, the AFP has made progress towards ensuring that foreign bribery investigations are thoroughly investigated, that all avenues are pursued, and that allegations come from diverse sources; although the Group would like to see an increase in enforcement before it can conclude that *recommendation 8a* has been fully implemented. Similarly, increased enforcement is required to determine whether the use of Australia's corporate liability provisions has been enhanced (*recommendation 3*) and whether false accounting is being vigorously pursued (*recommendation 4b*). On the topic of enforcement, the Group also felt that more could be done to explicitly prohibit the interference of Article 5 factors in investigations or prosecutions (*recommendation 10c*). On a more positive note, the Working Group welcomed the restructuring of its operating model by the Office of the CDPP to ensure sufficient resources are available to prosecute foreign bribery (*recommendation 10b*).

5. The Group also recognised positive steps which Australia had taken in relation to awareness-raising. The Attorney-General's Department (AGD) has developed and led a whole-of-government approach to awareness-raising in which the AFP, DFAT and Austrade have been active (*recommendation 12d*). This programme has raised the private sector's awareness of foreign bribery and corporate compliance (*recommendation 12b*) and has resulted in online foreign bribery training which, amongst other things, summarises publicly-available information on hospitality and bribery (*recommendation 12c*). The programme has discouraged facilitation payments, although the distinction between facilitation payments and bribes has however not systematically been covered: while Australia explains that its agencies go to quite some effort in their outreach presentations to explain the distinction, written publications by the AFP or Austrade do not clearly address the distinction (*recommendation 2a*). Similarly, while efforts have been made to raise awareness of plea-bargaining, a framework has not been established to address matters related to compliance system reform or prosecution of natural persons (*recommendation 9*). Some steps have been taken to raise awareness of foreign bribery as a predicate offence for money laundering and the Working Group looks forward to the forthcoming typology on foreign bribery, the release of which will fully implement *recommendation 13*. As recommended by the Working Group, the ATO has also considered the issue of bribery and small facilitation payments in its awareness raising and training activities, although it has yet to effectively include the topic in its *Compliance in Focus* publication (*recommendation 14c*).

6. On the topics of detection and reporting, the Working Group welcomed Australia's adoption of public sector whistleblower protection, but recommended that similar protections be adopted for the private-sector (*recommendation 15d*). With the integration of AusAID into DFAT, Australian officials in charge of official development assistance are now subject to an obligation to report foreign bribery suspicions to the AFP, and have received training in that respect (*recommendation 15e*). The Government is reportedly still considering extending the reporting requirements for external auditors (*recommendation 15a*). The Australian Public Service guide has yet to be amended to require overseas-based civil servants to report foreign bribery to the AFP (*recommendation 15b*) and employees of independent statutory authorities remain beyond the scope of the public sector's reporting obligations (*recommendation 15c*). Finally, Australia has yet to put in place transparent debarment policies for procuring agencies (*recommendation 16a*). *Recommendation 15f*, however, has been fully implemented by Austrade, which has encouraged companies to conduct due diligence on all agents. The Export Finance and Insurance Corporation (EFIC) has also improved due diligence and reporting requirements and established clear guidelines on the termination of support due to foreign bribery (*recommendation 16b*).

7. At the time of Phase 3, the Working Group had also recommended legislative change in several areas. Australia expressed its intention to introduce such legislative amendments to clarify that intention to bribe a particular official is not a requirement of Australia's foreign bribery offence (*recommendation 2b*), and to increase sanctions for the false accounting offence (*recommendation 4a*). On the other hand, Australia reports no action in respect of the Working Group's recommendation on record-keeping requirements relating to facilitation payments, which remain inconsistent between the criminal and tax legislation (*recommendation 14a*). Australia has also taken no steps to support other states' enforcement by providing the broad range of mutual legal assistance in respect of civil or administrative proceedings (*recommendation 11*).

Conclusions of the Working Group on Bribery

8. Based on these findings, the Working Group concludes that Australia has fully implemented recommendations 1, 5, 6, 7a, 7b, 8b, 10a, 10b, 12a, 12b, 12c, 12d, 14c, 15e, 15f, and 16b; recommendations 2a, 3, 4b, 8a, 9, 10c, 13, 14b, and 15d are partially implemented; and recommendations 2b, 4a, 11, 14a, 15a, 15b, 15c, and 16a are not implemented. Follow-up issues 17a and 17j no longer need be followed up. The Working Group will follow up on the recommendations that remain only partially or not implemented in the context of future monitoring, as well as on follow-up issues 17b-i and 17k. The Working Group invites Australia to report back in writing in 6 months (June 2015) on progress on enforcement action as it relates to recommendation 8a.

PHASE 3 WRITTEN FOLLOW-UP REPORT – AUSTRALIA

Name of country: AUSTRALIA
Date of approval of Phase 3 report: 12 October 2012
Date of information: 13 November 2014

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 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 3 Evaluation Procedure [DAF/INV/BR(2008)25/FINAL, paragraphs 55-67].

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.

Please submit completed answers to the Secretariat on or before 31 October 2014.

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation:

1. The Working Group recommends that Australia review its overall approach to enforcement in order to effectively combat international bribery of foreign public officials (Convention Article 1, 5; 2009 Recommendation V).

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

Australia has reviewed its approach to enforcement of the foreign bribery offence, and has implemented a number of initiatives as a result.

As a part of its one year follow-up report, Australia responded to two key recommendations from the OECD Working Group – recommendation 6 on cooperation between the Australian Federal Police (AFP) and the Australian Securities and Investment Commission (ASIC); and recommendation 8(a) regarding AFP investigation of foreign bribery cases. This response noted key measures undertaken which will help to bolster Australia's approach to enforcement.

In April 2012 (before the Phase 3 evaluation), AFP established an internal Foreign Bribery Panel of Experts. This Panel is made up of senior investigators who have had responsibility for at least one significant foreign bribery investigation, and who also have experience in investigating large and complex matters that span international jurisdictions.

In line with recommendation 8(a), the Panel of Experts is now responsible for:

- ensuring foreign bribery evaluations are not closed prematurely
- proactively gathering information, including monitoring credible media sources for new allegations and collecting data from overseas law enforcement bodies to better inform our investigators
- evaluating foreign bribery referrals and investigations and providing expert advice to investigators, including ensuring consideration of jurisdiction over related legal persons, consideration of concurrent and joint investigations and related offences, and recovery of proceeds of crime
- delivering foreign bribery specific training modules, and awareness-raising activities, and
- engagement with financial intelligence agencies.

Australia's reviewed approach to enforcement is also demonstrated by the establishment of dedicated Fraud and Anti-Corruption teams within the AFP in February 2013. This is an important shift from the 'flexible teams model' that Australia had in place during our Phase 3 evaluation and enables the AFP to better address serious and complex fraud and corruption, including foreign bribery. These teams are located across Australia, in Brisbane, Canberra, Melbourne, Sydney and Adelaide.

In 2013, the AFP established the Fraud and Anti-Corruption Centre (the FAC Centre), which was formally launched in July 2014. The Minister for Justice issued a media release on this, a copy of which is attached (Annex 1).

The FAC Centre has important functions for implementing foreign bribery investigations. The Panel of Experts works with the FAC Centre to deliver key functions to address foreign bribery matters through:

- assessment of all foreign bribery referrals in consultation with participating members, in particular ASIC
- a dedicated training cell focused on the delivery of fraud and anti-corruption training, external presentations, and the coordination of specific foreign bribery training modules
- a multi-agency evaluation and triage cell, including members from ASIC and the Australian Taxation Office (ATO), that can better inform the evaluation and investigative strategies of foreign bribery referrals
- targeted quality standards assurance for ongoing AFP FAC investigations, and
- the provision of tactical and strategic intelligence. Working with the Australian Crime Commission (ACC), the FAC Centre collates and analyses criminal methodologies and trends, identifies vulnerable groups, develops risk profiles, and informs the development of prevention and deterrence strategies relating to serious and complex fraud and corruption, including foreign bribery.

Following on from the first AFP Foreign Bribery Workshop, held in October 2013, the Panel Of Experts held a specialist workshop in June 2014, focussing on corporate compliance programs and the development of a Foreign Bribery Investigators Reference Guide. The AFP expects to finalise this Guide in January 2015. The Guide will be an integral tool for all investigators when conducting foreign bribery investigations.

The Panel of Experts engaged a specialist consultant (former private sector), with expertise in designing and implementing integrity and compliance frameworks for global companies, to present at the June 2014 workshop. This consultant helped the Panel maximise their understanding on corporate issues including company compliance and governance. A senior member of ASIC also presented at the workshop.

Text of recommendation :

2. With respect to the foreign bribery offence, the Working Group recommends that Australia:

- a) Continue to raise awareness of the distinction between facilitation payments and bribes, and encourage companies to prohibit or discourage the use of small facilitation payments in internal company controls, ethics and compliance programmes or measures, recognising that such payments must in all cases be accurately accounted for in such companies' books and financial records (2009 Recommendation VI.ii);

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

Australia has continued to raise awareness of the distinction between facilitation payments and bribes through outreach engagements at workshops, forums and training opportunities. Australian agencies encourage businesses to refuse requests for facilitation payments and to recognise that such payments represent a business risk.

To assist with our whole-of-government approach to outreach, the Attorney-General's Department (AGD) is developing an online learning module on foreign bribery, in consultation with other agencies involved in foreign bribery outreach activities.

The module is intended for use by industry and Government, and will be publicly available on the AGD website once launched. It will provide information on:

- bribery and its consequences
- forms of bribery
- Australia's anti-bribery policy
- the relevant laws and how they apply
- steps business can take to reduce the risk of breaching the laws, and
- how to report suspected foreign bribery.

The module is intended to complement our existing outreach activities, and provide an effective means of reaching a broader audience. It is expected to be publicly released in late 2014 (a copy can be shared with the OECD Secretariat and lead reviewing countries in advance of this). The module will include the Government's messaging on facilitation payments, as outlined above.

In an effort to reach Australian companies operating overseas, the AFP Foreign Bribery Fact Sheet has been sent to all AFP overseas posts for distribution during business events and is also available online. The Department of Foreign Affairs and Trade (DFAT) also encourages affected businesses to contact the relevant Australian diplomatic mission for assistance. The FAC Centre has distributed an AFP Foreign Bribery PowerPoint presentation to AFP international liaison officers deployed across 28 countries. The officers use the presentation and fact sheet to present to Australian business communities, providing a consistent message on Australian legislation regarding foreign bribery, including the distinction between bribes and facilitation payments, as well as the potential associated implications concerning other international legal frameworks.

A summary of these presentations is attached (Annex 2). A copy of the AFP factsheet is attached (Annex 3).

Also attached is an updated list of outreach activities undertaken by the Attorney-General's Department in 2013-14 (Annex 4), with a focus on reaching small to medium enterprises and highlighting the distinction

between facilitation payments and bribes, and discouraging businesses from making facilitation payments.

As part of direct engagement with Australian businesses working overseas, the Australian Trade Commission (Austrade) has implemented an outreach anti-corruption program in high risk/low governance locations (consistent with Transparency International's Corruption Perceptions Index 2013), where Austrade operates an office.

Within this program, Austrade's legal team provides detailed guidance on the risk presented by use of facilitation payments and how to implement policies and processes to avoid such payments.

Austrade will not advise or assist any Australian company to make a facilitation payment and is obliged to report any instance of suspected bribery. This policy is clearly articulated to clients and Australian business generally.

Further details of the outreach program are set out in the response to recommendation 12(b) below. Austrade's website also includes information on anti-bribery and a link to the AGD site for information relevant to facilitation payments. See: <http://www.austrade.gov.au/Export/About-Exporting/Legal-issues/Bribery-of-foreign-public-officials>.

Text of recommendation :

2. With respect to the foreign bribery offence, the Working Group recommends that Australia:

- b) Take appropriate steps to clarify that proof of an intention to bribe a particular foreign public official is not a requirement of the foreign bribery offence (Convention Article 1);

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

Australia regards that the legislation currently operates to not require proof of an intention to bribe a particular official. However, noting the Working Group's recommendation, we are taking steps to make this beyond doubt to remove a possible barrier to enforcing the foreign bribery offence.

