



**Asia-Pacific
Economic Cooperation**

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Agenda Item: 10

Anti-Corruption and Transparency Reporting Template - Australia

Purpose: Information
Submitted by: Australia



**19th Anti-Corruption and Transparency
Experts' Working Group Meeting
Beijing, China
13 August 2014**

APEC ANTI-CORRUPTION AND TRANSPARENCY (ACT) REPORTING TEMPLATE

ECONOMY:

Australia

CALENDAR YEAR:

2014

LAST UPDATED:

2014

LEADERS' AND MINISTERS' COMMITMENTS

- **2010:** We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies' progress in meeting APEC Leaders' commitments on anti-corruption and transparency.
- **2006:** Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders' and Ministers' commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

- **G20:** As part of Australia's presidency of the G20 in 2014, Australia (led by the Attorney General's Department) is co-chairing the G20 Anti-Corruption Working Group together with Italy. G20 Leaders established the Working Group in 2010 in recognition of the strong impact of corruption on economic growth, trade, and development. As co-chair, Australia is responsible for implementing outstanding deliverables on the 2013-14 Action Plan, as well as leading the development of a new, post-2014 mandate for the Working Group. This work in the G20 directly complements the commitments of APEC leaders and Ministers on anti-corruption.
- **Private sector engagement:** Australia funded a pilot project to design and implement the *APEC Code of Conduct for Business* in Vietnam, Thailand (2009) and Chile (2011). Australia subsequently co-sponsored the Philippines' proposal to implement the *Code of Conduct* in 2012. The United States has built on Australia's work in particular industry sectors (e.g. construction and pharmaceuticals). In 2013, Russia and China announced they are using the code in outreach to the private sector.
- **Anti-money laundering:** Australia supports APEC's pioneering efforts to use anti-money laundering and asset recovery systems against corruption. Australia's Attorney-General's Department and the Australian Transaction Reports and Analysis Centre (AUSTRAC) jointly assisted the design and delivery of conferences on this topic in Thailand (2007 and 2009) and Australia (2010) with funding support from APEC and the Australian Department for Foreign Affairs and Trade. China, the US and Australia co-sponsored Thailand's proposal for a fourth conference in July 2012, which AUSTRAC attended. In June 2013, Chile and Thailand

hosted a further conference in transnational money laundering and asset recovery, with an official from the Australian Embassy in Santiago delivering a speech on the value of a multi-agency approach in detecting, analysing and disrupting illicit financial flows..

- *Transnational crime*: Australia supports APEC efforts to prevent and disrupt corruption-facilitated transnational crime, including environmental crime. Following the *Sydney APEC Leaders' Declaration on Climate Change, Energy Security and Clean Development* (2007), which called for renewed action on sustainable marine and forest management, Australia hosted the *Fish, Forests and Filthy Lucre* Conference in 2010. The conference identified practical strategies to use anti-money laundering and asset confiscation systems against deforestation and illegal fishing. In 2013 Australia participated in the APEC Pathfinder Dialogue, *Combating Corruption and Illicit Trade across the Asia-Pacific Region*, which focused on the role corruption plays in facilitating illicit trade and transnational crime.
- *United Nations Convention against Corruption (UNCAC) Review*: The review of Australia's implementation of Chapters III and IV of the UNCAC is complete. Australia was found to be compliant with all of the mandatory requirements contained in these chapters. Australia undertook a transparent and inclusive approach to the review and facilitated civil society participation in the process. The executive summary of Australia's report is publicly available on both the UNODC website (www.unodc.org) and the Australian Attorney-General's Department website (www.ag.gov.au). Australia's self-assessment report can also be found on the Attorney-General's Department [website](#). During the first cycle of the UNCAC Implementation Review Mechanism, Australia has also participated as a reviewer of two countries: the Netherlands and Tanzania.
- *Whistleblower protections*: In July 2013, the Australian Parliament enacted the *Public Interest Disclosure Act 2013*. The Act, which commenced in January 2014, provides a legislative framework for the management of public interest disclosures, including through the provision of robust protections for public sector whistleblowers.

2. Summary of forward work program to implement Leaders' and Ministers' commitments.

- *G20*: As co-chair of the G20 Anti-Corruption Working Group in 2014, Australia is responsible for leading implementation of commitments under the Action Plan, including continuing work to combat foreign bribery, working to promote transparency in the beneficial ownership of legal entities, and completing and publishing the *G20 Guide to Asset Recovery*. Australia is also leading the development of a new mandate for the Working Group, to guide the G20 anti-corruption agenda post-2014.
- *Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention*: In October 2012 the OECD Working Group published its Phase 3 evaluation report on Australia's implementation of the Anti-Bribery Convention. Australia is progressing work against the recommendations made by the Working Group. These steps include: establishing dedicated Fraud and Anti-Corruption teams that work on foreign bribery offences; establishing an internal Foreign Bribery Panel of Experts; creating an International Foreign Bribery Taskforce; and a memorandum of understanding between ASIC and AFP covering foreign bribery investigations. From November 2011 to February 2012, the Australian Government conducted a public consultation on the facilitation payments defence to the foreign bribery offence. The consultation raised possible changes to Australia's anti-bribery laws in the Criminal Code to remove the facilitation payments defence and other amendments to improve the operation of the laws. The Government is considering the facilitation payment defence as part of an ongoing process of ensuring Australia has appropriate foreign bribery laws in place.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders' and Ministers' commitments by your economy and in the region.

At the regional level, Australia is committed to working bilaterally with partner governments to support their own efforts against corruption. Effective governance is one of the strategic priorities of the Australian Government's aid program. An effective public sector and functioning, predictable institutions provide the foundations for economic growth, private sector investment and trade. Australia also sees significant opportunities to use UNCAC implementation reviews to guide international technical assistance and capacity building programs.

I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC's provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

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RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
 - Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
 - Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
 - Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
 - Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

- Art. 13(1) Promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Preventive anti-corruption policies, practices and bodies (articles 5 and 6)

The Australian Government's approach to preventing corruption is based on the idea that no single body should be solely responsible for anti-corruption. In Australia, a number of different agencies have specific responsibilities for tackling corruption in different levels of government, and in relation to specific types of corruption. For example, many states and territories have independent anti-corruption bodies.

At the Australian Government level, a number of agencies or office holders have specific roles in relation to corruption. For example, the Australian Commission for Law Enforcement Integrity (ACLEI) provides independent assurance to government about the integrity of Australian law enforcement agencies (for further detail see below (I.B) 'Specialised authorities and inter-agency coordination' (UNCAC articles 36, 38 and 39)).

