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Convention against Corruption**

Executive summary

Note by the Secretariat

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* [CAC/COSP/IRG/2019/1](#).



II. Executive summary

Australia

1. Introduction: overview of the legal and institutional framework of Australia in the context of implementation of the United Nations Convention against Corruption

Australia signed the Convention on 9 December 2003 and ratified it on 7 December 2005; it entered into force on 6 January 2006. The Australian legal system is dualist. Therefore, the Convention is not directly applicable.

Australia is a constitutional democracy. It has a federal system with three layers of government: Commonwealth (federal), states and territories, and local level. The review of Australia was limited to the federal level.

The implementation by Australia of chapters III and IV of the Convention was reviewed in the second year of the first cycle, and the executive summary of that review was published on 15 May 2012 ([CAC/COSP/IRG/II/2/1](#)). Australia's anti-money-laundering and counter-terrorist financing framework was also assessed jointly by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG) in 2014–15.

Relevant institutions in the prevention of and fight against corruption include the Australian Commission for Law Enforcement Integrity (ACLEI), the Australian Criminal Intelligence Commission (formerly the Australian Crime Commission), the Commonwealth Ombudsman, the Australian Transaction Reports and Analysis Centre (AUSTRAC), and the Australian Federal Police (AFP).

The implementing legislation for chapters II and V includes, notably, the Criminal Code Act 1995 (Criminal Code); the Public Service Act 1999 (PSA), the Public Governance, Performance and Accountability Act 2013 (PGPAA), the Public Interest Disclosure Act 2013 (PIDA), the Anti-Money-Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act), and the Proceeds of Crime Act 2002 (POCA).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Australia relies on a set of relevant legislative provisions, notably PSA, the Parliamentary Service Act 1999, the Commonwealth Electoral Act 1918 (CEA), PIDA, PGPAA, the Freedom of Information Act (FOIA), the Corporations Act 2001 (CorpA), and legislative instruments like the Commonwealth Procurement Rules (CPR) to promote integrity, transparency and accountability in the public and private sectors and to prevent corruption.

Additionally, Australia has developed the Open Government National Action Plan for 2016–2018 (NAP) together with civil society. NAP includes 15 specific commitments aimed at improving Australia's anti-corruption regime, such as integrity in the public sector, public participation, access to government information and transparency and accountability in business. Each commitment identifies its objective, lead agency, timeframes and milestones.

Australia takes a multi-agency approach to implement and coordinate the above policies to effectively prevent and combat corruption. The Attorney General's Department oversees and coordinates the implementation of domestic anti-corruption policies and programmes across governmental departments and agencies and engages in international forums aimed at combating corruption. Other key agencies are AFP, the Australian Public Service Commission (APSC), the Australian Securities and Investments Commission (ASIC), the Australian National Audit Office, the Office of

the Australian Information Commissioner (OAIC), the Commonwealth Ombudsman, the Independent Parliamentary Expenses Authority, ACLEI and AUSTRAC. All these bodies and functions except the Attorney General's Department are statutory authorities or officeholders and have the necessary independence, resources, sufficient budget and specialized staff to carry out their work.

These agencies conduct activities to increase awareness regarding corruption and fraud within the public sector. AFP together with other agencies operate a fraud and anti-corruption centre to exchange information and intelligence regarding emerging threats and challenges regarding financial crimes including corruption. ACLEI systematically increases and disseminates knowledge about the prevention of corruption among agencies in their jurisdiction and among members of the public.

Operations of the key anti-corruption legislation are periodically reviewed but the results are not always made publicly available.

Australia is part of various regional and international anti-corruption forums such as the Group of 20, the Asia-Pacific Economic Cooperation, the Organization for Economic Cooperation and Development, FATF, the International Anti-Corruption Coordination Centre, and the International Foreign Bribery Taskforce, and supports efforts to tackle corruption and improve transparency and accountability in partner countries bilaterally through its development programmes.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

APSC, established under PSA, is responsible for promotion of high standards of integrity, conduct, accountability, effectiveness and performance and regulates recruitment, hiring, retention, promotion and retirement of Australian Public Service (APS) employees.

Recruitment to APS is competitive and based, inter alia, on fairness and merit. Recruitment decisions can be appealed by unsuccessful applicants to the Merit Protection Commissioner. The Merit Protection Commissioner, the Fair Work Commission, the Federal Court or the Federal Circuit Court may review employment decisions.