Australia is developing a minor technical amendment to the foreign bribery offence in Division 70 of the Criminal Code in a proposed legislative bill to clarify the operation of the offence. This bill is scheduled for introduction to Commonwealth Parliament in the Autumn 2015 sitting session (February-March 2015).

Text of recommendation :

3. Regarding the liability of legal persons, the Working Group recommends that Australia take steps to enhance the usage of the corporate liability provisions, including those on corporate culture, where appropriate, and provide on-going training to law enforcement authorities relating to the enforcement of corporate liability in foreign bribery cases (Convention Article 2).

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

Australia is taking steps to enhance the use of the corporate liability provisions in relation to foreign bribery.

As noted in the response to recommendation 1, in June 2014, the AFP held a Panel Of Experts Foreign Bribery workshop focussing on the corporate compliance programs. Corporate criminal liability was included as a key aspect of this workshop. It will also be included in the new AFP Foreign Bribery Investigators Reference Guide.

The AFP considers all extensions of criminal responsibility when evaluating and investigating allegations of foreign bribery, including corporate liability. The possibility of corporate criminal liability is a consideration in all foreign bribery investigation plan templates.

The AFP also works closely with ASIC (see recommendation 6) to further ensure all corporate liability provisions are considered throughout the lifecycle of all foreign bribery investigations. Where appropriate, matters will be referred to ASIC for investigation of possible civil action.

Text of recommendation :

4. Regarding the false accounting offence, the Working Group recommends that Australia:

- a) Increase the maximum sanctions against legal persons for false accounting under Commonwealth legislation to a level that is effective, proportionate and dissuasive within the meaning of Article 8(2) of the Convention, commensurate with Australia's legal framework; or increase the maximum sanctions and broaden the scope of liability of legal persons for false accounting offences at the State level (Convention Article 8(2));

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

Australia is exploring options to introduce a new false accounting offence for the purposes of foreign bribery, noting the offence introduced by Canada in response to a similar recommendation from the OECD Working Group. AGD is currently consulting with relevant agencies on this, with the aim of including the new offence in a bill scheduled for introduction to Parliament in 2015.

We note that directors of companies that are found to be engaging in false accounting may be liable for a range of sanctions (including disqualification) under the existing Corporations legislation.

Text of recommendation :

4. Regarding the false accounting offence, the Working Group recommends that Australia:

- b) Vigorously pursue false accounting cases and take all steps to ensure such cases are investigated and prosecuted where appropriate (Convention Article 8(1)).

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

Australia has taken steps in response to this recommendation.

All foreign bribery investigations undertaken or evaluated by AFP FAC involve analysis of whether false accounting offences may be applicable. This includes state and territory accounting offences as well as those under the federal Corporations Act. Noting this, foreign bribery is preferred as the primary offence as it has the most appropriate penalties.

As part of the closer engagement between the AFP and ASIC on foreign bribery matters, the two agencies engage in the early planning stages as well as during operational reviews of investigations to evaluate whether false accounting offences can be utilised. False accounting will also be addressed as a topic in the AFP's Foreign Bribery Investigators Reference Guide, to ensure the possibility of false accounting investigation is appropriately considered.

All AFP FAC investigators are now trained to identify and pursue false accounting offences. This has been achieved through training modules and workshops run by the AFP Foreign Bribery Panel of Experts.

The AFP works closely with ASIC from beginning to end of an investigation to identify and investigate false accounting offences. The AFP currently has an ASIC officer embedded in the team in Sydney, who is available to teams Australia wide on an ongoing basis. Additionally, an ASIC member attends the monthly foreign bribery case management forums, where all offences and progress of the investigation are explored.

As noted above, Australia is also considering a new false accounting offence at the Commonwealth level, and is consulting with relevant agencies on the best form of such an offence.

In recent years ASIC has taken 10 criminal actions in relation to false accounting/falsification of books offences. A further two matters are currently under investigation, one of which involves foreign bribery allegations.

One defendant in the Securrency/Note Printing Australia prosecutions was convicted of a state-based false accounting charge. On 20 August 2012, David Ellery, a former Chief Financial Officer of Securrency, was sentenced to six months imprisonment (suspended for two years) after pleading guilty to one count of false accounting, contrary to section 83(1) of the *Crimes Act 1958* (Vic).

Text of recommendation :

5. Regarding confiscation, the Working Group recommends that Australia take further concrete steps (such as providing guidance and training) to ensure that its law enforcement authorities routinely consider confiscation in foreign bribery cases (Convention Article 3(3)).

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

The AFP has taken a number of steps to address this recommendation.

- As part of the new FAC Centre, foreign bribery referrals are evaluated by a representative of the AFP Criminal Asset Confiscation Taskforce for full asset confiscation consideration.
- Criminal Asset Confiscation Taskforce case officers are then attached to each foreign bribery investigation to advise and take action via asset confiscation processes.
- AFP incorporated confiscation as a topic in the June 2014 foreign bribery investigations workshop and the proposed Foreign Bribery Investigators Reference Guide.
- The possibility of proceeds of crime action is a standard consideration for all AFP investigations and is noted in the case log.
- The AFP also has a Money Laundering Investigation Program for investigators that includes training on confiscation actions.

Text of recommendation :

6. Regarding the Australian Securities and Investment Commission (ASIC), the Working Group recommends that Australia take steps to ensure that ASIC's experience and expertise in investigating corporate economic crimes are used to assist the AFP to prevent, detect and investigate foreign bribery where appropriate (Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D).

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

Note – Australia responded to this recommendation at the one year follow-up. The following material builds on that input with relevant updates.

In October 2013, AFP and ASIC entered into a Memorandum of Understanding (MoU) on collaborative working arrangements. The MoU was made at the highest levels of these agencies (by the Chairman of ASIC and the AFP Commissioner). The specific purpose of Annexure A of the MoU is to support the implementation of the Anti-Bribery Convention.

The MoU expressly provides a mechanism for coordination of interagency information-sharing and corporate economic crime expertise to evaluate and investigate foreign bribery allegations. The MoU comprehensively covers cooperation on foreign bribery matters and improves the AFP's ability to take advantage of ASIC's experience and expertise in the context of foreign bribery.

In addition to the MoU:

- ASIC is a member of the AFP-hosted FAC Centre, and has seconded a lawyer, experienced in Corporations Act investigations and enforcement matters, to support the AFP investigation teams.
- ASIC has appointed two senior members of its enforcement team as the principal operational contacts between ASIC and the AFP in relation to foreign bribery. The purpose of these appointments is to:
 - ensure effective day to day oversight of the ASIC-AFP relationship and promote consistent application of the MoU
 - provide assurance in relation to the prompt handling of referrals and inquiries made between those agencies, and
 - provide an internal process within ASIC to identify and utilise resources on a case-by-case basis.
- ASIC has provided several training sessions to the AFP in relation to matters within ASIC's expertise, including in relation to possible Corporations Act offences that may be of application to foreign bribery, including false accounting.

Text of recommendation :

7. With respect to co-ordination and information-sharing, the Working Group recommends that:

- a) The AFP, ASIC, and APRA set out in writing with greater precision, following consultations with one another, their complementary roles and responsibilities in foreign bribery and related cases, and written rules for case referral and information sharing (Convention Article 5; 2009 Recommendation IX.ii);

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

The AFP, ASIC and the Australian Prudential Regulation Authority (APRA) have set out their respective responsibilities and formal information-sharing arrangements through bilateral memoranda of understanding (MoU) between the agencies.

In recognition of their lead roles in dealing with foreign bribery, the MoU between the AFP and ASIC includes an annexure dealing specifically with the roles and responsibilities of each agency in relation to foreign bribery matters.

On 7 July 2014, APRA and the AFP signed an MoU which sets out how those two agencies will share information. Under the MoU, APRA have a dedicated point of contact to refer matters to the AFP through the FAC Centre, which is the central point for assessment of all foreign bribery matters. The MoU is available on the APRA website at: <http://www.apra.gov.au/AboutAPRA/Documents/MoU-APRA-AFP.pdf>.

ASIC and APRA also have an MoU in place, which was signed on 18 May 2010. This is available online at: <https://dv8nx270cl59a.cloudfront.net/media/1340876/MOU-APRA-and-ASIC-May-2010.pdf>. The MoU covers responsibilities, collaboration on regulatory and policy development, mutual assistance and information sharing. The quarterly enforcement liaison meetings and other information-sharing arrangements between these agencies provide additional means by which issues (such as foreign bribery allegations) can be shared.

As noted above, ASIC is a member of the FAC Centre. In addition, since November 2013, ASIC has had an experienced senior lawyer seconded to the AFP as part of the Centre's arrangements. The senior lawyer's role is to provide ASIC expertise on foreign bribery matters being investigated by the AFP.

Text of recommendation :

7. With respect to co-ordination and information-sharing, the Working Group recommends that:

- b) Australia establish clear guidelines as to when each State and Territorial authority would refer foreign bribery cases to the AFP or commence its own investigations (Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D).

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

The AFP has protocols in place with State and Territory authorities for the referral of Commonwealth matters. Additionally, the AFP has formally written to state-level law enforcement agencies to raise awareness of the offence of foreign bribery and to remind them to refer reports to the AFP. The protocols on referring foreign bribery offending have been published on State and Territory police intranet pages.

The new FAC Centre works in partnership with state and territory enforcement and regulatory agencies in order to prevent, detect and investigate fraud and corruption against the Commonwealth. Since the establishment of the FAC Centre, the AFP has strengthened its engagement with State and Territory counterparts in relation to foreign bribery and corruption and fraud offences. The AFP Fraud and Anti-Corruption management team also engages regularly on fraud and corruption matters with State and Territory Police counterparts. This engagement has resulted in intelligence from a state police force that

led to a foreign bribery referral to the AFP FAC Centre.

Text of recommendation :

8. With respect to investigations of foreign bribery, the Working Group recommends that:

- a) The AFP (i) take sufficient steps to ensure that foreign bribery allegations are not prematurely closed; (ii) be more proactive in gathering information from diverse sources at the pre-investigative stage to increase the sources of allegations and to enhance investigations; (iii) take steps to ensure that it explores all avenues for exercising jurisdiction over related legal persons in foreign bribery cases; (iv) as a matter of policy and practice, continue to systematically consider whether it would be appropriate to conduct concurrent or joint investigations with other Australian and foreign law enforcement agencies, especially when foreign bribery is allegedly committed by a company that has its headquarters or substantial operations in Australia; and (v) routinely consider investigations of foreign bribery-related charges such as false accounting and money laundering, especially in cases where a substantive charge of foreign bribery cannot be proven (Convention Articles 2, 5, 7 and 8; Commentary 27; 2009 Recommendation Annex I.C and I.D);

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

Note – Australia responded to this recommendation at the one year follow-up. The following material builds on that input with relevant updates. These measures also implement recommendation 1, which asked Australia to review its overall approach to enforcement.

In April 2012 (before the Phase 3 evaluation), the AFP established an internal Foreign Bribery Panel of Experts. This Panel is made up of senior investigators who have had responsibility for at least one significant foreign bribery investigation, and who also have experience in investigating large and complex matters that span international jurisdictions.

In line with recommendation 8(a), the Panel of Experts is now responsible for:

- ensuring foreign bribery evaluations are not closed prematurely
- proactively gathering information, including monitoring credible media sources for new allegations and collection of data from overseas law enforcement bodies to better inform our investigators
- evaluating foreign bribery referrals and investigations and providing expert advice to investigators, including ensuring consideration of jurisdiction over related legal persons, consideration of concurrent and joint investigations and related offences, and recovery of proceeds of crime
- delivering foreign bribery specific training modules, and awareness-raising activities, and
- engagement with financial intelligence agencies.

Australia's renewed approach to enforcement is also demonstrated by the establishment of dedicated Fraud and Anti-Corruption teams within the AFP in February 2013. This is an important shift from the 'flexible teams model' that Australia had in place during our Phase 3 evaluation and enables the AFP to better address serious and complex fraud and corruption, including foreign bribery. These teams are located across Australia, in Brisbane, Canberra, Melbourne, Sydney and Adelaide.

