Update on measures taken by Australia to implement Chapter II (Prevention) and Chapter V (Asset Recovery) of the UNCAC

Since the completion of the country visit in April 2018 as part of Australia's second cycle review under the *United Nations Convention against Corruption* (UNCAC) Implementation Review Mechanism, Australia has made significant progress to address a number of the recommendations pertaining to Chapter II (Prevention) and Chapter V (Asset Recovery) made in the review. These recommendations are identified at paragraphs 2.3 and 3.3 of the Executive Summary to Australia's country report.

Chapter II recommendations

1. Continue efforts under the Open Government Partnership in order to develop and maintain effective and coordinated measures to prevent corruption

The Australian Government is firmly committed to the principles of the Open Government Partnership and intends to work closely with civil society to develop a new Third National Action Plan (NAP3) for Australia.

The NAP3 process provides a key opportunity for civil society to engage with government to progress commitments to promote transparency, strengthen corruption prevention, enhance civic participation and public accountability, as well as opportunities for use of technology and innovation to enhance openness and accountability.

Australia's second cycle report noted there was work underway under commitment 5.2 of Australia's first Open Government NAP to enhance public participation in policy and service delivery outcomes. This has led to the development of a standardised Australian Public Service (APS) framework for stakeholder engagement and participation. More information can be found at the following website: https://www.industry.gov.au/data-and-publications/aps-framework-for-engagement-and-participation.

2. Consider lowering or eliminating entirely the minimum threshold at which political parties and other disclosure entities must report donations, and endeavour to publish more timely financial returns of parties, candidates and other disclosure entities

The Australian Government is committed to transparency of donations, including in relation to disclosure thresholds and 'real-time' disclosure. In December 2021, the Australian Parliament passed the *Electoral Legislation Amendment (Political Campaigners) Act 2021* (Cth) to expand the types of individuals and entities that must provide financial returns, including political donations, to the Australian Electoral Commission.

The Government regularly reviews electoral laws and practices, primarily through the Joint Standing Committee on Electoral Matters (JSCEM) which is a multi-partisan committee appointed during each Parliamentary term to inquire into and report on these matters.

3. Consider introducing detailed regulation on gifts for public officials within APS and the Cabinet and establishing a register of gifts; and consider taking specific measures to systematically review and verify the declarations of interests made by public officials

Australia recognises that creating and maintaining a strong culture of integrity is crucial to public confidence and trust in the APS. In October 2019, the Australian Public Service Commission (APSC) released *Guidance for Agency Heads – Gifts and Benefits* (the Guidance). The Guidance applies to APS agency heads, including Secretaries of government departments. The Guidance requires agency heads to:

- publish a register of gifts and benefits they accept that are valued at over AUD100 (excluding GST) on their departmental or agency website on a quarterly basis;
- provide a link to the agency head gifts and benefits register to the APSC for publication on the APSC's website;
- collect and store the relevant information, and manage their register, in accordance with their agency's procedures;
- update the register within 31 days of receiving a gift or benefit; and
- publish a 'nil' declaration on the gifts and benefits register where agency heads have not accepted any gifts during the reporting period.

The Guidance also encourages agencies to publish gifts and benefits received by Senior Executive Service (SES) staff and other staff in their agency.

Other statutory office holders and heads of other Commonwealth entities and companies that are not classified as agency heads are strongly encouraged to adopt the Guidance and mirror these arrangements. The APSC periodically monitors compliance with the Guidance and provides advice to agencies on the scope and application of the Guidance through its Ethics Advisory Service.

4. Continue measures to enhance transparency of beneficial ownership of companies and director identification

The Australian Government has committed to establishing a beneficial ownership register.
The implementation of a beneficial ownership register will increase transparency and accountability around the ownership and control of companies operating in Australia.

The Australian Government is progressively implementing the Modernising Business Registers (MBR) Program which will consolidate more than 30 existing business registers onto a modernised business registry platform.