The Constitution contains the qualification criteria for election (sections 16 and 34) and for disqualification (sections 44 and 45) of Members of Parliament and senators. Additional requirements for parliamentarians and candidates are provided in sections 163, 362 and 386 CEA.

CEA further provides for an electoral funding and disclosure scheme that requires disclosure entities (candidates, political parties, donors etc.) to lodge financial returns with the Australian Electoral Commission. These returns are made public. Donations, loans, debts and gifts (as defined in subsection 287(1) CEA) must be disclosed. Details such as the date when received, the amount or value and the name and address of the donor must be disclosed for individual donations exceeding a specified threshold (currently 13,800 Australian dollars (AUD)). Candidates may be eligible for public funding. The Australian Electoral Commission reviews the financial returns and may refer violations, including lodging misleading or deceptive returns and failures to lodge accurate returns to the relevant authorities for criminal prosecution.

Each House of Parliament has a scheme for continuous disclosure of interests of its members and their immediate family members. Separately, the Prime Minister's Statement of Ministerial Standards (SMS) also requires ministers, assistant ministers and parliamentary secretaries to, inter alia, declare and register their interests and those of members of their immediate families and avoid conflicts of interests in their dealings with lobbyists. The declarations are publicly available.

All APS employees shall take reasonable steps to avoid real or apparent conflicts of interests and declare them if they arise (section 13(7) PSA). The declarations are kept and reviewed by agencies individually. APSC develops and makes available to all

agencies training materials on conflicts of interest. In addition, PGPAA requires all officials of state or parliamentary departments and other public and corporate bodies listed in section 10 of the Act to disclose material personal interests.

All APS employees are bound by the APS Code of Conduct (section 13 PSA). If necessary, they may seek advice on ethical issues from the Ethics Advisory Service. PGPAA also imposes a set of general duties on relevant officials. SMS sets specific standards of integrity and propriety for ministers, assistant ministers and parliamentary secretaries in their conduct of public business. Breaches of the APS Code of Conduct, including failure to declare conflicts of interest, may lead to sanctions ranging from a reprimand to termination of employment (section 15 PSA). PGPAA officials who do not discharge their general duties can also be subject to PSA sanctions (section 32 PGPAA).

APS employees are obliged to report misconduct (section 14(f) APS Commissioner's Directions 2016). Misconduct can also be reported under PIDA. In addition, agency heads under ACLEI's jurisdiction are required to notify the Integrity Commissioner of information or allegations relating to corruption in their agencies (section 19 Law Enforcement Integrity Commissioner Act). Potential fraud and corruption may also be referred to AFP for criminal investigation.

PIDA facilitates disclosure and investigation of wrongdoing and maladministration and regulates whistle-blower protections in the public sector. Reporting persons are protected from civil, criminal or administrative liability (section 10 PIDA). Disclosing the identity of and taking reprisal action against reporting persons are offences (sections 20 and 19 PIDA respectively). External disclosures may be made exceptionally (section 26 PIDA). Disclosable conduct is defined broadly and includes corruption, fraud, and corrupt conduct (section 29 PIDA).

Appointments and removals from office of the federal judiciary are regulated by section 72 of the Constitution and guided by convention and practice.

There is no compulsory integrity training for federal court judges, but they are encouraged to attend internal and external training and judicial education programmes that may include sessions on judicial ethics and conduct. Complaints are primarily handled according to the Courts Legislation Amendment (Judicial Complaints) Act 2012 (JCA) and the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012. The Judicial Complaints Act sets out internal procedures to consider, investigate and recommend actions in response to complaints. The Judicial Misbehaviour Act assists the parliament in considering the removal of a judge under section 72 of the Constitution.

The Commonwealth Director of Public Prosecutions (CDPP) is regulated mainly by the Director of Public Prosecutions Act 1983, which states in sections 5 and 27 that PGPAA and PSA fully apply to the Director and staff of CDPP. Additionally, the Director and Associate Director must disclose any direct or indirect pecuniary interests (section 24 PSA). Further, CDPP has issued a values and behaviours statement as a guide for its staff and requires them to declare any financial assets and liabilities as part of the security clearance process.