In 2013, the AFP established the Fraud and Anti-Corruption Centre (the FAC Centre), which was

formally launched in July 2014. The Minister for Justice issued a media release on this, a copy of which is attached (Annex 1).

The FAC Centre has important functions for implementing foreign bribery investigations. The Panel of Experts works with the FAC Centre to deliver key functions to address foreign bribery matters through:

- assessment of all foreign bribery referrals in consultation with participating members, in particular ASIC
- a dedicated training cell focused on the delivery of fraud and anti-corruption training, external presentations, and the coordination of specific foreign bribery training modules
- a multi-agency evaluation and triage cell, including members from ASIC and the ATO, that can better inform the evaluation and investigative strategies of foreign bribery referrals
- targeted quality standards assurance for ongoing AFP FAC investigations, and
- the provision of tactical and strategic intelligence. Working with the Australian Crime Commission, the FAC Centre collates and analyses criminal methodologies and trends, identifies vulnerable groups, develops risk profiles, and informs the development of prevention and deterrence strategies relating to serious and complex fraud and corruption, including foreign bribery.

Following on from the first AFP Foreign Bribery Workshop, held in October 2013, the Panel of Experts held a specialist workshop in June 2014, focussing on corporate compliance programs and the development of a Foreign Bribery Investigators Reference Guide. This will be an integral tool for all investigators when conducting foreign bribery investigations.

The Panel of Experts engaged a specialist consultant (a former compliance specialist from the private sector), with expertise in designing and implementing integrity and compliance frameworks for global companies, to present at the June 2014 workshop. This consultant helped the Panel maximise their understanding on corporate issues including company compliance and governance. A senior member of ASIC also presented at the workshop.

As noted in the response to recommendation 6, ASIC is actively engaged with the AFP through the FAC Centre and has seconded an experienced lawyer to assist the AFP with foreign bribery matters. ASIC and the AFP also consult on matters where both agencies are investigating the same conduct to ensure coordination between the separate investigations.

Text of recommendation :

8. With respect to investigations of foreign bribery, the Working Group recommends that:

- b) The AFP Foreign Bribery Panel of Experts consider the Working Group's recommendations to the AFP (Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D).

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

The AFP Foreign Bribery Panel of Experts has considered the Working Group's recommendations to the AFP, and has ensured that Article 5 has been appropriately captured in foreign bribery training to avoid improper influences from affecting the AFP's decision to investigate allegations of foreign bribery.

Specific reference to Article 5 is also contained in the DFAT/AFP information-sharing protocol as well as

the Foreign Bribery Investigators Reference Guide.

The DFAT/AFP information sharing protocol was signed on 13 June 2014, after both agencies identified the benefits in articulating inter-agency arrangements between the AFP and DFAT with such complex and politically sensitive matters. The protocol's purpose is to:

- support a whole of government approach towards Foreign Bribery investigations and prosecutions consistent with Australia's obligations under the OECD Anti-Bribery Convention, and
- outline procedures for the handling and protection of sensitive information that may arise during foreign bribery investigations.

The Protocol states (in part):

1. Introduction

- 1.1 In 1999 Australia ratified the Organisation for Economic Co-Operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention). As a result, Australia introduced legislation to make it a criminal offence under Australian law to bribe a foreign public official. Details of the offence can be found within section 70.2 of the *Criminal Code* (Cth).
- 1.2 Foreign bribery is an offence for both individuals and bodies corporate. The offence includes extraterritorial provisions making the offence applicable to criminal activities both domestically and internationally.
- 1.3 Foreign bribery prosecutions are complex and challenging and naturally involve allegations implicating foreign public officials. During the prosecution phase of the Australian Federal Police (AFP) foreign bribery investigation, Operation Rune, it became clear that a protocol would be of assistance in respect of inter-agency arrangements in such matters.

2. Purpose

- 2.1 The purpose of this Protocol is to:
 - 2.1.1 support a whole-of-government approach towards foreign bribery investigations and prosecutions consistent with Australia's obligations under the OECD Anti-Bribery Convention, and
 - 2.1.2 outline procedures for the handling and protection of sensitive information that may arise during foreign bribery investigations and prosecutions.

3. Agreed Principles

- 3.1 That Commonwealth agencies recognise the potential harm caused by Australian citizens or entities committing foreign bribery and the need to investigate allegations of this nature thoroughly.
- 3.2 That Commonwealth agencies support a whole-of-government approach towards foreign bribery prosecutions consistent with Australia's obligations under the OECD Anti-Bribery Convention.
- 3.3 That Commonwealth agencies, wherever possible, should present a unified position during prosecutions.

Text of recommendation :

9. Regarding plea bargaining and self-reporting, the Working Group recommends that Australia develop a clear framework that addresses matters such as the nature and degree of co-operation expected of a company; whether and how a company is expected to reform its compliance system and culture; the credit given to the company's co-operation; measures to monitor the company's compliance with a plea agreement; and the prosecution of natural persons related to the company (Convention Articles 3 and 5; Commentary 27; 2009 Recommendation Annex I.D).

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

Promoting self-disclosure by corporations

The CDPP and the AFP have worked together to develop an external presentation for industry on the benefits of self-reporting and cooperating with authorities, and the availability of charge negotiations. The following talking points are extracted from these presentations:

Talking Points for Foreign Bribery Presentations: encouraging self-disclosure

General points

- Under Australian law, bribery of a foreign official is a serious criminal offence punishable by a period of imprisonment of up to 10 years, a fine or both for an individual, and a fine for a corporation.
- Other criminal offences such as money laundering, false accounting and breaches of director duties may also be identified during the course of a foreign bribery investigation. These offences are also punishable by periods of imprisonment and, in some cases, a fine.
- The AFP is able to take action on a civil basis to recover the proceeds of foreign bribery and related Commonwealth offences under the *Proceeds of Crime Act 2002*.

Self-reporting

- Corporations should report to the AFP any suspicions of foreign bribery that arise within the corporation or involving a competitor.
- In a criminal matter, the degree to which a person or company has cooperated with law enforcement in the investigation of the offence can be taken into account by the Court on sentencing under s 16A of the *Crimes Act 1914*.
- In some instances, offenders who co-operate with the AFP's investigation can enter an early guilty plea through an agreed statement of facts and have matters dealt with swiftly by the Courts. This co-operation and the early guilty plea can be taken into account by the Court on sentencing for the purpose of reducing the severity of the penalty given.
- Offenders may also enter into an undertaking to cooperate with law enforcement agencies under s 21E of the *Crimes Act 1914*, which also can be taken into account on sentencing.
- Other advantages of a corporate entity self-reporting suspected instances of foreign bribery to law

enforcement include:

- opportunity to be included in the police investigation
 - potential to limit corporate criminal liability and for innocent company officers to avoid liability
 - minimise reputational damage
 - opportunity to identify and address wrongdoing within the corporation, and
 - assist law enforcement to detect and investigate serious criminal conduct.
- In certain circumstances, the Commonwealth Director of Public Prosecutions (CDPP) may indemnify a witness against prosecution. The decision whether to indemnify a witness is made by the CDPP in accordance with the Prosecution Policy of the Commonwealth, usually upon the recommendation of an investigative agency (eg the AFP).
 - Australia does not have a scheme of deferred and non-prosecution agreements, that corresponds with the legislation utilised by United States agencies in enforcing the Foreign Corrupt Practices Act.

Industry cooperation

- If foreign bribery offences are suspected the matter should be referred to the AFP at the earliest opportunity. The referral should identify all suspects, witnesses and identify the location of evidence that can support the allegations.
- Evidence that has the potential to be destroyed should be retained and handed to the AFP investigators in a manner that best preserves its authenticity and integrity for use in evidence.
- The AFP will be required to present a ‘prima facie’ case to the CDPP to prosecute offenders. Cooperation from witnesses in producing company records and statements is often valuable to support a brief of evidence in foreign bribery matters.
- A trusted point of contact within a company should be appointed to liaise with AFP investigators to facilitate access to records and witnesses.

Decision to prosecute and charge negotiation

Australia’s framework for matters such as the decision to prosecute and charge negotiation is articulated in publicly available documents, including the *Prosecution Policy of the Commonwealth* (see: <http://www.cdpp.gov.au/wp-content/uploads/Prosecution-Policy-of-the-Commonwealth.pdf>).

The decision to prosecute a person, whether that person is a company or a natural person, in relation to an allegation of foreign bribery will be made in accordance with Chapter 2 of the Prosecution Policy. The CDPP conducts charge negotiations in accordance with paragraphs 6.14 to 6.21 of the Prosecution Policy.

Consideration of cooperation

Section 16A of the *Crimes Act 1914* (Cth) sets out the matters that a court must take into account when sentencing a person for a Commonwealth offence. They include whether or not a person has pleaded guilty to the offence, and the degree to which the person has cooperated with law enforcement agencies in the investigation of the offence or of other offences and shown contrition for the offence.

The CDPP will always identify, by way of submissions to the sentencing court, any cooperation by the offender with the CDPP and law enforcement agencies. This will generally involve a description of the

type and timing of the cooperation provided, copies of any relevant witness statements and, where applicable, any characterisation by the law enforcement agency or the CDPP of the value of that cooperation overall. Reference will also be made to any relevant case law. In this respect, the process is the same for a foreign bribery offence as it is for Commonwealth offences generally.

Ultimately, the extent of any sentencing discount given to an offender in recognition of the offender's cooperation will be at the discretion of the sentencing court, within the confines of relevant law. Where an offender undertakes to give cooperation in future (eg by giving evidence as a Crown witness in a prosecution of another person) there is a formal process for enforcing compliance with that undertaking (see section 21E of the Crimes Act).

Text of recommendation :

10. With respect to resources and priority, the Working Group recommends that:

- a) The AFP continue to provide its officers with additional training in foreign bribery, and training to law enforcement officials to implement the Cybercrime Legislation Amendment Act 2012 (Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D);

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

All AFP investigators, including those working on foreign bribery, have been made aware of powers and obligations under the *Cybercrime Legislation Amendment Act 2012* through emails to all AFP staff.

This was also raised at the Investigators Workshop in October 2013 and the Panel of Experts workshop in June 2014. It has also been incorporated in ongoing refresher training.

Text of recommendation :

10. With respect to resources and priority, the Working Group recommends that:

- b) Australia take steps to ensure that the CDPP has sufficient resources to prosecute foreign bribery cases (Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D);

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

Relevant agencies within the Australian Government (including AGD and the Department of Finance) work closely with the CDPP on funding issues to enable the CDPP to continue to prosecute offences, including foreign bribery.

On 2 June 2014, the CDPP implemented a new operating model consisting of nationally organised and run practice groups, as opposed to the previous regional based model. The objective of the new operating model is to provide a more effective, efficient and nationally consistent federal prosecution service. The CDPP's national practice reform will help to deliver greater prosecutorial expertise in relation to foreign bribery.

The Practice Groups are based on compatible crime types. They are:

1. Commercial, Financial & Corruption (responsible for foreign bribery)

2. Revenue & Benefits Fraud
3. International Assistance & Specialist Agencies
4. Organised Crime & Counter Terrorism
5. Illegal Imports & Exports
6. Human Exploitation & Border Protection

Each Practice Group is led by a Deputy Director who has responsibility for:

- the prosecutions conducted by that Practice Group across Australia
- national liaison in relation to the Practice Group
- policy development for issues that concern the Practice Group, and
- the CDPP's contribution to law reform in relation to the crime types in that Practice Group.

The AFP engages the CDPP early on foreign bribery matters and provides ongoing advice as required throughout the investigation through to prosecution.

Text of recommendation :

10. With respect to resources and priority, the Working Group recommends that:

- c) The AFP and other bodies involved in foreign bribery investigations and prosecutions take measures (such by issuing written guidance or policy) to continue to ensure that they are not impermissibly influenced by factors listed in Article 5 (Convention Article 5; Commentary 27; 2009 Recommendation Annex I.D).