Codes of conduct for public officials (article 8)

As set out in the *Public Service Act 1999*, the Australian Public Service Commissioner is responsible for promoting the Australian Public Service (APS) Values, the APS Employment Principles and the Code of Conduct, and for evaluating the extent to which APS agencies uphold the Values and Employment Principles. APS agency heads must establish written procedures for determining whether an APS employee, or former APS employee, has breached the Code of Conduct. Among other things, the Code of Conduct requires agency heads and APS employees to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their employment; and not to make improper use of inside information or their duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person. Each State and Territory also has a Code of Conduct or ethical standards that apply to their public service and prohibit corrupt practices. All Australian police forces are similarly governed by a Code of Conduct.

Public reporting (article 10)

The Australian Public Service Commission (APSC) releases an annual State of the Service Report which details the number of APS employees investigated and found to have breached the APS Code of Conduct. Included in these statistics is the number of employees investigated and found to have breached section 13(10) of the Code of Conduct which states that APS employees must not make improper use of inside information or the employee's status or authority to gain a benefit or advantage. The available evidence consistently indicates that misconduct in the APS is generally in the nature of isolated incidents of poor behaviour and judgement by individual APS employees rather than being indicative of underlying systemic issues and that criminal or corrupt behaviour within the APS is uncommon.

Private sector (article 12)

The strong regulatory and co-regulatory framework governing Australia's private sector (under the *Corporations Act 2001*, the *Australian Securities and Investments Act 2001*, the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*, as well as individual corporate Codes of Conduct) by its nature encourages cooperation between the private sector and relevant law enforcement bodies.

With regard to financial institutions, under section 16 of the *Financial Transactions Reports Act 1988*, 'cash dealers' are required to report suspicious or significant cash transactions to AUSTRAC for the purposes of detecting criminal offences. Section 16(4) requires that cash dealers give further information to relevant authorities if requested. Part 3 of the Act also details the requirements for 'cash dealers' when opening and maintaining accounts.

Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) details the reporting obligations for financial institutions including the requirement to report suspicious transaction in section 41. Similarly, under the *Proceeds of Crime Act 2002* (Part 3) financial institutions are required to provide information and documents to authorised officers upon request.

Participation of society (article 13)

The Australian Government works closely with non-government organisations such as Transparency International to empower civil society, government and private sector stakeholders to advocate for anti-corruption reforms, and analyse the extent and causes of corruption.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

The Australian Government is committed to combating corruption domestically and internationally level, and is considering possible policy measures to further strengthen the anti-corruption framework at the federal level. Draft AML/CTF Rules have entered into force which require businesses covered by the AML/CTF regime to: determine the beneficial owner of a customer (the ultimate individual who owns or controls the customer); determine if the customer or beneficial owner is a politically exposed person (PEP); consider the associated risks and the purpose and intent of the business relationship; and undertake reasonable measures to update information in relation to customers. These enhanced customer due diligence (CDD) requirements will make it more difficult for corrupt officials to conceal their links with illicit money. The draft Rules entered into force on 1 June 2014.

As well as Australia's progress in implementing the **commitments of APEC leaders** (see above 'Executive summary'), Australia is also committed to implementing the **2013-14 G20 Anti-Corruption Action Plan**, which guides the work of the G20 Anti-Corruption Working Group. As co-chair of the G20 Anti-Corruption Working Group in 2014, Australia is responsible for leading implementation of commitments under the Action Plan, including continuing work to combat foreign bribery, working to promote transparency in the beneficial ownership of legal entities, and completing and publishing the *G20 Guide to Asset Recovery*. Australia is also leading the development of a new mandate for the Working Group, to guide the G20 anti-corruption agenda post-2014.

See 'Capacity building needs and opportunities' below for further measures.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Australia works with partner countries to support their efforts to tackle corruption, increase transparency and improve accountability. Australia's approach to combating corruption internationally focuses on four categories of sustained effort:

- *Design* – supporting the development of international anti-corruption standards. Australia is a long-standing contributor to the following international anti-corruption standard setting initiatives: UN Convention Against Corruption (UNCAC), OECD Convention on Combating the Bribery of

Foreign Public Officials and the Financial Action Task Force (FATF).

- *Implementation* – working with partner countries and international bodies and mechanisms to implement anti-corruption standards, e.g.:
 - Australia’s aid program tackles corruption bilaterally, regionally and internationally, working with partner governments to support their efforts to reduce corruption, increase transparency and improve accountability;
 - Australia’s aid program supports the operation of the UNCAC, by supporting the UN Office on Drugs and Crime and UN Development Program to help countries sign up, implement and review compliance with the Convention (US\$23.8 million from 2012-2015);
 - The AFP, ACC, AUSTRAC, ACLEI, and the Attorney-General’s Department assist partner governments to strengthen their legal frameworks and institutional capacity to combat corruption and promote the rule of law;
 - The Commonwealth Ombudsman cooperates internationally to improve ombudsman services in the Asia–Pacific region. One of the key responsibilities of ombudsmen in this region is to prevent corruption, and
 - The Treasury provides capacity building support, through its deployments, to help strengthen the institutional capacity of economic and finance ministries in the Asia-Pacific region.

- *Cooperation* – strengthening practical international cooperation against corruption, e.g.:
 - Australia is an active member of the **G20 Anti-Corruption Working Group** and is co-chairing the Group in 2014 (see above ‘Further measures planned’).
 - Australia is also an active participant in the **Egmont Group of Financial Intelligence Units**, a 139-member group of countries who work together to improve cooperation in the fight against money laundering and financing of terrorism. The Egmont Group has developed a white paper on the role of financial intelligence units in combating corruption.
 - Australia is a founding member of the Assembly of Parties of the **International Anti-Corruption Academy**. Australia supports the academy’s objectives to improve the effectiveness of organisations and people engaged in the prevention, investigation, prosecution and adjudication of corruption, and to develop standards and best practices for anti-corruption education and research.

- Australia’s aid program provides the following support to international organisations and mechanisms:
 - Assisting civil society to reduce corruption by supporting Transparency International’s work in the Asia Pacific region (A\$10.2 million from 2011-2015);
 - Promoting revenue transparency in the mining, gas and petroleum sectors by supporting the Extractive Industries Transparency Initiative (EITI). The EITI sets a global standard for transparency in these sectors, enabling revenues raised from natural resources to be spent on health, education and other developmental priorities. Australia is one of the longest serving and largest donors to the EITI (A\$18.1 million since 2006), and
 - Helping countries to recover assets stolen through corruption by contributing to the Stolen Assets Recovery Initiative (\$4.6 million from 2009-2013). Australia supports StAR to help developing countries to build legal tools and institutions to recover proceeds of corruption, provide support and training on asset recovery processes, facilitate collaboration across governments, regulators, banks and civil society, and share information about good practice.