The program is enabled by the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* (Cth), which also introduced the requirement for directors to obtain a Director ID. The requirement for a Director ID was introduced to help address illegal phoenixing and will provide visibility over a director's relationships across companies and over time. All directors will be required to obtain a Director ID and have been able to do so since November 2021. This occurs through an authenticated process on the Australian Business Registry Services website. Once issued, this number stays with an individual for life, helping to prevent the use of false or fraudulent director identities and making it easier for regulators to associate directors with companies.

5. Strengthen legislative or administrative measures to prevent conflicts of interest by introducing appropriate restrictions and effective compliance mechanisms to regulate professional activities and employment of former public officials in the private sector

Australia has progressed measures to regulate the activities of former public officials in the private sector. Updates to the Australian Government Lobbying Code of Conduct (the Code), which took effect on 28 February 2022, have improved the practical operation of the Code and strengthened the Australian Government's ability to address non-compliance, including by:

- requiring lobbyists who previously held roles in Government to provide additional details about their former role:
    - for publication on the Australian Government Register of Lobbyists; and
    - to the Government representative that they are contacting for the purposes of lobbying, for the duration of any 12 or 18 month post-employment prohibition period that may apply to the lobbyist
- introducing a compliance mechanism allowing the Secretary of the Australian Attorney-General's Department to decide not to register or re-register a lobbyist who has committed a serious breach of the Code, for a period of up to three months.

6. Continue to fully implement article 12(4)

The Australian Government is committed to global efforts to reduce corruption and to supporting Australian businesses seeking to eliminate facilitation payments to officials. As part of combating the use of facilitation payments, and in line with OECD recommendations, the Australian Government strongly discourages businesses from making facilitation payments. While Australia's foreign bribery laws include a defence for facilitation payments in very narrow circumstances, operational experience has indicated that the facilitation payment defence has not been an impediment to the enforcement of the foreign bribery offence. Such defences are also not prohibited under the OECD Convention on Combating Bribery of Foreign Public Officials.

Under Australia's foreign bribery laws, the facilitation payment defence is very narrow in its operation and is only available in respect of a payment of minor value provided in return for securing a minor, routine government action, and must be appropriately documented. Facilitation payments are distinguished from bribes in that they cannot be made to secure any decision to award or continue business, or any decision related to the terms of new or existing business.

The following are some key measures taken in relation to combating the use of facilitation payments since the UNCAC second cycle review:

Draft Adequate Procedures Guidance

In 2019, draft guidance was released outlining the steps a body corporate can take to prevent an associate from bribing foreign public officials, designed to support the implementation of a proposed corporate offence for failure to prevent foreign bribery. The guidance reiterates that the Government is committed to strongly discouraging Australian companies from making facilitation payments. The guidance also states that while Australia's foreign bribery laws provide a defence for such payments in very narrow circumstances, these payments may be illegal under the laws of foreign countries, and may represent a serious business risk by exposing companies to future bribe solicitation.

Australian Government publications

The Government maintains publications that educate individuals and companies about the risks of foreign bribery and facilitation payments. These include:

- The Attorney General's Department's publicly available information, print resources and training module on foreign bribery
- The Australian Trade and Investment Commission (Austrade) facilitation payment fact sheet

Other outreach avenues

Austrade has delivered a targeted outreach program to onshore and offshore Australian businesses for the purpose of educating businesses about the risks of foreign bribery. The program provides information about facilitation payments and conducting due diligence on foreign agents.

In October 2020, Australia officially launched the Bribery Prevention Network (BPN), a public-private partnership that brings together business, civil society, academia and government with the shared goal of supporting Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance. The BPN curates the Bribery Prevention Hub (www.briberyprevention.com), a free online tool that provides accessible, relevant, and reliable resources to help organisations develop and implement effective anti-bribery and corruption policies and compliance procedures. The resources include information about the risks of making facilitation payments and how to 'say no' to such payments.

In April 2022, the BPN hosted a public webinar in collaboration with Australian Government agencies to provide Australian small-to-medium sized enterprises (SMEs) with information about how the Australian Government can provide assistance when businesses operating overseas encounter requests for suspicious payments.