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

The factors listed in Article 5 are inherent in the AFP values, as articulated in the AFP Integrity Framework. While Article 5 is not articulated in specific AFP governance, it is well documented in AFP training and protocols. The OECD Anti-Bribery Convention is a part of all AFP training material on foreign bribery. Article 5 is specifically referenced in all presentations.

The factors were included in the 2013 Foreign Bribery Investigations Workshop and will be included in the Foreign Bribery Investigators Reference Guide.

Reference to Article 5 has also been included in the recent AFP/DFAT protocol on the investigation and prosecution of foreign bribery matters.

Text of recommendation :

11. With respect to mutual legal assistance (MLA), the Working Group recommends that Australia take reasonable measures to ensure that a broad range of MLA, including search and seizure, and the tracing, seizure, and confiscation of proceeds of crime, can be provided in foreign bribery-related civil or administrative proceedings against a legal person to a foreign state whose legal system does not allow criminal liability of legal persons (Convention Article 9(1); 2009 Recommendation XIII.iv).

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

Australia has a comprehensive framework for dealing with incoming and outgoing Mutual Assistance Requests (MARs).

Mutual assistance in Australia is governed by the *Mutual Assistance in Criminal Matters Act 1987* (MA Act). This legislative framework is consistent with the 2013 *G20 High-level Principles on Mutual Legal Assistance*, and enables Australia to seek and provide a comprehensive range of mutual assistance. Under the MA Act, Australian authorities can execute search warrants, take evidence from a witness in Australia (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to locate assets and register or otherwise enforce foreign orders restraining and forfeiting the proceeds of crime. Australia can also provide other assistance such as voluntary witness statements or service of documents.

Australia has entered into bilateral mutual legal assistance treaties with 29 countries but can receive MARs from any country on the basis of reciprocity.

The International Crime Cooperation Central Authority (ICCCA) within AGD is responsible for all incoming and outgoing MARs, including requests in relation to foreign bribery matters.

Over recent years Australia has made and actioned an increasing number of MARs relating to foreign bribery criminal investigations, and requests to target the proceeds of crime obtained from alleged foreign bribery. Since 2006, Australia has actioned approximately 66 mutual assistance requests relating to foreign bribery offences (18 incoming and 47 outgoing). Of these, 28 have occurred since Australia's Phase 3 report was adopted in October 2012.

Since September 2012, when amendments to the MA Act entered into force, Australia is able to register both conviction and non-conviction based proceeds of crime orders. Previously, Australia could only register non-conviction based proceeds of crime orders from countries specified in the regulations (namely the United Kingdom, United States, South Africa, Canada and Ireland). Action to register foreign proceeds of crime orders, or to take domestic proceeds of crime action in relation to property suspected of being the proceeds of a 'foreign indictable offence' (an offence punishable in the foreign country by a period of imprisonment of more than 12 months) is undertaken by the AFP-led Criminal Assets Confiscation Taskforce.

While proceeds of crime action in Australia is a civil proceeding, under the MA Act Australia can only register a foreign order that relates to alleged criminal offending. As previously detailed, Australia may decide to allow evidence gathered in relation to a criminal investigation or proceeding under the MA Act to also be used in related civil or administrative proceedings against the company. Since the publication of the Phase 3 report, Australia has not received any MARs seeking assistance for the purpose of foreign bribery-related civil or administrative proceedings against a legal person.

Recommendations for ensuring effective prevention, detection, and reporting of foreign bribery

Text of recommendation :

12. With respect to awareness-raising, the Working Group recommends that Australia:
- a) Raise awareness of the foreign bribery offence among State-level law enforcement authorities involved in investigating economic crime (2009 Recommendation III.i);

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

The AFP contributes to this recommendation through participation on inter-agency law enforcement forums and presenting on the AFP's foreign bribery investigation framework. Additionally, the AFP has formally written to state and territory law enforcement agencies to raise awareness of the offence of foreign bribery and that it should be reported to the AFP. The AFP informed states and territories about the Foreign Bribery Panel of Experts, the FAC Centre and the role that the AFP plays in the investigation of foreign bribery. Further information has been provided detailing the AFP's foreign bribery reporting protocols and relevant website links for members of the public to report foreign bribery.

This engagement with state and territory police forces has resulted in intelligence from a state police force, which led to a current investigation.

AGD has also raised the issue with State and Territory police through the Australia New Zealand Policing Advisory Agency (ANZPAA) Crime Forum meeting in May 2014. The ANZPAA Crime Forum is responsible for developing consistency, coordination and alignment across policing in Australia and New Zealand, and consists of senior police representatives from all Australian jurisdictions and New Zealand (Assistant Commissioner level) and the Commonwealth AGD.

Text of recommendation :

12. With respect to awareness-raising, the Working Group recommends that Australia:
- b) Continue to raise awareness among the private sector of the foreign bribery offence and the importance of developing and implementing anti-bribery corporate compliance programmes, including by (i) promoting Annex II of the 2009 Recommendation, (ii) targeting companies (particularly SMEs) that conduct business abroad, and (iii) co-ordinating efforts to promote corporate compliance, including those undertaken by the AFP (2009 Recommendation III.i, III.v, X.C and Annex II);

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

Australia has continued to raise awareness of the foreign bribery offence and the importance of effective corporate compliance programs. These efforts place a focus on reaching companies operating overseas (particularly small to medium enterprises which may not have as developed internal governance and compliance mechanisms). Annex II of the 2009 Recommendation is promoted in our outreach efforts.

Details on agencies' recent outreach activities are below:

The Attorney-General's Department (AGD)

AGD plays a key role in Australia's outreach efforts in relation to foreign bribery, and coordinates with other agencies to ensure consistent messaging. This includes organising joint presentations to provide a strong, unified message to industry on Australia's zero tolerance approach to foreign bribery and other forms of corruption. AGD has also led the development of the online learning module, discussed in further detail in the response to recommendation 2(a).

A list of outreach activities undertaken by AGD is attached (Annex 4).

The Department of Foreign Affairs and Trade (DFAT)

DFAT seeks to ensure that Australian businesses are aware of their obligations under Australian anti-bribery laws and continues to conduct outreach activities to the private sector about these laws. This program outlines the Australian Government's zero tolerance approach to foreign bribery, discusses the distinction between facilitation payments and bribes, and encourages any Australian individuals or entities unable to repel a corrupt approach through their own efforts, to contact the relevant Australian diplomatic mission for assistance.

DFAT's outreach activities target a broad audience, including industry, small and medium enterprises, legal and accounting professionals, financial institutions, universities and relevant Commonwealth and State Government departments. Outreach is conducted in a variety of formats, including DFAT-hosted events, in partnership with non-government or private sector organisations, individual briefings, and as keynote conference speakers. In 2014, DFAT-hosted private sector outreach events in Brisbane, Sydney, Melbourne and Hobart, and is planning similar events in Adelaide, Darwin and Perth in early 2015. DFAT's website also includes a page outlining Australia's measures against corruption.

The Australian Federal Police (AFP)

The AFP continues to support multi-agency activities, and responds to requests from special interest groups for presentations. This support will be further developed through the FAC Centre.

The AFP is routinely represented at various forums to raise awareness of the offence of foreign bribery such as:

- Non-Executive Directors-Clayton Utz Breakfast – 19 March 2014
- Australian Fraud Summit – 30 April 2014
- ICAA/AFAANZ Business Forum 2014 – 14 May 2014
- United Nations Global Compact /Allens – 4 and 13 June 2014
- Vietnamese Anti-Corruption Program – 10 June 2014
- 4th Annual National Public Sector Fraud and Corruption Congress – 31 July 2014
- Deloitte Australia bribery and corruption panels in Melbourne and Brisbane – July and August 2014
- Queensland Police Fraud and Cyber Crime Symposium – 26 August 2014
- Vietnamese Anti-Corruption Program – 30 September 2014

The AFP Foreign Bribery Fact Sheet, available online, has been sent out to all AFP overseas posts for distribution during business events. Foreign Bribery material is also distributed during UN Anti-Corruption day events.

The Australian Securities and Investments Commission (ASIC)

ASIC has presented at various forums including jointly presenting with the AFP and AGD (eg United Nations Global Compact/Allens forum) to raise awareness of foreign bribery and ASIC's role in

investigating alleged contraventions.

In late October 2014, ASIC attended and presented with the AFP at the US Securities and Exchange Commission-hosted Foreign Bribery and Corruption Conference in Washington DC.

The Australian Trade Commission (Austrade)

In 2012, Austrade developed a targeted outreach program for Australian businesses. The program clearly articulates what bribery is, the legal issues surrounding facilitation payments, the risks to businesses in using foreign agents, and that Austrade will not provide services when bribery is suspected, and is obliged to report these instances to Australian authorities. The sessions include discussions of possible changes to Australian law regarding facilitation payments, challenges businesses often experience in different jurisdictions, and the effect of other extraterritorial and local legislation.

The outreach program has been delivered via Austrade's overseas offices to Australian chambers of commerce and local business councils in eleven high risk/low governance locations where Austrade operates an office, consistent with Transparency International's Corruption Perceptions Index 2013. Delivery of this program will continue in 2015.

In addition to its outreach program, Austrade works to ensure its staff are aware of the law and of their obligations. Austrade staff located in-market are asked to continue informing Australian businesses 'on the ground' on ethical business practice. As part of the staff awareness program, Austrade officers have received refresher training on anti-bribery. This program also contains practical advice on:

- how to deal with competitive Government tenders
- raising awareness of behaviour that may lead to corrupt practices
- raising awareness of Austrade's gift policy and hospitality limits
- how to deal with clients seeking advice on making facilitation payments
- how to deal with foreign public officials, and
- the qualification and referral of agents.

In addition, Austrade has updated its anti-bribery checklist and circulated it to all Austrade staff.

Austrade has conducted its outreach program, within Australia and overseas, in collaboration with various Australian Government agencies and other organisations including DFAT, the AFP, Treasury, AGD, the Department of Defence, Transparency International, and law societies.

The outreach program is conducted in a variety of formats including Austrade-hosted events and in partnership with non-government or private sector organisations. The outreach program is regularly delivered to businesses and industry representatives through local Australian chambers of commerce chapters overseas in conjunction with representation from industry. Austrade has also, on invitation, provided keynote conference speakers. Bespoke presentations to business have also been delivered to address anti-bribery and corruption issues including to major banks, mining companies and Australian education institutions.

Austrade has also prepared a generic anti-bribery governance package for business to be made available on local Australian chambers of commerce websites for the benefit of members. This package is consistent with OECD better practice guidance and includes policies and practical information on implementing an anti-corruption program, steps to set the tone of an organisation from the top, conducting training (with sample materials), steps to minimise demands for bribes, reporting procedures, ethics training and suggested practice in monitoring key roles and maintaining documentation. This has been positively received by Australian business with feedback that it is useful, particularly to those businesses

with underdeveloped compliance programs.

Australian and overseas outreach will continue throughout 2015.

Australian Taxation Office (ATO)

The ATO focuses on bribes and facilitation payments as part of its compliance activities, with the intention of ensuring that only legitimate expenses are claimed as deductions. This includes:

- reviewing significant, one-off, regular or embedded payments by Australian businesses to entities in jurisdictions where bribes and facilitation payments are known to be 'part of doing business'
- checking that businesses with particular international trade profiles have appropriate codes of conduct and systems in place to detect bribes and confirm facilitation payments, and
- reviewing organisations that do not have appropriate systems in place

The ATO also works with businesses on the issue of bribes and facilitation payments. The cornerstone of this work is boosting self-regulation and enhancing governance processes that help identify risks before they eventuate. The ATO strongly recommends to businesses that they have a code of conduct across the business relating to bribes, have a strong internal audit function and audit committee, and act to rectify any relevant internal control weaknesses identified and reported to the board by external auditors.

The ATO has also prepared a publication for businesses, *Bribes and facilitation payments: A guide to managing your tax obligations*, which is available on the ATO website. This publication provides practical guidance to businesses, including suggested initiatives that company boards can put in place and suggestions to help businesses meet their obligations under the law. This publication complements the OECD publication, *OECD Bribery Awareness Handbook for Tax Examiners*, and builds on advice from Transparency International.