- *Review* – learning lessons from implementing international standards. Australia sees significant opportunities to use UNCAC implementation reviews to guide international technical assistance and capacity building programs. UNCAC implementation reviews provide a consistent framework and methodology for evaluation. This will help coordinate and target whole-of-government and wider international donor assistance.

I. B. Criminalization and Law Enforcement (Chapter III)

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RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
 - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
 - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
 - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Each State and Territory has criminalised corrupt activities such as bribing public officials and attempting to pervert the course of justice. Statutory offences are complemented by common law offences. When the Commonwealth legislative regime is taken together with the State and Territory legislative regimes, Australian legislation meets the mandatory requirements for Criminalisation under Chapter III of UNCAC.

Bribery offences; trading in influence (articles 15, 16, 18, 21)

Domestic bribery and foreign bribery offences are contained in the *Criminal Code Act 1995*. Bribery of a Commonwealth public official is a criminal offence. The offence covers a wide array of federal public officials and a range of conduct, including receiving an undue advantage (sections 139.2 – 142.2).

The Australian Government takes the crime of foreign bribery seriously and continues to take measures to combat foreign bribery. For example, in 2010, Australia increased the penalties for the crime of foreign bribery to a maximum penalty for an individual of 10 years' imprisonment and/or a fine of 10,000 penalty units (\$1.7 million). The maximum penalty for a body corporate was also increased. There is no specific offence under the *Corporations Act 2001* which deals directly with private sector bribery, however there are provisions in that Act which may have some application. Companies must maintain guidelines for preventing and reporting crimes or risk facing corporate liability for corrupt acts by employees.

Embezzlement; abuse of functions; illicit enrichment (articles 17,19, 20, 22)

Australia has fully criminalised embezzlement by public officials. There are a number of offences set out in the *Criminal Code Act 1995* that establish abuse of functions by a Commonwealth public official as a criminal offence. The *Commonwealth Criminal Code* also details a number of offences that relate to the administration of government more broadly, including misappropriation and other diversion of property offences.

Under the *Proceeds of Crime Act 2002*, unexplained wealth can be restrained (section 20A) and confiscated (Part 2-6).

In relation to the private sector, fraud by officers of a company is a criminal offence under section 596 of the *Corporations Act 2001*.

The Commonwealth Fraud Control Framework, consisting of three tiered documents under the *Public Governance, Performance and Accountability Act 2013*, sets out the governance arrangements for Commonwealth entities to control fraud. The three documents are:

- section 10 of the *Public Governance Performance and Accountability Rule 2014* (the Fraud Rule), which sets out the Government's requirement that all Commonwealth entities put in place practices and procedures for effective fraud control, including preparing fraud risks assessments and fraud control plans, and having appropriate prevention, detection and response measures
- the *Commonwealth Fraud Control Policy* (Fraud Policy), which sets out additional procedural requirements for non-corporate Commonwealth entities (departments of state and most agencies), for specific fraud control activities such as investigations and reporting, and
- *Resource Management Guide No. 201*, Preventing, detecting and dealing with fraud (Fraud Guidance), which supports the Fraud Rule and Fraud Policy by setting out the Government's expectations for fraud control in non-binding best practice advice.

Laundering of proceeds of crime; concealment (articles 23, 24)

Australia has a robust regime to detect and deter money laundering and terrorism financing. The main provisions criminalising the laundering of proceeds of crime are located in Division 400 of the *Criminal Code*. The legal framework also includes the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and the associated Rules Instrument, which establish obligations that are supervised and regulated by AUSTRAC. These include new AML/CTF Rules, which entered into force on 1 June 2014, which enhance existing customer due diligence (CDD) requirements under the AML/CTF Act. These enhanced customer due diligence (CDD) requirements will make it more difficult for corrupt officials to conceal their links with illicit money.

In 2010, Australia introduced legislative amendments to the money laundering offences to further increase their effectiveness and to expand the geographical jurisdiction. There are a wide range of penalties applicable to the money laundering offences, with the penalty applicable depending on the amount of money

laundered and the fault element involved. Penalties range from a maximum of one year to a maximum of 25 years imprisonment, and the court can also impose a fine of up to \$255,000 for individuals and \$1.275 million for companies. Money laundering offences under the Criminal Code apply to both proceeds (i.e. money or property that is derived or realised, directly or indirectly, from the commission of an indictable offence – being an offence with a prison term of more than 12 months) and instrumentalities (i.e. money or property used in or to facilitate the commission of an indictable offence).

Obstruction of justice (article 25)

The *Crimes Act 1914* makes it an offence to interfere in the application of justice, including intimidating or corrupting a witness (sections 36A and 37); destroying evidence (section 39) and attempting to pervert justice (section 43).

Liability of legal persons (article 26)

The *Crimes Act 1914* (Section 4B) provides that a provision of the law of the Commonwealth relating to indictable offences or summary offences shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons. These provisions that make bodies corporate subject to offences and affect the sentence that can be imposed on a corporation.

Participation and attempt (article 27)

Part 2.4 of the *Criminal Code 1995* establishes extensions of criminal responsibility, including aiding, abetting, counselling or procuring the commission of an offence, joint commission, commission by proxy, incitement and conspiring to commit an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Australia has strong sanctions in place to address acts of corruption, including criminal, civil and administrative sanctions. Officials charged with corruption offences under the *Criminal Code* can be liable to significant terms of imprisonment and pecuniary penalties.

The Commonwealth Department of Public Prosecutions (CDPP) is responsible for prosecution of offences of laws against the Commonwealth. All decisions to prosecute are made in accordance with the *Prosecution Policy of the Commonwealth*. In relation to federal parolees, there is no discretion in relation to releasing a person on parole if the person has been sentenced to less than 10 years imprisonment (*Crimes Act 1914* - section 19AL). The Attorney-General must release the person at the end of the non-parole period. However, the conditions placed on the person's parole may reflect the gravity of the offence.

The *Commonwealth Electoral Act 1918* contains a provision that disqualifies persons who have been convicted of bribery under the Act from sitting in either House of Parliament for 2 years from the date of the conviction.