The Australian Taxation Office (ATO) also encourages good governance practices for companies, including through the publication of its tax risk management governance review guide. Through this framework, it encourages boards to be appropriately informed on tax risk matters, including matters which impact on the organisation's tax risk appetite and reputation. The ATO has also published guidelines for dealing with bribery of public officials to ensure taxpayers and their advisors understand their obligations. These guidelines draw on the OECD's Bribery and corruption awareness handbook for tax examiners and tax auditors.

7. Amend the AML/CTF Act to ensure that designated non-financial businesses and professions beyond casinos and bullion dealers, such as real estate agents, accountants and lawyers, are subject to anti-money-laundering and counter-terrorist financing obligations in line with FATF standards

This recommendation remains under consideration. Other frameworks that assist the regulation of designated non-financial businesses and professions includes the *Financial Transaction Reports Act 1988* (Cth) (FTR Act) and sectoral rules. The FTR Act imposes reporting obligations, which requires solicitors and motor vehicle dealers who act as insurers or insurance intermediaries to report significant cash transactions and suspicious transactions. Sectoral rules require businesses and professions to abide by their own obligations, such as identity verification processes for both vendors and purchasers within the real estate sector.

8. Ensure that information on the beneficial owners of legal persons and legal arrangements is maintained and accessible to competent authorities in a timely manner

As mentioned in response to recommendation 4 above, the Australian Government has committed to introducing a public register containing the beneficial ownership information of companies. The register will enhance existing beneficial ownership transparency measures, consistent with international requirements, and ensure that competent authorities have access to accurate, adequate and current beneficial ownership information of companies in a timely manner. A stronger beneficial ownership transparency regime will assist regulators and law enforcement agencies in addressing tax evasion, money laundering and other financial crime concealed through complex legal structures and arrangements.

Through the establishment and use of Memorandums of Understanding (MoUs) and the use of the Egmont Group of Financial Intelligence Units (Egmont Group), the Australian Transaction Reports and Analysis Centre (AUSTRAC) also continues to actively engage in domestic and international exchanges of information and intelligence produced by AUSTRAC, including the exchange of beneficial ownership information.

9. Introduce a threshold value for the requirement to report cross-border movements of bearer negotiable instruments

The cross-border movement of bearer negotiable instruments (BNIs) must now be reported if they are valued at AUD10,000 or more.

At the time of Australia's country visit in April 2018 as part of its second cycle peer review, Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) imposed separate reporting obligations in relation to the Cross-Border Movement of Physical Currency and BNIs.

The *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* (Cth) amended Part 4 of the AML/CTF Act. These amendments commenced on 17 June 2022. The reforms consolidated the separate reporting requirements for physical currency and BNIs, and established a single obligation to report the movement of 'monetary instruments' of AUD10,000 or more. The definition of 'monetary instrument' includes physical currency and BNIs, but also allows additional things of value to be prescribed in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* (AML/CTF Rules), providing flexibility as new ways of transmitting value emerge.

Chapter IV Recommendations

10. Review the application of the exemptions relating to the identification of beneficial owners and politically exposed persons in part 4.14 of the AML/CTF Rules at appropriate intervals, in order to ensure that they do not create loopholes for the anti-money-laundering and counter-terrorist financing regime

This recommendation is under consideration by AUSTRAC. AUSTRAC is the Australian Government agency responsible for detecting, deterring and disrupting criminal abuse of the financial system to protect the community from serious and organised crime.

11. Continue to implement the FATF recommendation with regard to correspondent banking relationships with shell banks

In June 2021, the majority of the provisions under the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* (Cth) commenced. The Act included amendments to strengthen protections on correspondent banking by prohibiting correspondent banking relationships with shell banks. The amendments also require banks to conduct due diligence assessments before entering, and during the course of, all correspondent banking relationships.