The Export Finance and Insurance Corporation (EFIC)

EFIC also contributes to Australia's effort to raise awareness among the private sector of the foreign bribery offence and the importance of developing and implementing anti-bribery corporate compliance programs.

In advance of providing a facility to a customer, EFIC generally requires that the customer sign a form declaring that to their best of their knowledge, they (or any of their employees or agents) have not engaged in corrupt activity in relation to any "relevant matter" (meaning the application to EFIC or the transaction/agreement/arrangement to be supported by Efic), or are currently under charge or have been convicted for violation of laws against bribery of foreign public officials of any country.

All EFIC customers are referred to EFIC's Anti-Corruption Initiatives, available on its website at: (www.EFIC.gov.au/corp-responsibility/Pages/anticorruptioninitiatives.aspx). Multinational customers are also referred to the OECD Guidelines for Multinational Enterprises published by EFIC and available on its website at: (www.EFIC.gov.au/corp-responsibility/Pages/Guidelinesformultinationalenterprises.aspx).

In addition:

- EFIC's contractual terms require the customer to disclose to EFIC if they become aware of corrupt activity, including foreign bribery, in connection with the contract (including any transaction, agreement, arrangement or event contemplated by, or referred to in, the application for financial assistance), and
- Specific references to foreign bribery in relevant documents (including the finance

documents), EFIC provides clarity to its clients that there are serious consequences for engaging in foreign or domestic bribery or corruption.

Text of recommendation :

12. With respect to awareness-raising, the Working Group recommends that Australia:

- c) Consider summarising publicly available information on when hospitality, promotional expenditure, and charitable donations may amount to bribes (2009 Recommendation III.i and X.C);

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

The online learning module on foreign bribery (mentioned in response to recommendation 2(a)) will summarise the publicly available information on reasonable hospitality. As Australia does not have any case law in this area, it is difficult to provide advice on what may constitute a bribe in certain circumstances. The module also directs to the relevant advice documents for the US and UK, noting the extraterritorial application of their laws. The AFP Foreign Bribery Fact Sheet also addresses aspects of this and is available on the AFP website.

Text of recommendation :

12. With respect to awareness-raising, the Working Group recommends that Australia:

- d) Adopt a “whole-of-government” approach to raise awareness of foreign bribery (2009 Recommendation III.i).

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

Noting that many Australian agencies have an interest in foreign bribery matters and conduct outreach, Australia has adopted a whole-of-government approach to awareness raising. As the lead policy agency in relation to foreign bribery, AGD leads this whole-of-government approach. This includes ensuring that messaging does not conflict and identifying opportunities for joint presentations.

In June 2014, AGD convened an inter-agency roundtable meeting to discuss foreign bribery, which included representatives from the AFP, ASIC, Treasury, CDPP, Austrade and DFAT. At this meeting, agencies discussed on opportunities to collaborate on outreach activities. Agencies regularly engage at the working level on prospective outreach activities.

Joint awareness-raising activities help convey the respective roles of the agencies involved in Australia’s response to corruption and foreign bribery. In June 2014, the UN Global Compact Network Australia hosted four presentations (two in Sydney, two in Melbourne) by an anti-corruption regulatory panel featuring the AFP, AGD and ASIC at the offices of international law firm Allens Linklaters.

The AFP, AGD, DFAT and the New Zealand Serious Fraud Office co-presented on a foreign bribery panel at the C5 Anti-Corruption Conference on 29 April 2013.

As noted above in Austrade’s response to recommendation 12(b), Austrade conducted its 2014 Outreach Program in collaboration with a range of other agencies including DFAT, the AFP, Treasury and

AGD. Austrade is also collaborating with the Department of Defence in anti-corruption awareness training.

Text of recommendation :

13. With respect to anti-money laundering measures, the Working Group recommends that Australia further raise awareness of foreign bribery as a predicate offence, and provide additional guidance to reporting entities regarding the detection of foreign bribery, including through case studies and typologies (2009 Recommendation III.i).

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

The Australian Transaction Reports and Analysis Centre (AUSTRAC) provides information circulars to regulated entities, which provide information on issues that may affect their business or their compliance with anti-money laundering and counter-terrorism financing obligations.

AUSTRAC updated their information circular on Bribery of Foreign Public Officials in March 2014. This is available online at http://www.austrac.gov.au/files/aic42_bribery_foreign_public_officials.pdf.

The updated circular notes that foreign bribery is a predicate offence, as per the extract below:

‘Bribery of a foreign public official can also trigger criminal charges for money laundering, under Division 400 of the Criminal Code. Any benefit obtained from a bribe may be considered “proceeds of crime” and property offered, or intended to be offered, as a bribe may be considered an “instrument of crime”. Any person who knowingly, recklessly or negligently deals with proceeds or instruments of crime may be liable under Division 400 of the Criminal Code for committing a money laundering offence.’

In addition, a statement has been posted on the AUSTRAC website dealing with bribery of foreign public officials, available online at: http://www.austrac.gov.au/our_partners.html.

AUSTRAC is currently developing a typologies brief on foreign bribery. The typologies brief includes information on the offence of foreign bribery and sets out various money laundering methods and indicators that could involve foreign bribery

As part of its outreach activities, the AFP is preparing presentations for financial institutions which provide a detailed breakdown of the offence, information about related offences such as money laundering, case studies and an explanation of how the financial industry is exposed to foreign bribery risks. This is the most effective method the AFP can contribute to generating awareness among reporting entities of the offence of foreign bribery and its role as a predicate offence to money laundering. In this way the AFP supports (but not duplicate) AUSTRAC’s efforts.

Text of recommendation :

14. With respect to tax-related measures, the Working Group recommends that:

- a) Australia align the record-keeping requirements for deducting a facilitation payment under the ITAA 1997 with those for the facilitation payment defence under the Criminal Code Act (2009 Recommendation VI.ii, VIII.i; 2009 Tax Recommendation I.i);

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

No action to implement this recommendation.

If no action has been taken to implement recommendation 14(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:

Australia will continue to consider this recommendation. At present, other tax measures announced by the Australian Government have taken priority over the alignment of record-keeping requirements.

Text of recommendation :

14. With respect to tax-related measures, the Working Group recommends that:

- b) The AFP promptly inform the ATO of foreign bribery-related convictions so that the ATO may verify whether bribes were impermissibly deducted (2009 Recommendation VIII.i; 2009 Tax Recommendation I.i);

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

This had not yet had to occur, as Australia's first foreign bribery prosecutions are currently being tried. However, the AFP and ATO have put in place appropriate frameworks to ensure the prompt communication of matters relating to foreign bribery.

The ATO is a member of the AFP-hosted FAC Centre which facilitates close liaison on financial crime, including foreign bribery. The importance of early liaison with the ATO will also be included as part of the AFP's Foreign Bribery Investigations Workshop.

Text of recommendation :

14. With respect to tax-related measures, the Working Group recommends that:

- c) The ATO consider including periodically bribery and facilitation payments in its Compliance Programme (2009 Recommendation III.i, VIII.i; 2009 Tax Recommendation I.ii).

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

The ATO has considered this recommendation. The format, content and size of the ATO annual Compliance Program has changed significantly since the recommendation was made. The publication, now known as *Compliance in Focus*, contains only the highest priority risks and is updated as new risks emerge throughout the year. The inclusion of content related to incorrect claiming of deductions related to bribery and facilitation payments will be determined by the assessment of the likelihood and consequence of it happening relative to other risks.

Text of recommendation :

15. With respect to prevention, detection and reporting, the Working Group recommends that:

- a) Australia extend the reporting obligation of external auditors under the Commonwealth Corporations Act to cover the reporting of foreign bribery, including foreign bribery committed by an audited company's subsidiary or joint venture partner (2009 Recommendation III.iv, X.B.v);

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

Australia's audit reporting requirements are contained in Chapter 2M of the *Corporations Act 2001*. Statutory audit requirements are supplemented by Australian Auditing Standards (ASA) that are developed with reference to international audit standards and the international audit reporting framework more broadly.

If no action has been taken to implement recommendation 15(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:

While Australia will continue to consider this recommendation, the Australian Government is currently focused on other efforts to reduce the regulatory burden for individuals, businesses and community organisations.

Text of recommendation :

15. With respect to prevention, detection and reporting, the Working Group recommends that:

- b) Australia align the APS Guide with its practice of requiring Australian civil servants who work overseas to report suspicions of foreign bribery to the AFP in all cases (2009 Recommendation IX.ii);

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

The *Public Service Act 1999* (s.13(11)) requires APS employees to report misconduct (including foreign bribery) by public servants to uphold the APS Values.

The Australian Public Service Commission's (APSC) current guidance on this issue is contained within the publication *APS Values and Code of Conduct In Practice* (copy available here: <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice>). This sets out the guide to official conduct for Australian Public Service (APS) employees and agency heads. It applies to APS employees working overseas.

The publication notes the following in relation to foreign bribery:

Employees should also note that, consistent with Australia's obligations under the OECD Convention on the Bribery of Foreign Public Officials in International Business Transactions, under section 70.2 of the Criminal Code it is an offence to bribe a foreign public official, whether in Australia or in

another country. An Australian in another country who bribes or attempts to bribe an official of that country can be prosecuted for bribery in an Australian court.

Such an offence has a maximum penalty of 10 years imprisonment.

Where an employee becomes aware of information which they suspect relates to the bribery of a foreign public official by another employee, consistent with their obligations under the APS Values and Code of Conduct to behave ethically, honestly and with integrity, they should report the information in accordance with their agency's instructions on reporting breaches of the Code of Conduct (see Chapter 17: Whistleblowing). If the information relates to a person who is not an APS employee, the employee should discuss the matter with an appropriate senior person in their agency to determine the most appropriate course of action, including reporting the matter to the Australian Federal Police.

More information is available on the AGD website at Foreign Bribery Offences.

In relation to APS employees working overseas, AFP liaison officers in overseas posts have been provided with a fact sheet and presentation on the AFP's role in combating foreign bribery. AFP liaison officers are well placed to receive referral and intelligence of this nature. In the past six months, the FAC Centre has already received a referral and intelligence from overseas posts.

Text of recommendation :

15. With respect to prevention, detection and reporting, the Working Group recommends that:

- c) Australia ensure that Australian public servants, and officials and employees of independent statutory authorities are subject to equivalent reporting requirements (2009 Recommendation IX.ii);

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

As per response to recommendation 15(b), above, the APS Values and Code of Conduct apply to employees and heads of statutory and executive agencies employed under the *Public Service Act 1999*..

Text of recommendation :

15. With respect to prevention, detection and reporting, the Working Group recommends that:

- d) Australia put in place appropriate additional measures to protect public and private sector employees who report suspected foreign bribery to competent authorities in good faith and on reasonable grounds from discriminatory or disciplinary action (2009 Recommendation IX.iii);

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

Australia has appropriate reporting channels and protections for whistleblowers in both the public and private sectors.

Public sector whistleblower protection

Within the Australian Commonwealth public sector, the *Public Interest Disclosure Act 2013* (PID Act) promotes integrity and accountability by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures, and requiring agencies to take action. Wrongdoing is broadly defined in the PID Act as ‘disclosable conduct’, which includes a contravention of a law, abuse of public trust and corruption. The PID Act applies across the Australian Government public sector, and commenced on 15 January 2014.

The scheme provides that disclosures will be made and investigated within Government. A public official can make a disclosure outside Government where the requirements are met. External disclosures must not divulge intelligence information.

The Commonwealth Ombudsman is responsible for promoting awareness and understanding of the PID Act, and monitoring and reporting on its operation to Parliament. The Ombudsman also provides general information, guidance to agencies about their management of the PID scheme, and advice to people who are thinking about making a disclosure of wrongdoing. Details on the implementation of the PID Act are covered in follow-up item 17(j), below.

The PID Act gives effect to the Guiding Principles for legislation set out in the G20 Study on Whistleblower Protection Frameworks.

