

UNODC Note CU 2015/46/DTA/CEB/CSS – Response from the Australian Government

Since the completion of Australia's peer review under the *United Nations Convention against Corruption* (UNCAC) in 2012, Australia has made significant progress in responding to two recommendations identified in our final peer review report:

- Adoption and implementation of legislation establishing a comprehensive scheme for public sector whistle-blower protection, and
- Review of policies and legal mechanisms to provide the widest measure of mutual legal assistance.

Whistleblower protections

In July 2013, the Australian Parliament enacted the *Public Interest Disclosure Act 2013* (Cth) (PID Act). The PID 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.

The PID Act establishes a framework to encourage and facilitate reporting by public officials (includes contracted service providers to government) and former public officials of wrongdoing in the Commonwealth public sector. It also ensures that Commonwealth agencies properly investigate and respond to public interest disclosures and provide protections to public officials who make qualifying public interest disclosures.

Under the PID Act, government agencies are required to develop and implement procedures and appointed authorised officers to facilitate public interest disclosures for public officials that belong to their agency.

The Commonwealth Ombudsman (and the Inspector General for Intelligence and Security [IGIS] in relation to intelligence agencies) oversees and monitors the implementation of the PID scheme, and is also responsible for raising awareness and providing assistance and education about the PID scheme. The Commonwealth Ombudsman (and the IGIS) can also investigate public interest disclosures made public officials (and former public officials) or allocated by agencies. The Commonwealth Ombudsman will report annually to the Minister and Parliament on the operations of the PID Act.

In addition, Australia's corporate, markets and financial services regulator, the Australian Securities and Investments Commission (ASIC), recently announced that it will establish an Office of the Whistleblower. The Office 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 its whistleblower arrangements through the adoption of a centralised monitoring procedure.

Mutual legal assistance framework

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 and 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
- 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
- facilitating preservation of, and access to, stored communications, and
- facilitating access to historical and prospective telecommunications data.

Australia continually assesses the appropriateness of its legal frameworks for the provision of mutual legal assistance to ensure we are able to provide the most effective and efficient assistance possible. In addition, the Attorney-General's Department has undertaken to initiate a review into the operation of amendments to the Australian mutual legal assistance framework introduced with the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012*. This review will examine the operation of the amendments between the time of commencement (in September 2012) to three years after enactment.