12. Ensure that obligations under article 55(1) and (2) of UNCAC are considered by the Attorney-General as part of the exercise of his or her discretion under section 34 of MACMA

Australian authorities take steps to ensure that obligations under all applicable multilateral conventions are considered by decision makers when exercising their authority under the *Mutual Assistance in Criminal Matters Act 1987* (Cth) (MACMA), where consistent with Australian domestic law. This is in line with section 7 of the MACMA, which enables regulations to be made that apply the MACMA, subject to a relevant multilateral treaty. In this case, the Mutual Assistance in Criminal Matters (Convention against Corruption) Regulations 2005 make the MACMA apply, subject to limitations, conditions, exceptions or qualifications that are necessary to give effect to the obligations in the UNCAC, in relation to: (a) requests received from countries that are Parties to the UNCAC and, (b) where the request for mutual assistance is made using the UNCAC as the basis for mutual assistance. The Attorney-General therefore takes into account Australia's obligations under the UNCAC, including those in articles 55(1) and 55(2), when exercising discretionary powers under the MACMA.

13. Consider including a reference in the legislation to the specific mechanisms and mandatory requirements of article 57 and monitor the application thereof in all asset recovery cases

As mentioned above, section 7 of the MACMA enables regulations to be made that apply the MACMA, subject to a relevant multilateral treaty. The Mutual Assistance in Criminal Matters (Convention against Corruption) Regulations 2005 make the MACMA apply, subject to limitations, conditions, exceptions or qualifications that are necessary to give effect to the obligations in the UNCAC, in relation to: (a) requests received from countries that are Parties to UNCAC and, (b) where the request for mutual assistance is made using the UNCAC as the basis for mutual assistance. The Attorney-General therefore takes into account Australia's obligations under UNCAC, including those under article 57, when exercising discretionary powers under the MACMA.

Additionally, the *Proceeds of Crime Act 2002* (Cth) (POC Act) has been amended a number of times since April 2018. The amendments to the POC Act made by Schedule 5 to the *Unexplained Wealth Legislation Amendment Act 2018* (Cth) include amendments to section 296(4)(c) and the introduction of section 297B(3). The amendments provide an alternative basis for Australia to share confiscated assets with a foreign country. Namely, the Commonwealth can receive and share the proceeds of confiscated assets under the national cooperative scheme on unexplained wealth (NCSUW) where a country has contributed to the recovery of the proceeds. As a consequence of the NCSUW provided for in Part 4-3 of the POC Act, all proceeds of crime matters that are likely to result in the confiscation of over AUD100,000 are formally assessed by a Committee that considers whether assets should be shared with another domestic or international jurisdiction. These amendments supplement Australia's implementation of article 57(3)(a) and (b).

Other measures taken to strengthen integrity arrangements

National Anti-Corruption Commission

On 28 September 2022 the Australian Government introduced a Bill to the Australian Parliament to legislate a powerful, transparent and independent National Anti-Corruption Commission (the Commission). The Commission will operate independently of government to ensure integrity and accountability in the federal government, Commonwealth public sector and institutions, and will be a central pillar in Australia's broader federal integrity framework.

The Bill gives full effect to the Australian Government's publicly released design principles that were developed on the advice of eminent legal and integrity experts, that will ensure the Commission operates effectively. The Commission will have broad jurisdiction to investigate serious or systemic corruption across the Commonwealth public sector. This includes the power to investigate ministers, parliamentarians and their staff, statutory officer holders, and employees and contractors of government agencies.

Subject to the passage of the legislation, the Commission will have discretion to commence investigations on its own initiative or in response to referrals from anyone, be able to investigate both criminal and non-criminal corrupt conduct, and conduct occurring before or after its establishment. It will have the power to hold public hearings in exceptional circumstances and if satisfied it is in the public interest to do so.

The Bill is subject to a public inquiry by a Joint Select Committee of the Parliament, which is due to report on 10 November 2022. The Government has indicated its intention for the legislation to be passed before the end of the year, with the Commission commencing operations from mid- to late-2023.

Australian Commission for Law Enforcement Integrity (ACLEI)

From 1 January 2021, the Integrity Commissioner's jurisdiction was expanded to include conduct of staff members which relates to the performance of a law enforcement function of the following agencies:

- Australian Competition and Consumer Commission (ACCC)
- Australian Prudential Regulation Authority (APRA)
- Australian Securities and Investments Commission (ASIC)
- ATO

The Office of the Special Investigator was brought within jurisdiction in December 2021.