All Australian states and territories have public interest disclosure or whistleblower protection legislation which sets out protection arrangements within their jurisdiction. These laws vary in the reporting channels available to whistleblowers, in the range of protections provided, in who can make a protected disclosure and in the types of conduct covered.

Private sector whistleblower protection

Provisions in the *Corporations Act 2001* and ASIC’s organisational approach to dealing with whistleblowers provide reporting channels for corporate whistleblowers.

The whistleblower protections in Pt 9.4AAA of the Corporations Act include protection from any civil liability, criminal liability or the enforcement of any contractual right that arises from the disclosure, as well as the prohibition against victimisation of whistleblowers, and the right to seek compensation if damage is suffered as a result of the disclosure.

A ‘corporate whistleblower’ is a person working in the private sector who makes a disclosure about a company that he or she works for, where a suspected contravention has occurred. Corporate whistleblowers may be able to access protections under Pt 9.4AAA of the Corporations Act, and similar protections in relation to financial institutions are available under the *Banking Act 1959*, the *Insurance Act 1973*, the *Life Insurance Act 1995* and the *Superannuation Industry (Supervision) Act 1993*.

Access to protections under Pt 9.4AAA is available where the whistleblower is a current officer, employee or contractor of the company about which they are making the disclosure, and where the disclosure is made to:

- ASIC
- the company’s auditor or audit team
- a director, secretary or senior manager of the company, or
- a person authorised by the company to receive whistleblower disclosure.

Furthermore, protections apply where:

- the whistleblower reveals their identity in making the disclosure
- the disclosure is made in good faith, and
- the disclosure relates to a suspected contravention of the Corporations Act, *Australian Securities and Investments Commission Act 2001* (ASIC Act) or associated regulations.

Where a report of misconduct is made outside these requirements, no statutory protection is available. However, ASIC provides additional reporting channels at an organisational level as part of its approach to dealing with whistleblowers. That approach includes:

- maintaining a coordinated, centralised procedure for the tracking and monitoring of all whistleblower reports
- giving appropriate weight to the inside nature of the information provided by whistleblowers in its assessment and ongoing handling of the matter
- providing prompt, clear and regular communication to whistleblowers to the extent possible and appropriate during investigations, and
- maintaining the confidentiality of whistleblowers within the applicable legal framework.

ASIC has extended this approach to persons who do not fall within the definition of whistleblower under the Corporations Act, but who still have inside information (for example, because they are no longer employed at the company about which they are making the disclosure, or because they make the disclosure anonymously).

Australia's whistleblower protections meet Australia's international obligations in related areas, including its commitments to the G20.

While Pt 9.4AAA does not impose any specific or general obligations on a person to disclose contraventions, company auditors must notify ASIC about matters that they have reasonable grounds to suspect amount to a contravention of the Corporations Act. This obligation exists for 'significant' contraventions, as well as contraventions that are not significant, but that the auditor believes have not or will not be adequately dealt with.

Office of the Whistleblower to be created

On 26 June 2014, the Senate Economics References Committee issued its report on its inquiry into ASIC's performance. This report made a number of recommendations in relation to the whistleblower protection in the *Corporations Act 2001*. Notably, the Committee recommends that the Government initiate a review of the adequacy of Australia's current framework for protecting corporate whistleblowers, with a view to:

- updating them to make them generally consistent with and complementary to the protections afforded to public sector whistleblowers under the *Public Interest Disclosure Act 2013*, and
- amending the legislation to expand the definition of a whistleblower and expand the scope of information protected by Part 9.4AAA to cover any misconduct that ASIC may investigate, rather than merely breaches of the *Corporations Act 2001*.

The Government has tabled its response to the Committee's report (available online here: <http://www.financeminister.gov.au/media/2014/docs/Austrn-gov-response-senate-economics-references-committee%20report.pdf>).

The Government noted the recommendations relating to whistleblower protections

(recommendations 12-16). ASIC has agreed to establish an Office of the Whistleblower, which will monitor the handling of all whistleblower reports, manage staff development and training and handle the relationship with whistleblowers on more complex matters. The Office will build on improvements that ASIC has made to whistleblower arrangements through the adoption of a centralised monitoring procedure.

Text of recommendation :

15. With respect to prevention, detection and reporting, the Working Group recommends that:

- e) AusAID expressly require that all foreign bribery allegations involving Australian nationals, residents and companies are always reported to the AFP; and train its employees on this reporting obligation and procedure (2009 Recommendation IX.ii);

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

Following the 2013 federal election, the Australian Agency for International Development (AusAID) has been integrated into DFAT.

DFAT officials are under an obligation to report all allegations of extra-territorial offences committed by Australian citizens, permanent residents or companies, including information they receive about bribes paid to foreign public officials. Information regarding allegations of the foreign bribery offence are reported to the Transnational Crime Section within DFAT and referred to the AFP. DFAT refers all allegations of the foreign bribery offence which it becomes aware of to the AFP FAC Centre.

DFAT has formalised and clarified these obligations and reporting procedures through a number of policy documents, including Administrative Circular P1197 – Australian extraterritorial offences and the responsibility to report; Administrative Circular P1179 – DFAT guidance and procedures for dealing with fraud; and a Fraud Policy Statement (copies can be provided if required).

DFAT staff receive training regarding the foreign bribery offence both as part of their initial induction training and prior to undertaking any overseas posting. DFAT has also provided training for staff working overseas through regional training programs.

DFAT has a dedicated team responsible for the management and oversight of external fraud within the Australian aid program. DFAT staff are provided with technical advice and training to support the effective identification and management of fraud and corruption.

Text of recommendation :

15. With respect to prevention, detection and reporting, the Working Group recommends that:

- f) Austrade consider taking concrete steps to encourage companies, in the strongest terms, to conduct due diligence on agents, including those referred to them by Austrade (2009 Recommendation X.C.i).

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

Austrade's outreach program targets Australian businesses operating in high risk locations. Austrade also takes steps to ensure its staff is aware of the law and of their obligations.

Austrade's outreach program clearly states what Austrade can and cannot do to assist Australian businesses operating overseas. Austrade advises it will only provide referrals within tightly established processes and that Australian businesses are to conduct their own due diligence when considering using foreign agents, suppliers, or distributors, before they engage them for in-market assistance. A disclaimer on conducting due diligence is also a standard term in the provision of all Austrade's services to Australian businesses.

Austrade reminds Australian businesses that culpability for the crime of bribery operates through the whole chain-of-command, from agents to principal, that local laws apply to the foreign agent, and that the AFP does not distinguish between the illegal activities of agents and those who instruct them.

Finally, Austrade emphasises that each Australian business must ensure that any agent it engages must have anti-bribery and corruption training comparable to that given to the business' Australian employees, as part of its obligation to integrate staff, agents and contractors into a consistent compliance program.

In late 2012, PwC undertook a review of Austrade's current policies and practices related to referring Australian businesses to agents (see Annex 5). The review assessed better practice in a number of overseas markets and provided recommendations to Austrade of changes or enhancements to Austrade's operations in relation to maintaining an effective anti-corruption program (including for the use of agents).

The recommendations included:

1. Policies and procedures are in place, communicated to staff and third parties (including through training), and monitored effectively
2. There is clear and visible support from the top for active management of risk arising from the use of agents
3. Risk assessments are up to date and mitigation strategies are in place, including appropriate controls
4. Compliance with policies and procedures is regularly reported to senior management
5. All contracts with third parties (e.g. clients, agents) include appropriate provisions for mutual obligation and expectations, e.g. level of due diligence to be performed by clients on third party providers
6. The use of agents risk management framework is tested regularly and updated to align with changing practices

Austrade can report sound progress against each recommendation, as detailed in the document attached (Annex 5).

Text of recommendation :

16. With respect to public advantages, the Working Group recommends that:

- a) Australian procuring agencies put in place transparent policies and guidelines on the exercise of their discretion on whether to debar companies or individuals that have been convicted of foreign bribery (Convention Article 3(4); 2009 Recommendation XI.i);

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

No action to implement this recommendation.

If no action has been taken to implement recommendation 16(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:

Australia will continue to consider this recommendation. At present, no specific measures are being progressed to implement recommendation 16(a).

Text of recommendation :

16. With respect to public advantages, the Working Group recommends that:

- b) EFIC (i) conduct due diligence on agent commission fees below 5% of large absolute value to ensure funds are not being provided as bribes; (ii) report all credible allegations of foreign bribery involving Australian nationals, residents and companies to the AFP, and not consider the CCPM when deciding whether to report these cases; and (iii) reduce to writing its criteria and guidelines for terminating support to entities involved in foreign bribery (2009 Recommendation XII.ii; 2006 Export Credit Recommendation).

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

- i) Conduct due diligence on agent commission fees:

EFIC has amended its procedures so that it requests the name and address of agents used in connection with the contract. EFIC then conducts due diligence on all agent commission fees, regardless of value. For project finance transactions where there may be an extremely large number of persons acting on the borrower's behalf and it is not feasible to request the name and address of all agents, EFIC has the right to request the name of such persons and the amount and purpose of commissions paid or payable to such persons. EFIC exercises this right using a risk-based approach.

- ii) Report credible allegations of bribery to the AFP:

EFIC has amended its procedures so that it reports all credible allegations of foreign bribery to the AFP and does not consider the CCPM in deciding whether to refer these cases to the AFP. The AFP Panel of Experts reviewed EFIC's anti-bribery policies and procedures and provided advice which assisted EFIC develop the policies and procedures to better address allegations of Foreign Bribery.

iii) Document its guidelines for terminating support to entities involved in foreign bribery:

EFIC has amended its procedures to document the circumstances in which it will terminate support in a transaction involving bribery.

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

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (a) Outcome of Australia's public consultation on the facilitation payment defence and foreign bribery offence (Convention Article 1);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

From November 2011 to February 2012, the former Australian Government conducted public consultation on the possibility of removing the 'facilitation payment' defence to the Commonwealth offence of bribing a foreign public official. The 15 submissions received indicate that stakeholder views are split on the issue of whether to retain the facilitation payments defence. The previous Government did not make a decision to maintain or repeal the defence before the September 2013 federal election.

The facilitation defence is under active consideration by the current Government but there is no timeframe on any possible law reform at this stage.

In line with our obligations under the OECD Convention and 2009 Recommendation, Australia continues to actively discourage individuals and businesses from making facilitation payments, as discussed in the response to recommendation 2(a).

As noted in the responses to recommendations 2(b) and 4(a), Australia is currently considering legislative amendments in relation to the foreign bribery offence. These amendments would:

- clarify that the legislation operates to not require proof of an intention to bribe a particular official to establish the foreign bribery offence, and
- introduce a new false accounting offence, noting the offence introduced by Canada in response to a similar recommendation from the OECD Working Group.

AGD is aiming for these amendments to be presented to Parliament in 2015.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (b) application of the defence of facilitation payments, in particular to determine whether Australian companies conscientiously comply with the record-keeping requirements under

section 70.4(3) of the Commonwealth Criminal Code (Convention Article 1; Commentary 9);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The facilitation payment defence has not been raised in any foreign bribery criminal proceedings. As per the response to recommendation 2(a), Australian agencies provide advice on facilitation payments as a part of all outreach activity, and actively discourage Australian businesses from relying on this defence, noting the business risks involved.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (c) Whether the foreign bribery offence requires the proof of an intention to bribe a particular foreign public official (Convention Article 1);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No new case law on this issue. As noted in the response to recommendation 2(b) above, a legislative amendment is being progressed to address this.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (d) Whether effective, proportionate and dissuasive sanctions (including confiscation) are imposed against natural and legal persons for (i) foreign bribery, and (ii) false accounting in connection with foreign bribery (Convention Articles 3(1), 3(3), 8(2));

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Australia's first foreign bribery prosecutions are currently before the courts.

On 20 August 2012, David Ellery, a former Chief Financial Officer of Securrency, was sentenced to six months imprisonment (suspended for two years) after pleading guilty to one count of false accounting, contrary to section 83(1) of the *Crimes Act 1958* (Vic).