Persons who have a criminal record or who are convicted of a criminal offence are not automatically excluded from employment in the Australian Public Sector. However, if the criminal conviction is relevant to the specific requirements of a particular vacancy, it can be taken into account in making a decision whether to employ a person with such a record. Offences committed while employed in the APS may result in action under the Code of Conduct and may, depending on the circumstances, lead to a decision to terminate the employment of the relevant individual.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

The *Proceeds of Crime Act 2002* (POCA) establishes a scheme for restraining and confiscating the proceeds and instruments of Commonwealth indictable offences, foreign indictable offences and indictable offences of Commonwealth concern. Under the *Banking Act 1959* and the POCA, bank secrecy is not an impediment to AFP investigations.

Protection of witnesses and reporting persons (articles 32, 33)

There are a number of legislative mechanisms that operate to protect persons giving evidence in Court. These include the *Witness Protection Act (1994)* and the National Witness Protection Program, which provide protection and assistance to witnesses identified as being at risk due to the assistance they have provided.

The *Public Interest Disclosure Act 2013 (Cth)* incorporates protections for public officials making disclosures of suspected wrongdoing in the public sector, including provisions ensuring the confidentiality of the identity of a person making a disclosure, ensuring disclosers are immune from civil, criminal and administrative liability for making a disclosures and criminalising taking, or threatening to take, a reprisal against someone because they make a disclosure.

Statute of limitations; criminal record (articles 29, 41)

Section 15B of the *Crimes Act 1914* outlines that prosecution may be commenced at any time if the maximum penalty is a term of imprisonment longer than six months. Prosecution of a body corporate may be commenced at any time where the penalty is greater than 150 penalty units. Where the penalty is less, prosecution must commence within one year of the commission of the offence.

Jurisdiction (article 42)

Jurisdiction is established over most corruption offences where the act in question is committed wholly or partly within the territory of Australia. Jurisdiction is also established over acts committed by nationals, residents and bodies corporate overseas.

Consequences of acts of corruption; compensation of damage (articles 34, 35)

Australia has several remedies in place to address acts of corruption, including criminal, civil and administrative sanctions. For example, officials charged with corruption offences under the *Criminal Code* can be liable to terms of imprisonment and pecuniary penalties. Australia's legal system also provides for persons to seek compensation for wrongs against them through initiating civil proceedings in a court of law. Remedies may be available under statute or common law, including tort, contract, or another common law principle. Where officials engage in corruption, severe consequences include possible forfeiture of the public sector contribution to the convicted official's pension fund.

Specialised authorities and inter-agency coordination (articles 36, 38, 39)

Australia's multi-agency approach to corruption vests responsibility for combating corruption in a number of Commonwealth Agencies. These agencies include:

- Australian Crime Commission (ACC): The ACC is Australia's national criminal intelligence agency and conducts special operations and investigations to combat serious and organised crime.
- Australian Federal Police (AFP): Under the *Commonwealth Fraud Control Guidelines*, Commonwealth agencies are to refer all matters of serious and complex fraud against the Commonwealth to the AFP. This includes all bribery and corruption matters.

- Australian Commission for Law Enforcement Integrity (ACLEI): The Integrity Commissioner has jurisdiction to investigate allegations against the AFP, ACC (including secondees) and the Australian Customs and Border Protection Service, reflecting the central role these agencies play in Commonwealth law enforcement and the particularly high corruption-risk environments in which they operate. The Government has also recently announced the doubling of the number of enforcement agencies overseen by ACLEI. New agencies to be overseen are: The Department of Agriculture, Forestry and Fisheries – Biosecurity Staff, the Australian Transaction Reports and Analysis Centre and CrimTrac.
- Australian Public Service (APS) Commission: The Australian Public Service Commissioner can inquire into allegations of breaches of the APS Code of Conduct by agency heads and report his or her findings to the appropriate Minister, including, where relevant, recommendations for sanctions. The Australian Public Service Commissioner’s role also includes promoting the APS Values, APS Employment Principles and Code of Conduct.
- The Commonwealth Ombudsman: The Ombudsman is impartial and independent, and plays an important role, along with courts and administrative tribunals, in examining government administrative action.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See I.A. ‘Capacity building’ above.

I.C. Preventing Money-Laundering

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RELEVANT UNCAC PROVISIONS

- Art. 14(1) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- Art. 14(2) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, including money remitters, to:
 - (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
 - (b) maintain such information throughout the payment chain; and
 - (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Measures to prevent money laundering (article 14)

Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and associated Rules instrument establishes a regulatory regime that strengthens the capacity of business to identify, mitigate and manage the risk of their businesses being used to launder money or finance terrorism. The provisions include customer identification and verification, and reporting and record keeping obligations on certain businesses. These measures enable businesses to know their customers, their sources of wealth and monitor financial transaction movements. They enable law enforcement and intelligence agencies to follow money trails in potential cases of corruption. Compliance with obligations under the AML/CTF Act is supervised by AUSTRAC. Similarly, under the *Proceeds of Crime Act 2002*, financial institutions can be compelled to provide certain information and documents to specified law enforcement officers upon request. As noted above (see (I.B)), in 2010, Australia introduced legislative amendments to the money laundering offences to further increase their effectiveness and to expand the geographical jurisdiction.

On 4 December 2013 the Attorney-General's Department commenced a review of the anti-money laundering and counter-terrorism financing framework, including the AML/CTF Act, Rules and Regulations. The review will be wide ranging, considering issues such as the risk-based approach and better regulation, regime scope, harnessing technology to improve regulatory effectiveness, industry supervision and monitoring, enforcement, reporting obligations, secrecy and access, privacy and record keeping, and international cooperation. The review will also consider compliance with international standards and will be informed by the results of the FATF's mutual evaluation of Australia which is scheduled to be completed by February 2015.

Australia recognises that corruption and money laundering are intrinsically linked, and has identified beneficial ownership transparency among private entities as a key priority to combat corruption. Transparency of beneficial ownership would allow ill-gotten gains to be more easily traced and make it more difficult and less attractive for people to benefit from the proceeds of corruption and crime. On 1 June 2014, new AML/CTF Rules entered into force which enhance existing customer due diligence (CDD) requirements under the AML/CTF Act. These enhanced customer due diligence (CDD) requirements will make it more difficult for

corrupt officials to conceal their links with illicit money.