Since 2018, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity has undertaken an Inquiry into the integrity of Australia's border arrangements (report published in December 2020).

Territory integrity arrangements

The Australian Capital Territory's Integrity Commission and the Northern Territory's Office of the Independent Commissioner against Corruption were both established in 2018.

Foreign Influence Transparency Scheme

On 28 June 2018, the Australian Parliament passed the *Foreign Influence Transparency Scheme Act 2018* (Cth). The Act establishes the Foreign Influence Transparency Scheme (the scheme) which commenced on 10 December 2018. The scheme is a key transparency measure to provide the public and decision makers in government with visibility over the nature, level and extent of foreign influence in Australia's government and political processes and systems.

The scheme imposes registration obligations on persons and entities who have certain arrangements with, or undertake certain activities, on behalf of foreign principals. Former Cabinet Ministers, Members of Parliament and other designated position holders (including agency heads, Ambassadors and ministerial staffers) are required to register if, after leaving their public role, they enter into an arrangement with a foreign principal. For former Cabinet Ministers this is a lifelong obligation. For other former Ministers, Members of Parliament and designated position holders, the obligation to register an arrangement with a foreign principal exists for the fifteen years immediately following their designated role.

Commonwealth Procurement Rules

The Commonwealth Procurement Rules (CPRs) were recently updated and took effect on 1 July 2022. The updates reflect the Australian Government's commitment to:

- ensuring that small and medium-sized enterprises (SMEs) are not disadvantaged in Commonwealth procurements;
- strengthening the requirements to pay suppliers on-time; and
- ensuring that insurance requirements in contracts reflect actual risk.

A table outlining a complete list of the changes to the CPRs that took effect on 1 July 2022 is available on the Department of Finance's website.

Previous updates to the CPRs that were introduced in 2019 and 2020 included:

- supporting officials' consideration of sustainable procurement practices;
- emphasising the importance of paying suppliers on time, particularly small businesses; and
- introducing a new Appendix A Exemption that allows direct engagement of an SME for procurements up to AUD200,000. Appendix A of the CPRs exempts procurements of certain goods and services from the application of particular rules under the CPRs.

Review of Procurement Processes

The *Government Procurement (Judicial Review) Act 2018* (Cth) established an independent complaint mechanism for government procurement processes. The Act requires the accountable authorities of relevant Commonwealth entities to formally investigate complaints made in accordance with the Act, and to suspend procurements during the investigation of a complaint under the Act, unless a public interest certificate is in place that states it is not in the public interest for the procurement to be suspended. The Act also places obligations on suppliers to take reasonable steps to resolve a complaint with the relevant Commonwealth entity before taking legal action in the Federal Circuit and Family Court of Australia. Since the implementation of the Act, there have been no applications to the Federal Circuit and Family Court of Australia.

Risk Management Policy

The Commonwealth Risk Management Policy (the Policy) was introduced in 2014 to support Commonwealth entities to manage risk in line with section 16 of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act).

A review of the PGPA Act in 2018 recommended that the Department of Finance review and determine whether any aspect of the Policy required changes to improve its coherence and operation. The Policy was reviewed in 2021 by a steering committee from a cross-section of Commonwealth entities. The revised Policy is intended to have a greater focus on the effectiveness of controls and treatments of risk, emerging risks, and risk management responsibilities.

The draft revised Policy was tested with stakeholders in the first half of 2022. Commonwealth entities will be supported with guidance material to assist them in embedding the new enhancements to their existing frameworks.

On 2 August 2022, the Government tabled the *Parliamentary Business Resources Act 2017 and Independent Parliamentary Expenses Authority Act 2017 Review* (the Review) in accordance with statutory requirements. The Review considered whether each Act was meeting its objectives of providing appropriate levels of support and improving the accountability and transparency of parliamentary business resources. The Review found that the legislative framework is broadly meeting its objectives, but that there are areas for improvement, including in reporting and certification processes, improving service delivery and training, and supporting a modern, diverse parliament. The Government supports all the recommendations in principle and will work with relevant entities on their implementation.