In December 2007, ASIC commenced civil penalty proceedings in the Supreme Court of Victoria against six defendants for alleged breaches of their duties as directors and officers of AWB Limited. The proceedings arose from investigations conducted by ASIC following the completion of the Inquiry into certain Australian companies in relation to the UN Oil-For-Food Program that had been established by the

Australian Government.

While some aspects are still before the courts, the following outcomes have been achieved:

- In August 2012, Andrew Lindberg, the former Managing Director of AWB was disqualified from managing corporations for two years and ordered to pay a pecuniary penalty of \$100,000.
- In March 2013, Paul Ingleby, the former Chief Financial Officer of AWB was disqualified from managing corporations for 15 months and ordered to pay a pecuniary penalty of \$40,000.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (e) Choice of proceeding in foreign bribery cases as summary conviction versus indictable offences, and where the choice is made to proceed summarily, whether the resulting sanctions are sufficiently effective, proportionate and dissuasive (Convention Articles 3, 5);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Australia's first foreign bribery prosecutions are currently being prosecuted on indictment in the Supreme Court of Victoria, which is the highest trial court in Victoria.

The prosecutions resulted from a major investigation into the activities of Securrency International Pty Ltd (Securrency) and Note Printing Australia Limited (NPA) in marketing Australian banknote technologies overseas. It is alleged that Securrency, NPA and a number of their employees used agents to engage in bribery of foreign public officials in countries that purchased a polymer substrate which is used in the process of printing money. Some of the alleged offending dates back to 1999.

By virtue of section 4J of the *Crimes Act 1914* (Cth), an offence against section 70.2 of the *Criminal Code* ('Bribing a foreign public official') is an indictable offence which may be also dealt with summarily. In determining the mode of trial in a particular matter, the CDPP will apply the principles set out in the *Prosecution Policy of the Commonwealth* (paragraphs 6.11–6.13).

Paragraph 6.12 states that:

'In determining whether or not a case is appropriate for trial on indictment regard should be had to:

- a. the nature of the case, and whether the circumstances make the alleged offence one of a serious character
- b. any implied legislative preference for a particular mode of trial
- c. the adequacy of sentencing options and available penalties if the case were determined summarily
- d. any delay, cost and adverse effect upon witnesses likely to be occasioned by proceeding on indictment
- e. in situations where a particular type of criminal activity is widespread, the desirability of a speedy resolution of some prosecutions by proceeding summarily in order to deter similar breaches
- f. the greater publicity, and accordingly the greater deterrent effect, of a conviction obtained on

indictment

as well as such of the criteria relevant to the decision whether to prosecute as appear to be significant.’

Given the serious nature of the offence under s70.2, the CDPP anticipates that foreign bribery matters would almost always proceed on indictment. (It may be different where the CDPP determines that the available, admissible evidence is incapable of establishing an offence against s70.2 and a lesser summary charge is the only viable alternative.)

Given that Australia’s foreign bribery prosecutions are all still on foot and subject to suppression orders, it is not appropriate to comment further.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (f) Work of the AFP Foreign Bribery Panel of Experts, including the implementation of recommendations that the AFP (i) be more proactive in gathering information from diverse sources at the pre-investigative stage; (ii) ensure that future foreign bribery investigations consistently consider the involvement of related legal persons, and alternate charges such as money laundering and false accounting; and (iii) the implementation of the *aide mémoire* (Convention Articles 2, 5, 7, 8; 2009 Recommendation Annex I.C, I.D);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The AFP Foreign Bribery Panel of Experts has considered and is acting upon the recommendations directed at the AFP. In relation to the matters raised, relevant activities include the following.

- The Panel of Experts looks at daily media articles and monitors international forums for information pertaining to current and new allegations. Any reporting involving Australian entities is referred to the FAC Centre for consideration. An agency internal newsletter is generated by the Panel of Experts derived from media reporting.
- The Panel of Experts provides advice in the initial investigation planning processes to ensure relevant issues (including those mentioned in this follow-up item) are considered at the commencement and throughout an investigation.
- A Panel of Experts case officer is now assigned to each foreign bribery investigation, to ensure consistent and appropriate advice is provided to investigators.
- The Panel of Experts is developing a Foreign Bribery Investigators Reference Guide that includes the issues mentioned in this follow-up item.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (g) AFP’s statement to the Working Group in 2008 that they were “willing to undertake evaluations on suspected foreign bribery instances based on credible media reports, publicly available documents from foreign courts or mutual legal assistance requests” (Convention,

Article 5; Commentary 27; 2009 Recommendation Annex I.D);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In addition to the measures mentioned in response to follow-up issue 17(f), the AFP advises that it has evaluated three matters that were identified by the AFP through media reporting, and a further matter as a result of identifying Australian interests through the receipt of a Mutual Legal Assistance Request.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (h) Whether the ATO re-assesses the tax returns of taxpayers convicted of foreign bribery (2009 Recommendation VIII.i; 2009 Tax Recommendation);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As noted in the response to recommendation 14(b), the AFP and ATO have taken steps to ensure the prompt communication of foreign bribery matters. The ATO is a member of the AFP-hosted FAC Centre which facilitates communication relating to allegations of foreign bribery. Early liaison with the ATO was included as part of the Foreign Bribery Investigations Workshop held in October 2013.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (i) Reporting of foreign bribery cases by the ATO to the AFP (2009 Recommendation IX.ii);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As noted in the response to recommendation 14(b), the AFP and ATO have taken steps to ensure the prompt communication on foreign bribery matters. The ATO is a member of the AFP-hosted FAC Centre which facilitates communication relating to allegations of foreign bribery. Early liaison with the ATO was included as part of the Foreign Bribery Investigations Workshop held in October 2013.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (j) Enactment and implementation of the Public Interest Disclosure Bill (2009 Recommendation IX.iii);

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As noted in the response to recommendation 15(d), the PID Act has been passed by the Australian Parliament and commenced on 15 January 2014.

The PID Act confers a number number of roles on the Commonwealth Ombudsman to ensure the scheme provides robust protections to public officials who report wrongdoing in the public sector. The office is responsible for promoting awareness and understanding of the Act and monitoring its operation; as well as providing guidance, information and resources about making, managing and responding to public interest disclosures.

Since the commencement of the Act, 48 of the 191 Commonwealth agencies covered by the scheme received one or more disclosure. Within those 48 agencies, 3782 disclosures were made by public officials, former public officials or people taken to be public officials.

The Ombudsman's Annual Report 2013-14 details the first six months of the scheme's operation. It is available online at: http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2013-14/pdf/commonwealth_ombudsman_annual_report_1314.pdf.

Text of issue for follow-up:

17. The Working Group will follow up the issues below as case law and practice develop:

- (k) Application of EFIC's procedures in two cases that involve EFIC support and which is the subject of on-going foreign bribery investigations (2009 Recommendation XII.ii).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

This item relates to two cases referred to in para 158 of the Phase 3 report, about which EFIC was unable to comment at the time of the Phase 3 review.

The AFP is still conducting ongoing investigations into these matters. As such, EFIC is not in a position to discuss these matters in detail.

Under EFIC's procedures, and in accordance with the OECD Council Recommendation on Bribery and Officially Supported Export Credits, where bribery is proven in a transaction where EFIC has provided financial support, EFIC has the right, under its contractual provisions, to terminate the transaction and will do so in a manner that is not prejudicial to the rights of parties not responsible for illegal payments.

ANNEX 1: AFP MEDIA RELEASE



**The Hon Michael Keenan MP
Minister for Justice**

MEDIA RELEASE

31 July 2014

AFP-HOSTED FRAUD AND ANTI-CORRUPTION CENTRE

The Coalition Government has formally established the Fraud and Anti-Corruption (FAC) Centre located in the Australian Federal Police (AFP) headquarters, with the recent signing of a Commonwealth multi-agency Memorandum of Understanding – marking a new era in the approach to dealing with fraud and corruption at a federal level.

The FAC Centre brings together the Australian Taxation Office, Australian Securities and Investments Commission, Australian Crime Commission, Australian Customs and Border Protection Service, Department of Human Services, Department of Immigration and Border Protection, Department of Defence, and Department of Foreign Affairs and Trade in order to assess, prioritise and respond to serious fraud and corruption matters.

The FAC Centre has been designed to triage and evaluate serious and complex fraud and corruption referrals to deliver an effective Commonwealth multi-agency response when serious concerns are raised.

The FAC Centre will be resourced by the AFP, with partner agencies all contributing seconded members with relevant areas of expertise. It will deliver whole-of-government fraud training through a joint training team.

AFP FAC investigation teams are also based in Melbourne, Sydney, Canberra, Brisbane and Adelaide. They will investigate serious and complex fraud, corruption and foreign bribery matters, including identity crimes.

Partner agencies will work to prioritise the most effective and appropriate investigative response to allegations of fraud and corruption matters. This will ensure that serious fraud and anti-corruption issues are dealt with in the most effective manner.

The FAC Centre will also engage existing intelligence resources, such as the Australian Crime Commission's National Criminal Intelligence Fusion Capability, drawing on specialists, data and analytics to develop fraud-related intelligence.

The establishment of the FAC Centre is consistent with the Government's zero tolerance approach to corruption in all its forms – seen most recently the establishment of Task Force Pharos which is targeting

hidden corruption in the Australian Customs and Border Protection Service, and the establishment of the Royal Commission into Trade Union Governance and Corruption.

We are proud of Australia's position and reputation – consistently ranked by Transparency International as one of the least corrupt countries in the world. This announcement further enhances our ability to prevent and respond to serious fraud and corruption at the Commonwealth level.

Media contact: Emily Broadbent 0400 390 008

ANNEX 2: AFP – REGIONAL PRESENTATIONS ON FOREIGN BRIBERY

Guangzhou, China

- Presented on Foreign Bribery to the Australian/China business communities in Shenzhen and Guangzhou through the Australian Chamber of Commerce.
- Provided the Foreign Bribery Fact Sheet to Department of Foreign Affairs and Trade and Australian Trade Commission (Austrade) officials for dissemination amongst relevant businesses.

Hanoi and Ho Chi Minh City, Vietnam

- Delivered two presentations to Australian Chamber of Commerce (Hanoi and Ho Chi Minh City) on Foreign Bribery, with the Foreign Bribery Fact Sheet distributed at both events.
- Promotion of Foreign Bribery as an issue in the Peoples Police Academy and have provided Foreign Bribery Fact Sheets for the library there.
- Attended, mentored and delivered presentations at 33rd AFP/Vietnamese Asia Region Law Enforcement Management Program (ARLEMP). This course was themed 'Fraud, Corruption, and Foreign Bribery'.

Beijing, China

- Spoke at Australian Chamber of Commerce in Beijing on Foreign Bribery and Corruption and provided Fact Sheets.
- AFP attended and presented at the High level APEC Anti-Corruption Workshop on Combating Business Bribery (14 Aug) and the Anti-Corruption law Enforcement Network on 15 August.

Kuala Lumpur, Malaysia

- Attended and presented at the Austrade Seminar titled 'trading with integrity'. Handed out Foreign Bribery Fact Sheet at the function.
- Presentation to Malaysian Anti-Corruption Commission Roundtable on Corporate Liability, Kuala Lumpur, Malaysia (invitation extended via OECD - William Loo) on 17 Feb 2014.

Siem Reap, Cambodia

- Regional meeting on curbing foreign bribery in ASEAN Economic Community (2 October 2014), United Nations Office on Drugs and Crime.

ANNEX 3: AFP FOREIGN BRIBERY FACTSHEET

Available online: <http://www.afp.gov.au/~media/afp/pdf/f/foreign-bribery-afpfactsheet.pdf>.