As part of its commitment to a global, rules-based order, Australia participates closely in the development of multilateral conventions to prevent and disrupt corruption, enhance transparency, and promote the sustainable rule of law. Australia is a long-standing contributor to the various international anti-corruption standard setting initiatives, including the FATF. In 2014 Australia is undergoing a mutual evaluation of its compliance with FATF Recommendations. Australia has previously been evaluated three times by the FATF against the international standards to combat money laundering. In the last review in 2005 Australia received 'largely compliant' for Recommendation 1 relating to criminalising money-laundering.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Australia is closely engaged in developing international anti-money laundering and counter terrorism financing (AML/CTF) standards. Australia also actively supports key multilateral anti-corruption forums, including in our role as 2014 co-chair of the G20 Anti-Corruption Working Group, which has committed to taking stronger measures to prevent corruption-related money laundering. As noted above (see 'Executive summary' and I.C.), to disrupt the financing of corruption, Australia worked with Thailand and other APEC members to promote the pioneering use of anti-money laundering systems against corruption, including hosting several international conferences for this purpose.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Australia is actively engaged in capacity building in the anti-money laundering sphere (see above: I.C. 'Further measures' and I.A. 'Capacity building').

II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INTEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

Contact Point: Name: Anti-Corruption Unit Title: _____

Telephone Number: +61 2 6141 6666 Fax Number: _____ Email Address: Anti-CorruptionSection@ag.gov.au

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity

- The *Public Service Act 1999* was amended on 1 July 2013 to strengthen the leadership and stewardship of the Australian Public Service (APS). One key amendment was the revision of the APS Values to a smaller, more memorable compact set, and the introduction of the APS Employment Principles. The Values and Employment Principles together capture the essence of the historical APS Values, blending contemporary ethics with enduring principles of public administration. The revision of the Values was informed by a process of consultation with APS employees and the community that attracted more than 500 submissions.
- The APS Employment Principles include the requirement for fair employment decisions with a fair system of review; for decisions relating to engagement and promotion to be based on merit; for effective performance to be required from each employee; for workplaces to be flexible, safe and rewarding, as well as free from discrimination; and for diversity to be recognised and fostered in the workplace.
- The revised Values and Employment Principles, supported by the Code of Conduct, govern the behaviour of all public servants, and provide real assistance as public servants carry out their policy advice and program management responsibilities. The Code requires employees to behave in a way that upholds the integrity and good reputation of their agency, as well as the APS.

Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;

- The *Freedom of Information Act 1982* (FOI Act) promotes government accountability and transparency by providing a legal framework for individuals to request access to government documents. It applies to Australian Government Ministers and most Australian Government agencies, although the obligations of agencies and ministers are different. Under the FOI Act, government documents able to be requested include documents containing personal or other information, such as information about policy-making, administrative decision-making and government service delivery. Individuals can also request that ministers or agencies amend or annotate any information held about them. Most Australian Government agencies are subject to the FOI

Act, and must release documents in response to an FOI request unless there is an overriding reason not to do so – this is consistent with the presumption of openness and maximum disclosure contained within the FOI Act. Agencies are expressly forbidden from declining to grant access on grounds such as potential loss of confidence in or embarrassment to government. To encourage general public access to government information, agencies must also publish documents given to FOI applicants on their websites (in a ‘disclosure log’), subject to certain exceptions (for example, if the information is personal or business information).

- The FOI Act also includes an information publication scheme that requires agencies to proactively publish other specified classes of information online, including annual reports and the details of agencies’ structures and functions (including decision-making powers and other powers affecting members of the public).
- Each Australian State and Territory has legislation equivalent to the FOI Act. The scheme also provides agencies the discretion to voluntarily publish other information.
- Transparency of public administration at the Commonwealth level is also enhanced by the functions of the office of the Commonwealth Ombudsman, which was established in 1977, and is charged with the mission of safeguarding the community in its dealing with Australian Government agencies by:
 - correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
 - fostering good public administration that is accountable, lawful, fair, transparent and responsive
 - assisting people to resolve complaints about government administrative action
 - developing policies and principles for accountability
 - reviewing statutory compliance by agencies.
- The office of the Commonwealth Ombudsman has four main statutory roles:
 - Complaint investigations: conducting reviews of, and investigations into, the administrative actions of Australian Government officials, agencies and their service providers upon receipt of complaints from individuals, groups or organisations. The role includes the actions of registered private providers of training for overseas students and registered private postal operators.
 - Own motion investigations: on the Ombudsman’s own initiative, conducting investigations into the administrative actions of Australian Government agencies. These investigations often arise from insights gained through the handling of individual complaints.
 - Compliance audits: inspecting the records of Commonwealth agencies such as the Australian Federal Police the Australian Commission for Law Enforcement Integrity, and the Australian Crime Commission, as well as State and Territory police forces and integrity bodies such as the Independent Commission Against Corruption, to ensure compliance with legislative requirements applying to selected law enforcement and regulatory agencies.
 - Immigration detention oversight: under s 4860 of the *Migration Act 1958* (Cth), reporting to the Immigration Minister on the detention arrangements for people in immigration detention for two years or more (and on a six-monthly basis thereafter). As Immigration Ombudsman, the Commonwealth Ombudsman also oversees immigration detention facilities through a program of regular announced and unannounced visits to detention centres.

Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

- See response above (I.A. Adopting Preventive Measures).

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

See 'further measures' (I.A.) above.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See I.A. 'Capacity building' above.

III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

Contact Point: Name: Anti-Corruption Unit Title: _____

Telephone Number: +61 2 6141 6666 Fax Number: _____ Email Address: Anti-CorruptionSection@ag.gov.au

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and [FATF's Special Recommendations](#) (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
 - Art. 14 (Money laundering)
 - Art. 23 (Laundering of Proceeds of Crime)
 - Art. 31 (Freezing, seizure and confiscation)
 - Art. 40 (Bank Secrecy)
 - Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.

- See response above: 'Executive Summary', (I.A) and (I.C).

Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.

Australia's Department of Immigration and Border Protection considers applications against the criteria for grant of the particular visa class applied for, which include general eligibility criteria and public interest considerations enabling a visa to be refused. There are two potential options for consideration of refusal of a visa to a 'corrupt person'. The most appropriate of these would be for the Foreign Minister (or his delegate) to make a determination that the presence of the 'corrupt person' is, or would be, contrary to Australia's foreign policy interests. Alternately, where a person has either a single criminal conviction related to corruption, in relation to which a sentence of imprisonment of 12 or more months has been imposed, or two or more such convictions, in relation to which sentences of imprisonment have been imposed which total at least 24 months, or where their conduct can be well documented, their visa could be considered under the 'character test' set out in section 501 of the *Migration Act 1958* and the visa refused. This provision provides for a permanent exclusion from grant of Australian visas and has a very high evidentiary standard; it is generally used for the most serious criminal convictions.

- See also response (I.A. Capacity Building). In addition, Australia is actively supporting G20 efforts to deny visas to corrupt persons.

Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)

- As noted above (see I.C.) Australia is closely engaged in developing international anti-money laundering and counter terrorism financing (AML/CTF) standards and guidance. Australia has developed draft AML/CTF Rules that will enhance existing customer due diligence (CDD) requirements in line with revised FATF recommendation 10. These measures will allow ill-gotten gains to be more easily traced and make it more difficult and less attractive for people to benefit from the proceeds of corruption and crime.
- Australia is currently undergoing its mutual evaluation against the revised FATF standards, which is expected to be finalised by February 2015. The resulting report will allow Australia to focus on any areas where Australia needs to address deficiencies against the international standards.

Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)

- See responses (I.C. Preventing money laundering) and (V. Enhancing regional cooperation).

Implement relevant provisions of UNCAC.

- See response (I.A.), (I.B) and (I.C.).

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See I.A. 'Capacity building' above.

IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

Contact Point: Name: Anti-Corruption Unit Title: _____

Telephone Number: +61 2 6141 6666 Fax Number: _____ Email Address: Anti-CorruptionSection@ag.gov.au

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:

- ***Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.***

As noted above (I.B), the Australian Government takes the crime of foreign bribery seriously and continues to take measures to combat foreign bribery. Bribing or attempting to bribe a foreign public official is a serious crime and individuals or companies that bribe an official in a foreign country can be prosecuted under Australian law. The foreign bribery offence in the Australian *Criminal Code* conforms to the standards set by the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. The jurisdiction of the offence is broad, applying both to conduct within Australia, and to conduct by Australian citizens, residents and companies overseas. Individuals and companies that offer or pay bribes to foreign public officials are subject to effective, proportionate and dissuasive penalties.

Where an offence has no nexus to Australia, Australia considers that it is appropriate for State Parties to pursue the conduct of their officials in their own jurisdictions, which is likely to be where the majority of the evidence is located. Australia provides assistance to other State Parties to assist with this process under mutual legal assistance arrangements and in accordance with Australia's international cooperation obligations

- ***Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.***

All Government agencies must maintain guidelines for preventing and reporting corruption and all companies must also maintain guidelines for preventing and reporting crimes or risk facing liability for corrupt acts by employees. For example, as outlined above in relation to UNCAC articles 17,19, 20, 22, the Commonwealth Fraud Control Framework under the *Public Governance, Performance and Accountability Act 2013*, set out the arrangements for Commonwealth entities to control fraud. The Fraud Rule sets out requirements that entities prepare fraud risk assessment and fraud control plans, and have appropriate prevention, detection and response measures. The Fraud Policy sets out additional requirements for non-corporate Commonwealth entities

(departments of state and most agencies) for specific fraud control activities such as investigations and reporting.

In relation to the private sector, while there is no offence under the *Corporations Act 2001* ('the Act') which deals directly with private sector bribery, there are provisions in the Act which may have some application. These provisions create offences which apply to directors and officers of companies and of responsible entities for managed investment schemes. Accordingly, depending on the circumstances, private sector bribery may constitute a contravention of the Act, e.g. section 184 makes it a criminal offence for a director, other officer or employee of a company to use their position dishonestly.

- ***Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.***

To support a business culture of transparency and accountability, the Australian Government runs a national anti-corruption education and outreach program called 'Trading with Integrity'. The program informs Australian businesses of their responsibilities to conduct activities in accordance with Australian law. It covers the various international anti-bribery and anti-corruption frameworks supported by the Australian Government including the APEC Code of Conduct for Business and OECD instruments including the Guidelines for Multinational Enterprises, the Anti-Bribery Convention and the Risk Awareness Tool.

The Department of Foreign Affairs and Trade also publishes web-based resources on anti-corruption for Australians and Australian businesses travelling, working or operating overseas.

The regulatory framework governing Australia's private sector is covered under the *Corporations Act 2001*, the *Australian Securities and Investments Act 2001*, the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* as well as individual corporate codes of conduct. Australia adheres to the OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises, which are recommendations on responsible business conduct, including provisions on how the private sector can help combat bribery.

The *Corporations Act 2001* regulates the conduct of directors and officers of companies and includes offences such as failure to act in good faith, and fraud by company officers. In addition, corporate criminal responsibility has been established for all offences contained in the *Criminal Code Act 1995*, meaning that corporations may be found guilty of any offence contained in the code, including those punishable by imprisonment.

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* imposes obligations on business when they provide certain services (financial, gambling and bullion) to identify and verify their customers, lodge reports with Australia's financial intelligence unit, AUSTRAC, monitor the relationship with their customers and make and retain records of the services provided. Similarly, under the *Proceeds of Crime Act 2002*, financial institutions can be made to provide certain information and documents to specified law enforcement officers upon request.

Domestically, there are several agencies that investigate or provide intelligence about corruption in the private sector.

- AUSTRAC: The Australian Transaction Reports and Analysis Centre provides financial intelligence on potential crimes, including corruption.
- ACCC: The Australian Competition and Consumer Commission educates the business community and the public—for example, how to make a complaint—and advises small businesses how to avoid corrupt conduct.
- APRA: The Australian Prudential Regulation Authority oversees banks, credit unions, building societies, insurance companies, and the superannuation industry.
- ASIC: The Australian Securities and Investment Commission has powers to investigate offences by corporations and corporate officers. This includes powers

to investigate bribery offences, the misleading of shareholders or other abuses for personal gain.

- EFIC: As Australia’s export credit agency, the Export Finance and Insurance Corporation was established to help grow Australian businesses, trade and investment activities internationally by providing finance, guarantee and insurance facilities. EFIC works to eradicate corruption in international business transactions by:
 - a) informing exporters and, where appropriate, other relevant parties, of the legal consequences of engaging in bribery;
 - b) requiring exporters and, where appropriate, other relevant parties, to provide a ‘no engagement in bribery’ declaration; and
 - c) informing law enforcement authorities if there is credible evidence that bribery was involved in the award or execution of an export contract.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See I.A. ‘Capacity building’ above.