Protections for persons who report corruption

The *Public Interest Disclosure Act 2013* (Cth) (the PID Act) enables public officials to disclose suspected wrongdoing by another public official or by an Australian government agency. Suspected wrongdoing is defined broadly and includes fraud, serious misconduct and corrupt conduct as well as minor wrongdoing. The Government is committed to reforming the PID Act. The Government will commence the progression of reforms in the coming months by introducing amendments to the PID

Act which will respond to key issues identified by the 2016 Review of the PID Act by Mr Philip Moss AM (the Moss Review) and parliamentary committees.

The Moss Review made 33 recommendations to improve the PID Act, including:

- providing greater protections to disclosers and witnesses
- strengthening oversight of the scheme, and
- focusing the PID Act on more serious wrongdoing such as fraud and corruption.

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018* strengthens whistleblower protections for those who disclose corporate and tax misconduct. The Act commenced on 1 July 2019 and amended Part 9.4AAA of the *Corporations Act 2001* (Cth) (administered by ASIC) and Part IVD of the *Taxation Administration Act 1953* (Cth) (administered by the ATO) to strengthen protections for persons who disclose corporate misconduct and introduce new protections for persons who disclose tax misconduct.

The Act also introduced a requirement for public companies, large proprietary companies and trustees of corporate superannuation trustees to have a whistleblower policy, which commenced from 1 January 2020.

Since 2019, ASIC has issued a regulatory guide, information sheets, media releases, articles and other information about the enhanced corporate whistleblower protection regime and continues to engage with stakeholders across the corporate, legal, academic, public, and regulatory sectors on the regime. ASIC also established an Office of the Whistleblower in 2014 to monitor and improve ASIC's handling of disclosers who report corporate misconduct.

The ATO has established a Tax Integrity Centre to more effectively generate actionable intelligence from the information provided by disclosers. Alongside this, the Tax Integrity Centre incorporates various protections to give effect to the tax whistleblower protection regime.

Amendments to the Proceeds of Crime Act 2002

The *Crimes Legislation Amendment (Economic Disruption) Act 2021* (Cth), which commenced in February 2021, amended section 266A of the POC Act to enhance disclosure of information obtained through subsection 266A(1) to mutual assistance authorities of foreign countries. The amendments also enabled information sharing with the International Criminal Court, International War Crimes Tribunals, and professional disciplinary bodies to assist in the performance of their functions.

Reforms to the AML/CTF Act

The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* (Cth), which commenced in April 2018, expanded the regime to regulate digital currency exchanges, enhanced investigation and enforcement powers and clarified important concepts. This enhanced AUSTRAC's enforcement powers with respect to remitters, allowing the AUSTRAC CEO to cancel a person's remittance registration if there are reasonable grounds to believe that the registered person no longer carries on a remittance business.

This reform was followed by the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* (Cth), which commenced in June 2021 and strengthened obligations with respect to correspondent banking relationships and shell banks, streamlined provisions governing access to and use of financial intelligence, expanded provisions for third-party reliance on customer due diligence procedures, and modernised cross-border reporting requirements.

The *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* (Cth) also made amendments to Part 11 of the AML/CTF Act to streamline the information sharing framework, and enables more efficient sharing of AUSTRAC information with foreign countries and agencies.

Financial Action Task Force (FATF)

Australia's third enhanced follow-up report occurred in November 2018. This report gave Australia seven positive re-ratings:

- Largely Compliant to Compliant – Terrorist financing offence (Recommendation 5), new technologies (Recommendation 15), responsibilities of law enforcement and investigative authorities (Recommendation 30), cash couriers (Recommendation 32) and guidance and feedback (Recommendation 36).
- Partially Compliant to Largely Compliant – Higher risk countries (Recommendation 19).
- Non-Compliant to Largely Compliant – Non-profit organisations (Recommendation 8).