ANNEX 4: FOREIGN BRIBERY OUTREACH ACTIVITIES – ATTORNEY GENERAL'S DEPARTMENT

2013 – 2014

Date	Event / Location	Comments
January 2013	AGD foreign bribery website update / online	Update to foreign bribery fact sheets to reflect increase in value of penalty unit and add international dialling codes for people overseas to more easily report foreign bribery.
18 April 2013	International Foreign Bribery Taskforce workshop / Sydney	Daniel Mossop presented to this event at the invitation of AFP. Covered issues such as foreign bribery policy development, and awareness raising. The workshop was attended by a range of stakeholders including civil society, international law enforcement from the FBI, RCMP and City of London Police. The world Bank, EFIC, ASIC, CDPP, Trade Commission and AusAID also attended the workshop attending.
6 May 2013	International Trade Law Symposium / Canberra	Graeme Gunn and Rishi Gulati presented. Covering the historical development of foreign bribery offences up to modern developments including the OECD Phase 3 evaluation report. Discussed importance of understanding the offences and increased investigative and prosecutorial activity. Co-presenter was Ms Annette Hughes of Corrs. Audience of people interested in international trade.
29 April 2013	C5 Anti-Corruption Conference / Sydney	Graeme Gunn presented with Linda Champion of AFP and Stephen Clark of DFAT. Major anti-corruption forum and the first C5 conference in Australia. Brief introductory remarks and a panel discussion that covered a wide range of anti-bribery topics. Large audience including lawyers, compliance experts, large and small companies, academics. Some media coverage of the event.
10 July 2013	Snedden Hall & Gallop Lawyers / Canberra	Graeme Gunn presented. This was the first presentation on foreign bribery to a law firm that services SME clients. Audience was lawyers and support staff approx. 15 pax. Introduction to foreign bribery offences and preventive measures and discussion (1 hour). Good feedback to say the subject matter was likely to be relevant to their clients.

16 July 2013	UN Global Compact anti-corruption leadership group / Sydney	Graeme Gunn presented. Key Australian anti-corruption network. High level of interest in anti-corruption. Discussion included foreign bribery offences, new developments and alternative approaches and case studies. Audience included civil society, lawyers, UN GC member companies, consultants.
18 July 2013	UN Global Compact anti-corruption leadership group / Melbourne	Graeme Gunn presented. Key Australian anti-corruption network. High level of interest in anti-corruption. Discussion included foreign bribery offences, new developments and alternative approaches and case studies. Audience included civil society, lawyers, UN GC member companies, consultants.
18 July 2013	Madgwicks Lawyers / Melbourne	Graeme Gunn met with a partner and senior consultant lawyer of this law firm which serves SME clients. Discussed foreign bribery offences and risks etc. Lawyers thought many clients would not be aware of these risks and said they would publish a client alert.
12 September 2013	Corruption Prevention Network Annual Forum / Sydney	Andrew Lawrence attended and ran a Departmental information stall at the forum, with material on fraud, corruption, foreign bribery, protective security and identity security. There was significant interest in foreign bribery from attendees from state and territory jurisdictions as well as private corporations.
20 November 2013	C5 Anti-Corruption Event for Extractive Industries / Perth	Graeme Gunn presented on Australia's foreign bribery offences, defences, enforcement trend including annex 2 of the anti-bribery convention, corporate controls and other matters.
20 November 2013	WA Law Society / Perth	Graeme Gunn presented on Australia's foreign bribery offences, defences, enforcement trend including annex 2 of the anti-bribery convention, corporate controls and other matters. Well attended by lawyers including those that represent SMEs, academics and others.
20 November 2013	AFP, WA police and other Cth agencies / Perth	Graeme Gunn presented on Australia's foreign bribery offences, defences, enforcement trend including annex 2 of the anti-bribery convention, corporate controls and other matters. Well attended by AFP based in WA, and other agencies including ATO, ASIC, WA police.
6 February 2014	Anti-corruption event / Brisbane	Graeme Gunn presented on Australia's FB offences, defences (discourage FPs etc), enforcement trends. Co-presented with King Wood Mallesons law firm. Well attended, approximately 60 persons, by lawyers in Brisbane from a wide range of private sector companies.

17 March 16 June 9 April 22 September 2014	Commonwealth Agency Investigator Workshops (Sydney, Adelaide, Brisbane and Melbourne)	Andrew Lawrence presented on the Commonwealth's foreign bribery response, including on offences, defences, investigation procedures and reporting to Commonwealth investigators from a range of Government agencies.
27 May 11 November 25 November 2014	Diploma in Fraud Control – Department of Human Services	Andrew Lawrence presented on the Commonwealth's foreign bribery response, including on offences, defences, investigation procedures and reporting to staff from the Department of Human Services.
4 June 2014 (Sydney) 13 June (Melbourne)	Global Compact Network Australia breakfast seminars	Federal regulators panel discussion on enforcement approach to anti-bribery law. Attendees were Global Compact Network members, ranging from small and medium sized companies to large corporations, as well as a handful of civil society and academic representatives. Media release here . Presenters: Anthony Coles (AGD), Linda Champion (AFP), Chris Savundra (ASIC – Sydney), Simon Temple (ASIC – Melbourne).
4 June 2014 (Sydney) 13 June (Melbourne)	Allens Linklaters seminars	Federal regulators panel discussion on enforcement approach to anti-bribery law. Attendees were Allens clients, including those from various industry section mining and resources, financial services, manufacturing, logistics and supply chain. Media release here . Presenters: Anthony Coles (AGD), Linda Champion (AFP), Chris Savundra (ASIC – Sydney), Simon Temple (ASIC – Melbourne).
11 September 2014	Corruption Prevention Network Annual Forum / Sydney	Andrew Lawrence attended and ran a Departmental information stall at the forum, with material on fraud, corruption, foreign bribery, protective security and identity security. There was significant interest in foreign bribery from attendees from state and territory jurisdictions as well as private corporations.

ANNEX 5: AUSTRADE – USE OF AGENTS UPDATE (DECEMBER 2014)



Background

In late 2012, PwC undertook a review of Austrade's current policies and practices related to referring Australian businesses to agents. The review assessed better practice in a number of overseas markets and provided recommendations to Austrade of changes or enhancements to Austrade's operations in relation to maintaining an effective anti-corruption program (including for the use of agents).

The recommendations included:

1. Policies and procedures are in place, communicated to staff and third parties (including through training), and monitored effectively
2. There is clear and visible support from the top for active management of risk arising from the use of agents
3. Risk assessments are up to date and mitigation strategies are in place, including appropriate controls
4. Compliance with policies and procedures is regularly reported to senior management
5. All contracts with third parties (e.g. clients, agents) include appropriate provisions for mutual obligation and expectations, e.g. level of due diligence to be performed by clients on third party providers
6. The use of agents risk management framework is tested regularly and updated to align with changing practices

Austrade can report sound progress against each recommendation as detailed below.

Progress against recommendations

Ref.	Better Practice	Austrade
1	Policies and procedures are in place, communicated to staff and third parties (including through training), and monitored effectively	<p>In 2013, Austrade introduced an eligibility check for services that applies to all organisations that seek its services in Australia and overseas. This eligibility check is as follows:</p> <ol style="list-style-type: none"> 1. Registration We only work with registered organisations. 2. Net benefit test We only work with organisations whose activities demonstrate a net benefit to Australia. 3. Best interest test We only work with organisations if it is in the 'best interest' of Austrade, the Australian Government or Australia and will not harm our reputation. 4. Ethical test We only work with organisations that are committed to maintaining appropriate business ethics and legal obligations including anti-bribery law in both Australia and overseas. <p>The eligibility check can be found on Austrade's website and was reinforced through staff training through 2013 and 2014.</p> <p>In 2014, Austrade published a new Service Handbook outlining all the Austrade policies that apply to the provision of services to Australian and international companies, including Australian exporters, offshore agents and third-party service providers. All policies were updated to reflect Austrade's strong anti-corruption stance. The policies also reinforce that: <i>Austrade cannot and does not undertake due diligence for any organisation. This means that Austrade cannot:</i></p> <ul style="list-style-type: none"> › interpret financial statements or company audits › collect information on the financial details or private affairs of individuals within companies, agencies or other organisations › prepare credit status reports (however, a referral to reputable local service providers can be provided) › guarantee or confirm the financial stability or commercial reliability of organisations › select staff members or potential business partners or customers for Australian organisations. <p>Austrade policies now include specific reference to working foreign agents and distributors: <i>Finding potential offshore agents and distributors for Australian exporters is an integral element of our client servicing activities.</i></p> <p><i>Although Austrade identifies and introduces potential agents and distributors, exporters are responsible for conducting their own due diligence before entering into commercial arrangements with the parties we introduce.</i></p> <p><i>To support good outcomes for exporters, we recommend the following approaches:</i></p> <ul style="list-style-type: none"> › Wherever possible, identify and introduce exporters to at least three potential agents or distributors so they have several options to consider. › While it is difficult to fully qualify foreign organisations in the early stages of an introduction, use market contacts, internet and database searches to uncover information and insights into their business. › Remind clients about the requirements for due diligence on all potential agents and partners, including those introduced through Austrade services or opportunities. › Always include a disclaimer clause and advice about bribery when providing lists of potential agents and distributors. <i>If an appointed agent, distributor or joint venture partner becomes involved in the bribery of foreign public officials, the Australian entity engaging the foreign organisation may potentially be held responsible and prosecuted under both Australian and foreign laws.</i> <p>Austrade provides a referral service to qualified Australian exporters and international investors that seek specialist professional services to further their international business objectives. Over the past few years, Austrade has built up a strong database of third-party service providers that can be included in referral services. To register for this database, the service providers must complete an online registration form on the Austrade website. The form outlines the terms and conditions of the registration, including anti-bribery provisions. Upon receipt, Austrade staff conduct an eligibility assessment before confirming the registration. This assessment may include independent research of the service provider and third-party checks through relevant industry bodies or associations. All referral services are provided in writing in a template that explicitly states that the recipient must undertake their own due diligence.</p>

Ref.	Better Practice	Austrade
2	<i>There is clear and visible support from the top for active management of risk arising from the use of agents</i>	<p>Staff training has also included the need to document all interactions with third-parties in the Austrade database. Upgraded technology has significantly streamlined this process, enhancing Austrade's record keeping procedures.</p> <p>All Austrade staff at posts and in Australia have completed mandatory training on bribery and corruption. Training is included in induction programs and annual refresher courses.</p> <p>Austrade's Executive regularly review any incidents or allegations of bribery that arise in the Australian exporter community. Austrade declines services to exporters that face bribery allegations or proceedings.</p> <p>Externally, Austrade has actively presented to Australian exporter groups in Australia and overseas on combatting anti-bribery in their international engagements. In particular, Austrade provides advice to these companies on setting up their internal and external governance structures to monitor and counter corrupt activities by their staff and agents.</p>
3	<i>Risk assessments are up to date and mitigation strategies are in place, including appropriate controls</i>	<p>All Austrade planning documentation including corporate plans, market plans and individual performance plans include reference to the integrity and ethical conduct of its activities. In high-risk markets, managing bribery and corruption specific risks and controls are explicitly mentioned in the relevant market plan. Austrade's Audit and Risk Committee actively reviews these risks on a quarterly basis. Any detected instance of bribery or corruption is reported to the Audit and Risk Committee; all suspected cases of bribery are referred to the Australian Federal Police.</p>
4	<i>Compliance with policies and procedures is regularly reported to senior management</i>	<p>Breaches of policies and procedures are reported to Austrade senior management and Austrade's Audit and Risk Committee.</p> <p>All staff are aware of bribery reporting processes and escalation procedures. All staff complete a mandatory annual policy refresher module which includes anti-bribery and corruption mitigation policies.</p>
5	<i>All contracts with third parties (e.g. clients, agents) include appropriate provisions for mutual obligation and expectations, e.g. level of due diligence to be performed by clients on third party providers</i>	<p>Austrade's templates, disclaimers and email signatures contain standard wording regarding the need to apply one's own discretion when using the information provided through Austrade's service provision. Austrade staff also provide written and verbal reinforcement that companies must undertake their own due diligence when contracting third-party service providers or agents.</p> <p>Further, all Austrade templates, disclaimers and email signatures highlight that Australia's anti-bribery laws apply overseas and Austrade will not provide business related services to any party who breaches the law and will report credible evidence of any breach.</p>
6	<i>The use of agents risk management framework is tested regularly and updated to align with changing practices</i>	<p>The Service Handbook is reviewed quarterly and updated to reflect any changes to Austrade's policies and procedures.</p>