V. ENHANCING REGIONAL COOPERATION

Contact Point: Name: Anti-Corruption Unit Title: _____

Telephone Number: +61 2 6141 6666 Fax Number: _____ Email Address: Anti-CorruptionSection@ag.gov.au

LEADERS' AND MINISTERS' COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region: See below

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
 - Art. 44 – Extradition
 - Art. 46 – Mutual Legal Assistance
 - Art. 48 – Law Enforcement Cooperation
 - Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
 - Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

• **Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.**

Australia has implemented its extradition obligations under the UNCAC in the *Extradition (Convention against Corruption) Regulations 2005* ('the Regulations'). The Regulations apply Australia's *Extradition Act 1988* to the States Parties to UNCAC subject to the Convention, meaning that UNCAC can be the basis for the consideration of requests from States Parties for the extradition of persons from Australia for offences covered by the Convention. In September 2012 the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* (Cth) entered into force. This Act introduced amendments to the extradition regime which were designed to streamline the extradition process and reduce duplication in the decision-making process, while maintaining the integrity of key safeguards and protections for the individual. Significant amendments include:

- ensuring that a person can be prosecuted in Australia by Australian authorities if Australia has refused to extradite the person to a foreign country
- allowing individuals to elect to waive the extradition process
- streamlining the early stages of the extradition process by reducing duplications in decision making
- extending the availability of bail to the later stages of the extradition process
- allowing a person to consent to their surrender for a wider range of foreign offences, and
- extending the mandatory grounds for refusal to require Australia to refuse to extradite a person if he or she may be punished or discriminated against upon surrender on the basis of his or her sex or sexual orientation.

Australia's *Mutual Assistance in Criminal Matters Act 1987* (Cth) enables Australia to provide other countries with the widest measure of legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention. Australia's international assistance includes taking evidence, production of documents, providing material from Australian investigations, locating witnesses and locating, restraining and forfeiting proceeds of crime. Amendments to Australia's mutual assistance regime, introduced by the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012* (Cth) and the *Cybercrime Legislation Amendment Act 2012*, have streamlined some of the processes for providing certain types of assistance to foreign countries, where it is appropriate to do so, and have increased the range of law enforcement tools Australian authorities can use to assist in a foreign investigation or prosecution. Significant amendments include:

- enabling Australian authorities to apply to use surveillance devices to assist in a foreign investigation or prosecution following a formal mutual assistance request
- allowing Australian authorities to request a foreign country to use a surveillance device to assist with an Australian investigation or prosecution
- streamlining the existing process for providing lawfully obtained telecommunications and stored communications information to a foreign country
- enabling Australian authorities to carry out a forensic procedure on a suspect or a volunteer to assist in a foreign investigation or prosecution following a formal mutual assistance request
- allowing Australian authorities to request a foreign country to conduct a forensic procedure to assist with an Australian investigation or prosecution
- strengthening safeguards where there are concerns about a person being subjected to torture or the death penalty
- expanding the discrimination ground for refusing a request for assistance to cover circumstances where there is discrimination against a person because of their sex or sexual orientation
- ensuring that Australia's provisions on 'take evidence' and 'production of documents' in the Mutual Assistance Act allow for the provision of assistance via live video link
- Preservation of, and access to, stored communications, and
- Access to historical and prospective telecommunications data.

As noted above (I.B.), the *Proceeds of Crime Act 2002* (POCA) establishes a scheme for restraining and confiscating the proceeds and instruments of Commonwealth indictable offences, foreign indictable offences and indictable offences of Commonwealth concern. Part VI of the *Mutual Assistance in Criminal Matters Act 1987* also relates to proceeds of crime matters. These provisions relate to enforcing and registering foreign orders, issuing restraining orders relating

to foreign criminal proceedings, issuing production orders, monitoring orders, notices to financial institutions and issuing search warrants relating to foreign serious offences.

- ***Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.***

As noted above, Australia's *Mutual Assistance in Criminal Matters Act 1987* (Cth) enables Australia to provide other countries with the widest measure of legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention. While the *Mutual Assistance Act* allows Australia to make requests to and receive requests from all countries, the Act also allows for regulations to be made to facilitate mutual assistance requests in accordance with treaty arrangements. Australia has implemented the *Mutual Assistance in Criminal Matters (Convention against Corruption) Regulations 2005* to facilitate Australia's ability to make and receive mutual assistance requests to and from States Parties to the *United Nations Convention against Corruption* in respect of the offences covered by the Convention. The Regulations apply the Act to a foreign country that is a State Party to the Convention, subject to the Convention by modifying the application of the Act subject to the limitations, conditions, exceptions or qualifications that are necessary to give effect to mutual assistance obligations under the Convention.

- ***Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.***

To enhance international cooperation, Australia has an extensive law enforcement liaison network. The AFP's International Liaison Officer Network has offices in 29 countries to broker collaboration with international law enforcement agencies in order to drive investigations, and support bilateral or multilateral cooperation. The AFP International Liaison Officers are the Australian Government's law enforcement representatives overseas, and have well established channels of communication with local Law Enforcement Agencies, which are constantly developed and enhanced. The AFP has a number of bilateral or multilateral agreements with other law enforcement agencies, mainly in the form of Memorandum of Understanding, Letters of Exchange and/or Statement of Intent.

Information relating to criminal matters can be transmitted, without the involvement of formal Government-to-Government requests, on a police-to-police or agency to agency basis. Police-to-police assistance does not include providing information that must be obtained by the exercise of coercive powers, such as material obtained by search warrant. Such assistance must be sought through a formal mutual assistance request. Australia can provide the following types of assistance on a police to police basis:

- taking voluntary witness statements
- conducting voluntary witness interviews
- taking voluntary witness testimony via a video link facility
- hosting foreign police who are undertaking investigations in Australia
- sharing intelligence
- conducting optical surveillance without a warrant
- conducting crime scene analysis where material is not obtained under an Australian warrant
- taking fingerprints
- obtaining criminal records, or

- obtaining publicly available material

Most Australian non-police investigative agencies (including the Australian Taxation Office and the Australian Securities and Investment Commission) also have liaison and information sharing arrangements with their counterparts in foreign countries. The information sought through agency-to-agency assistance often does not require the exercise of coercive powers and does not require a mutual assistance request to be made.

- ***Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action)***

Australia has 39 bilateral extradition treaties and 29 bilateral mutual legal assistance treaties currently in force, and is a party to numerous multilateral arrangements.

As noted above, under the *Extradition (Convention against Corruption) Regulations 2005*, States Parties to UNCAC are declared to be extradition countries for the purposes of the Extradition Act.

Australia is able to make and receive mutual assistance requests without the need for a treaty relationship. Australia's *Mutual Assistance in Criminal Matters Act 1987* enables Australia to provide international assistance in relation to the locating, restraining and forfeiting of proceeds of crime.

The Australian Federal Police have over 25 arrangements in place with other states' police forces that enable operational planning and information sharing on a number of law enforcement issues, including identify theft and document forgery.

- ***Coordinate, where appropriate, with other anticorruption and transparency initiatives***

Australia supports the operation of UNCAC, by supporting the UNODC and UNDP to help countries sign up, implement and review compliance with the Convention. Australia supports the Implementation Review Mechanism established under UNCAC, and has completed its first cycle implementation review. Australia also engages actively in evaluation mechanisms under the FATF and the OECD Anti-Bribery Convention.