Public procurement and management of public finances (art. 9)

Relevant Australian public entities conduct their own procurement and grant processes under the general framework set by PGPAA. The Act provides for issuance of CPR by the Minister for Finance which serve as the basic rules set for all public procurements (subsection 105B (1)).

CPR require that relevant entities report their procurement contracts at or above specified thresholds on AusTender, a centralized, public information system providing information on procurement plans, open tenders and awarded contracts.

The use of a standard contract template (Commonwealth Contracting Suite) is mandatory for procurements valued up to AUD 200,000 and encouraged for use up to

AUD 1 million. For each procurement, responsible officials must maintain appropriate documentation for proper scrutiny (part 7 CPR). Complaints may be made to the procuring entity, the Procurement Coordinator within the Department of Finance, the Commonwealth Ombudsman, and the Federal Court. The Australian National Audit Office conducts audits on procurement activities and publishes the audit reports on its website and tables them in Parliament.

The annual federal budget is prepared by the Cabinet and adopted by Parliament. The budget is presented within the framework set by the Charter of Budget Honesty Act 1998, which requires the Treasurer to publicly release periodic budget economic and fiscal outlook reports that are based on accounting standards and the government financial statistics standards developed by the International Monetary Fund.

In addition to annual whole-of-government financial statements prepared by the Finance Minister, state or parliamentary departments and other public and corporate bodies listed in section 10 PGPA must prepare annual financial statements and submit them to the Auditor General for audit (sections 42 and 48 PGPA). The Joint Committee of Public Accounts and Audit of Parliament also examines the financial affairs of authorities and all reports of the Auditor-General.

Sections 490.1 and 490.2 of the Criminal Code establish offences for false dealing with accounting documents.

Public reporting; participation of society (arts. 10 and 13)

FOIA gives every person a legally enforceable right to access an official document of ministers or Government agencies, subject to specific exceptions and exemptions (including personal privacy, national security, trade secrets etc.) and establishes an information publication scheme that requires public bodies to proactively publish a range of information. Requests may also incur charges. Responses to requests must be published with few exceptions. FOIA sets specific deadlines to deal with requests and requires reasons to be provided if the request is denied.

OAIC, established by the Australian Information Commissioner Act 2010, oversees the operation of FOIA and issues guidelines on its operation. Ministers and agencies must have regard to the guidelines when applying FOIA. The Information Commissioner may conduct investigations into actions of agencies taken and review decisions made under FOIA. Under the Ombudsman Act 1976, the Commonwealth Ombudsman may also investigate complaints against actions taken by agencies under FOIA.

Approaches to stakeholder engagement and public consultations vary across public bodies. Policy development generally requires genuine and timely consultation with businesses, community organizations and individuals. NAP seeks to improve the approach in its commitment 5.2.

AFP and State police services have telephone and internet services to report crime. The Crime Stoppers Australia project and the National Security Hotline provide for anonymous reporting of crime.

Private sector (art. 12)

The Australian regulatory and co-regulatory framework to prevent corruption in the private sector consists mainly of the Criminal Code, CorpA, the Australian Securities and Investments Commission Act 2001, the AML/CTF Act, and relevant legislative instruments and regulatory guidance.

AFP regularly engages with the private sector to, inter alia, educate on domestic and foreign corruption and bribery legislation and promote transparency in international business transactions.

The Department of Foreign Affairs and Trade and the Australian Trade and Investment Commission conduct outreach activities to ensure that Australian businesses are aware of their obligations under anti-bribery laws. The Australian Stock Exchange

Corporate Governance Council's Corporate Governance Principles and Recommendations are linked to the Australian Stock Exchange Listing Rules and encourage listed entities to adopt good governance practices.

Whistle-blower protection in the private sector is provided in part 9.4AAA CorpA, which covers reporting of breaches of CorpA and the Australian Securities and Investments Commission Act 2001. ASIC has established an Office of the Whistle-blower, enhanced its internal process for dealing with whistle-blower reports and developed targeted information to raise awareness among potential whistle-blowers on available protections and the role of ASIC.

ASIC maintains 31 legal registers (companies, business names, professional registers, etc.) that contain information about over 4.8 million entities. Most registers are publicly available online. Accuracy of information in the registers is ensured by ongoing legal obligations to update information, including an annual review requirement, a late fee regime and prescribed offences under the Criminal Code (sections 137.1 and 137.2).