See also (Executive Summary), (I.A. 'Capacity Building'), (I.C. 'Measures to prevent money laundering' and 'Further measures') above.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

To strengthen international cooperation among APEC member economies and facilitate the tracing, freezing, seizure and return of financial proceeds of crime and corruption, Australia is developing an APEC Guide to Mutual Legal Assistance. This Guide will ensure that all APEC member economies have a simple, practical and user-friendly guide to making a successful mutual legal assistance request to any other APEC member. It is anticipated that the Guide will be published and distributed by August 2014. The Guide will also be loaded onto the APEC ACT website.

See also (I.A. 'Further measures') above.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See I.A. 'Capacity building' above.

VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

Contact Point: Name: Anti-Corruption Unit Title: _____

Telephone Number: +61 2 6141 6666 Fax Number: _____ Email Address: Anti-CorruptionSection@ag.gov.au

LEADERS' AND MINISTERS' COMMITMENTS

- **2005:** Ministers encouraged all APEC member economies **to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC)**. Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)
- **2006:** Ministers underscored their commitment **to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them**. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.
- **2007:** We endorsed a model **Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors**. We encouraged all economies **to implement these codes** and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)
- **2008:** We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed **to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows**. We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)
- **2009:** We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore **Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption**. We encourage economies **to implement measures** to give practical effect to the Declaration and Guidelines. (AMM)
- **2010:** We agreed to leverage collective action **to combat corruption and illicit trade** by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to **ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region**. (AELM, AMM)
- **2011:** We will also take the following steps to increase convergence and cooperation in our regulatory systems: **Ensure implementation of our APEC anti-corruption and open government commitments by 2014 through deeper cooperation in APEC**. (AELM)
- **2012:** We strongly commit to fight against corruption to ensure openness and transparency in APEC. Acknowledging that corruption fuels illicit trade and insecurity and is a tremendous barrier to economic growth, the safety of citizens, and to the strengthening of economic and investment cooperation among APEC economies, **we endorse commitments on Fighting Corruption and Ensuring Transparency** (see Annex E). (AELM)
- **2013:** On Sustainable Growth with Equity: We agreed to take further steps toward empowering, engaging and opening opportunities for our stakeholders to fully participate in

our economic growth, by considering the following concrete actions: (f.) advance greater collaboration among law enforcement authorities, in combating corruption, bribery, money laundering, and illicit trade, through the **establishment of an APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET)** that will strengthen informal and formal regional and cross-border cooperation. (AELM).

Fighting Corruption and Ensuring Transparency (AMM 2013). We reaffirmed the importance and the need to enhance prevention and enforcement in addressing corruption, bribery and other financial crimes and illicit trade that imperil our security and prosperity agenda, including the safeguarding of public assets, natural resources, and human capital. We also reaffirmed our commitment to create ethical business environments that support sustainable economic growth, in particular by strengthening ethical standards, and we encouraged all stakeholders to implement APEC's high standard principles for codes of business ethics. We applauded the Anti-Corruption and Transparency Working Group (ACTWG)'s continued leadership in collaborating with other APEC fora. We further committed to establish among member economies an "APEC Network of Anti-Corruption Authorities and Law Enforcement Authorities (ACT-NET)", under the auspices of ACTWG to promote networking and foster relationship-building among anti-corruption and law enforcement officials who can assist one another in detecting, investigating and prosecuting corruption and domestic and foreign bribery, money laundering, and illicit trade cases; to provide a forum that can facilitate bilateral and multilateral discussions of such cases, as appropriate; and to facilitate the sharing of expertise and experiences in detecting, investigating and prosecuting such cases (see Annex D).

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- As noted above (Executive Summary), the review of Australia's implementation of Chapters III and IV of the UNCAC is complete. Australia was found to be compliant with all of the mandatory requirements contained in these chapters. Australia undertook a transparent and inclusive approach to the review and assisted civil society to participate in the process. Australia's self-assessment report and the executive summary of the review of Australia's compliance with the UNCAC can be found on the Attorney-General's Department [website](#). During the first cycle of the UNCAC Implementation Review Mechanism, Australia also participated as a reviewer of two countries: the Netherlands and Tanzania.
- Australia is an active contributor to the APEC Anti-Corruption and Transparency Experts Taskforce. Australia led the development of the **APEC Code of Conduct for Business** and worked with Chile, Thailand and Vietnam to implement the code. The United States built on this work by extending the code to specific industry sectors. Australia is currently developing the APEC Guide to Mutual Legal Assistance, which will ensure that all APEC member economies have a simple, practical and user-friendly guide to making a successful mutual legal assistance request to any other APEC member – see V. 'Further measures' above.
- As co-chair of the G20 Anti-Corruption Working Group in 2014, Australia is leading implementation of G20 anti-corruption commitments contained in the *2013-14 G20 Anti-Corruption Action Plan*, including continuing work to combat foreign bribery, working to promote transparency in the beneficial ownership of legal entities, and completing and publishing the *G20 Guide to Asset Recovery*.
- As well as the support noted above (see I.A. Capacity building needs), Australia's aid program also supports the operation of UNCAC by providing financial assistance to the UN Office on Drugs and Crime and UN Development Program to help countries sign up, implement and review compliance with UNCAC. This includes technical and capacity building assistance to support countries to develop policies, laws and institutional frameworks to advance the effective implementation of UNCAC:
 - US\$8.9m from 2012 to 2015 to UNODC's global program
 - US\$10.6m from 2012 to 2015 to UNDP's global program, and
 - US\$4.3m from 2012 to 2015 to the joint UNODC-UNDP Pacific Regional Anti-Corruption Project (UN-PRAC)
- Australia supports APEC efforts to prevent and disrupt corruption-facilitated transnational crime, including environmental crime. Following the *Sydney APEC Leaders' Declaration on Climate Change, Energy Security and Clean Development* (2007), which called for renewed action on sustainable marine and forest management, Australia hosted with APEC partners the international Fish, Forests and Filthy Lucre Conference in 2010 to strengthen regional cooperation

against illegal deforestation and fishing. The conference identified practical measures to detect and disrupt corruption-enabled environmental crime. Australia participated in the 2013 APEC Pathfinder Dialogue, *Combating Corruption and Illicit Trade across the Asia-Pacific Region*, which focused on the role corruption plays in facilitating illicit trade and transnational crime.

- Australia has been supportive of the establishment of the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) and welcomes the opportunity this forum will provide for anti-corruption focused law enforcement collaboration.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

See I.A. 'Capacity building' above.