No general legislative restrictions on post-separation employment exist for public officials — agencies may adopt the appropriate policies, in line with PSA and the APS Code of Conduct. APSC provides guidance for agencies on conflicts of interest, including managing post-separation employment. SMS also provides for some restrictions but it is unclear if and how they could be enforced.

Under CorpA, relevant entities must keep written financial records that correctly record and explain their transactions, financial position and performance, and that enable accurate financial statements to be prepared and audited (section 286). Section 292 CorpA requires all companies, other than small proprietary companies to prepare an annual report and make it public by lodging it with ASIC.

Many entities regulated under CorpA are required to apply Australian Accounting Standards based on international financial reporting standards. The financial records must be retained for seven years (section 286(2)) and failure to do so is a criminal offence (section 286(1) and 286(2)). Section 490 CC criminalizes false dealing with accounting documents in the private sector.

The Income Tax Assessment Act 1997 expressly restricts deductibility of bribes to public officials (sections 26–52 and 26–53) and expenditure relating to illegal activities (sections 26–54). However, minor facilitation payments may be deductible under sections 26–52(4) and Australia continues to periodically review its policies and approach on facilitation payments in order to effectively combat the phenomenon.

Measures to prevent money-laundering (art. 14)

Australia has a robust and mature regime for combating money-laundering, although certain key areas — in particular the coverage of certain designated non-financial businesses and professions — remain unaddressed. The main legislative instruments for the prevention of and fight against money-laundering are the AML/CTF Act, the Anti-Money-Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules), the Anti-Money-Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulation 2018, the Financial Transaction Reports Act 1988 and part 10.2 of the Criminal Code. The AML/CTF Act adopts a risk-based approach and establishes three levels of due diligence (standard, enhanced and simplified). A national money-laundering threat assessment was carried out in 2011. This assessment is augmented by sectoral and product risk assessments, which commenced in 2016. Substantial changes to the AML/CTF Rules on beneficial ownership, politically exposed persons and customer due diligence were introduced in 2014.

Australia has adopted an all-crimes approach to money-laundering. Money-laundering is criminalized under division 400 of the Criminal Code and covers dealing with proceeds and instruments of crime.

AUSTRAC is Australia’s financial intelligence unit and anti-money-laundering and counter-terrorist financing regulator. Reporting entities under the AML/CTF Act include financial institutions, and the gambling, remittance, digital currency exchange and bullion dealing sectors that provide designated services listed in section 6 of the Act (“reporting entities”). This means that designated non-financial businesses and professions other than casinos and bullion dealers are not subject to anti-money-laundering and counter-terrorist financing obligations.

Verification of the identity of customers is provided for in sections 28–35 AML/CTF Act and chapter 4 of the AML/CTF Rules. Ongoing customer due diligence is required by section 36 of the Act. Enhanced due diligence obligations are set out in part 15.8–15.11 of the AML/CTF Rules. Procedures for the collection and verification of beneficial owner information are outlined in part 2 of the AML/CTF Act and part 4.12 of the AML/CTF Rules. Part 4.13 of the AML/CTF Rules provides for enhanced customer due diligence with regard to politically exposed persons. Reporting entities have an obligation to make a suspicious matter report to AUSTRAC (section 41 AML/CTF Act). The major reporting entities — including the biggest domestic banks — have an informed understanding of their anti-money-laundering and counter-terrorist financing risks and obligations.

In terms of national cooperation, AUSTRAC has 46 domestic partner agencies across law enforcement, national security, human services and revenue protection. In 2017, AUSTRAC launched the Fintel Alliance, a public-private partnership to share financial intelligence.

Mutual legal assistance, also in relation to money-laundering, is regulated in the Mutual Assistance in Criminal Matters Act 1987 (MACMA).

Provisions relating to the declaration or disclosure of cross border movement of currency and bearer-negotiable instruments are contained in part 4 of the AML/CTF Act. In particular, the physical cross-border transportation of cash in the amount of AUD 10,000 or more must be reported (section 53 AML/CTF Act). There is no threshold value for the requirement to report cross-border movements of bearer-negotiable instruments but an individual must report the movement of a bearer-negotiable instruments when requested by a police or customs officer. Part 5 of the AML/CTF Act covers electronic funds transfers, part 6 establishes a remittance sector register and part 6A establishes a register for digital currency exchange businesses. Reporting entities providing a designated remittance service (section 6 AML/CTF Act) must enrol and register with AUSTRAC before providing remittance services to their customers. It is an offence for unregistered persons to provide remittance services, including hawalas.

Australia is a founding member both of FATF and APG, a FATF-style regional body. AUSTRAC is also a founding member of the Egmont Group of Financial Intelligence Units.

2.2. Successes and good practices

The review highlighted as good practices:

- Australia actively participates in regional and international organizations and programmes that address anti-corruption (art. 5(4));
- Australia has created a dedicated website that contains information on the national budget and clearly presents budget information with detailed explanations and interactive tools (art. 9(2));
- The establishment of the Fintel Alliance, a public-private partnership to share financial intelligence (art. 14(1)(b));
- The wide range of assistance and training provided by Australia to neighbouring countries and international initiatives (art. 14(5)).

2.3. Challenges in implementation

It is recommended that Australia:

- Continue its efforts under the Open Government Partnership in order to develop and maintain effective and coordinated measures to prevent corruption (art. 5(1));
- 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 (art. 7(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 (art. 8(5));
- Continue its measures to enhance transparency of beneficial ownership of companies and director identification (art. 12(2)(c));
- 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 (art. 12(2)(e));
- Continue to fully implement article 12(4);
- 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 (arts. 14(1)(a) and 52(1));
- Ensure that information on the beneficial owners of legal persons and legal arrangements is maintained and accessible to competent authorities in a timely manner (arts. 14(1)(a) and 52(1));
- Introduce a threshold value for the requirement to report cross-border movements of bearer negotiable instruments (art. 14(2)).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Australia has a comprehensive legislative and policy framework on asset recovery. POCA, MACMA, and the AML/CTF Act provide a legal basis for identifying, restraining, forfeiting, and returning assets derived from the commission of an offence. The Confiscated Assets Fund has been established under the POCA (part 4–3). In the framework of G-20, Australia has published a step-by-step guide for asset recovery.

The sharing of information held by AUSTRAC with foreign countries is governed by sections 132–133C AML/CTF Act. AUSTRAC cooperates with other financial intelligence units through the Egmont Group. AUSTRAC can and does, share information proactively, without a prior request. AUSTRAC has 92 memorandums of understanding with counterpart international financial intelligence units for the exchange of financial intelligence and of regulatory and compliance information.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Provisions governing the identity of customers and beneficial owners are contained in sections 28–35 AML/CTF Act and chapter 4 of the AML/CTF Rules. There is no register of beneficial owners.

Politically exposed persons are defined in part 1.2 of the AML/CTF Rules and includes domestic politically exposed persons. Under part 4.13 of the AML/CTF Rules, politically exposed persons are subject to special measures and enhanced due diligence. However, part 4.14 sets out certain exemptions relating to the identification of beneficial owners and politically exposed persons. Reporting entities can consult information in links communicated in AUSTRAC guidance and through existing commercial databases to identify politically exposed persons and individuals on United Nations sanctions lists.

Records of customer identification procedures must be kept for the life of the customer relationship and for seven years after the reporting entity ceases to provide designated services to the customer (section 113 AML/CTF Act). Banks that have no physical presence and that are not affiliated with a regulated financial group (“shell banks”) are defined in section 15 AML/CTF Act. Section 95 AML/CTF Act prohibits financial institutions from entering into a correspondent banking relationship with a shell bank, or with another financial institution that has a correspondent banking relationship with a shell bank. Nonetheless, FATF has rated Australia non-compliant with FATF recommendation 13 due to the lack of information reporting entities are required to gather and verify in the context of a correspondent banking relationship.

Every Commonwealth parliamentarian is required to maintain a public register of interests, including domestic and foreign accounts, assets, gifts and any source of income. Under the APS Code of Conduct, all APS employees shall declare any potential conflicts of interest and update this declaration when circumstances change. The declaration does not include assets. There are no requirements for public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship.

AUSTRAC is an administrative financial intelligence unit in the portfolio of the Department of Home Affairs. The obligation to report suspicious transactions to AUSTRAC is established in part 3.2 AML/CTF Act.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

As a matter of common law and subject to relevant jurisdictional and procedural requirements, foreign States may initiate civil action in Australian civil courts to establish title to or ownership of property or seek compensation or damages.

Part VI.2.A of MACMA deals with the enforcement of foreign orders. The Attorney General can authorize a domestic proceeds of crime authority to register a foreign forfeiture order in a court with proceeds jurisdiction upon receiving a request from a foreign country (sections 34 and 34A MACMA). It then has effect, and may be enforced, as if it were a forfeiture order made by the court under POCA (section 34B MACMA). Both conviction based and non-conviction based orders may be registered. A foreign freezing or seizure order may be registered and enforced under sections 34 and 34E MACMA. Where a foreign country has not provided a restraining order to Australia, MACMA makes provision for the Attorney General to apply for a domestic interim restraining order if requested to do so by the foreign country (section 34J). However, Australia will require a foreign restraining order to be sent to Australia and registered within a prescribed time after the interim order was made. The applicable standard of proof is reasonable suspicion that the criminal proceedings or confiscation proceedings are about to commence in a foreign country.

With regard to the application of the provisions implementing article 54 to a concrete case under article 55, section 34 MACMA provides that the Attorney General enjoys discretion whether or not to take any measures. The content of requests for mutual legal assistance for the purpose of confiscation is determined by MACMA.

To provide assistance for the purposes of confiscation Australia does not require a treaty. However, Australia has concluded bilateral treaties, which included a framework for recovery of property and the confiscation of assets.

Section 8 MACMA outlines the grounds for refusal of assistance, which do not include the de minimis value of the property. Australian authorities would not discontinue provisional measures without first giving the requesting state an opportunity to outline why the measures should be continued.

The rights of bona fide third parties are protected under section 34L MACMA.

Proactive measures without request may be taken under sections 18 or 19 POCA. A restraining order must have been in force for at least 6 months, before the property can be forfeited. POCA provides for non-conviction based forfeiture. Section 47 enables action to be taken where a court is satisfied that a person has committed a serious offence, including corruption. Section 49 of POCA enables the forfeiture (*in rem*) of property suspected of being the proceeds of indictable offences or foreign indictable offences, including corruption. POCA also contains mechanisms to ensure that legitimate owners of property can have their interest in property recognized, including exclusion orders and compensation orders (sections 29 et seq. and 73 et seq.).

Return and disposal of assets (art. 57)

Australia cannot return confiscated property in direct application of the Convention. Pursuant to POCA, once a domestic forfeiture order is made by a court, the property is liquidated and credited to the Confiscated Assets Account (section 296). Australia can share with a foreign country a proportion of any proceeds recovered if the foreign country has made a significant contribution to the recovery or to the investigation or prosecution of the unlawful activity (so-called “equitable sharing program”, section 296(4)(c) POCA). Moreover, under section 70 POCA, the Minister may direct that the property be alternatively disposed of. This section can be used to return property to the country of origin. However, this mechanism is discretionary.

Section 34B(3) MACMA provides for a complementary process to POCA where a property that has been dealt with pursuant to a foreign forfeiture order may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney General.

The rights of bona fide third parties and the rights of legitimate owners are protected through the use of exclusion orders (section 34L MACMA). Cooperation requests are, in principle, executed free of charge. Australia will not reclaim expenses incurred for investigations, prosecutions or judicial proceedings. Where costs are incurred in the administration of the confiscated assets, Australia may choose to reclaim them.

Australia does not make cooperation for purposes of return and disposal of assets conditional on the existence of a treaty. However, Australia has concluded bilateral treaties which included a framework for dealing with the return and disposal of assets. Australia can also conclude agreements on a case-by-case basis for the final disposal of confiscated property.

3.2. Successes and good practices

- Australian authorities may act on information provided by foreign law enforcement to commence domestic proceedings against property in Australia that is the proceeds of a foreign indictable offence (art. 54(2)(b)).

3.3. Challenges in implementation

It is recommended that Australia:

- 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 (art. 52(1));
 - Continue to implement the FATF recommendation with regard to correspondent banking relationships with shell banks (art. 52(4));
 - Ensure that obligations under article 55(1) and (2) of United Nations Convention against Corruption are considered by the Attorney General as part of the exercise of his or her discretion under section 34 of MACMA;
 - 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 (art. 57(3)(a) and (b)).
-