



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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Anti-Corruption Section
International Crime –Policy and Engagement Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

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To the Hon Nicola Roxon MP

**The Commonwealth's approach to anti-corruption:
discussion paper**

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body in Australia delivering authoritative accredited education and the most practical training and information in the field, CSA is focused on improving organisational performance and transparency.

Our Members have primary responsibility to develop and implement governance and risk management frameworks in public listed, unlisted and private companies, and not-for-profit and public sector organisations. As governance professionals, our Members assume a leadership role in identifying and managing anti-corruption practices within their respective organisations. Thus, they are directly affected by amendments to national policy, and in particular, the development of the Commonwealth's approach to anti-corruption (the discussion paper).

CSA supports the purpose of the discussion paper, which is to develop a cohesive framework to coordinate and guide anti-corruption activities in Australia. CSA notes that the plan will:

[provide] a comprehensive outline of existing Commonwealth arrangements to combat corruption; analyse the results of a risk analysis of current and emerging corruption risks; and design a framework to ensure that the plan is able to effectively address these risks into the future.¹

CSA welcomes the government's commitment to combating corruption through utilising the existing Commonwealth's arrangements and through aligning Australia's position with international best practice. However, CSA is also concerned that the discussion paper is seemingly at an early stage in its approach to the development of a plan to address corruption risk.

CSA acknowledges Australia's current position in relation to corruption through Australia's involvement in the United Nations Convention against Corruption (UNCAC); the Organisation for

¹ The Attorney General's Department, *The Commonwealth's approach to Anti-Corruption: Discussion paper*, 2012, p 4

Economic Co-operation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the G20 Anti-Corruption Working Group; and the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption Working Group.

CSA is also aware of the domestic multi-agency approach which includes the Attorney General's Department; the Australian Federal Police; the Office of the Commonwealth Director of Public Prosecutions; the Australian Commission for Law Enforcement Integrity; the Australian Crime Commission; the Australian Public Service Commission; the Office of the Commonwealth Ombudsman; the Auditor-General; the Australian Electoral Commission; the Office of the Australian Information Commissioner; and the Inspector-General of Intelligence and Security.

CSA's concerns, however, lie in the lack of strategic guidance offered with respect to the development of the anti-corruption plan. The discussion paper provides very little content on the details of current anti-corruption measures and, in particular, outlines no process for bringing the existing various approaches into one plan. Rather, there is simply a narrative description of Australia's current international commitment, a list of the agencies with some involvement in anti-corruption practices, and a broad outline of the current legislative regime governing anti-corruption acts.

CSA notes that this approach makes it difficult for stakeholders to provide detailed feedback on the questions asked in the discussion paper. Very few, if any, stakeholders will have extensive understanding of the multitude of forums in which the Australian Government and agencies participate, nor will stakeholders have a detailed knowledge of the current legislative regimes across each state and territory of Australia.

CSA strongly believes, therefore, that a greater consideration needs to be given to the strategic direction of the anti-corruption discussion. This requires a more comprehensive exploration of the current approaches to anti-corruption, while noting the various principles that should underpin the development of the plan.

Education, training and anti-corruption guidance

It is widely acknowledged that, in many instances, corrupt practices occur outside of the boundaries of the law and the deemed illegality of action does not provide a suitable deterrent to prevent these corrupt practices from occurring. Corruption will generally exist regardless of the legislative regime in place, if the practices involved are deemed to be acceptable within a particular cultural context.

CSA notes that the aim is to develop an ethical, values-based organisation, with a strong culture of resistance to any corrupt behaviours and fraud. Such an organisation understands and enacts public sector values. CSA recognises that a majority of agencies have sound values and processes in place to deal with the potential for corrupt practices. However, in some instances, if the culture is flawed or there is uncertainty in the operation of processes, organisational change needs to occur. While many agencies already provide guidance, information and training on how to effect a culture of eliminating corrupt behaviours, the issue is not always a simple question of distinguishing right from wrong. Rather it is about empowering employees to act in accordance with the agency's values despite opposing pressures to do otherwise. CSA is of the view that all organisations benefit from ongoing training and education to ensure that employees can voice and act on their values.

As a precursor to developing the integrated plan, CSA is therefore of the view that a review of current practices is required, with a view to learning from the limitations of current practices.

This will include:

- identifying gaps in the current approach, and the level at which those gaps will need to be addressed, and

- developing and promoting current processes which are working well, and providing education and training to those organisations or agencies that are not performing well, in order to improve their performance, for example, through providing staff training.

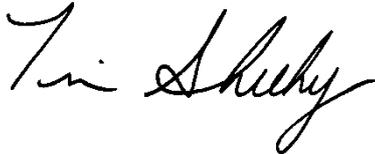
The lack of strategic direction in the anti-corruption plan suggests a lack of understanding of how organisational change is undertaken with respect to corrupt practices. CSA notes that, while Australia currently has 'strong, modern legislative regime and guidelines' (Chapter 5) which criminalise corrupt behaviours and act as a deterrent to their many forms; an attempt to eradicate undesirable behaviour must recognise that organisational change can only occur through education and training based on a principles-based approach to anti-corruption.

CSA strongly recommends that the anti-corruption plan undertake further consideration of the relevant education and training information which is currently available concerning anti-corruption practices. Further, **CSA recommends** that an analysis of this information be undertaken with a view to providing definitive principles or guidance to organisations and agencies about dealing with corrupt practices.

With these considerations in mind, CSA provides the following submission addressing the questions outlined in the discussion paper.

CSA would be more than happy to discuss its concerns further with your office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Sheehy', written in a cursive style.

Tim Sheehy
CHIEF EXECUTIVE

CSA National Anti-Corruption Plan Public Submission

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<p>Consent to publish</p>	<p><input checked="" type="checkbox"/> — Yes I consent to my submission and my name being published</p>
<p>Submission</p> <p>Question 1: In the context of the Commonwealth's multi-agency approach to anti-corruption, could policy coordination and leadership be improved? If so how?</p>	<p>CSA believes that the policy coordination and leadership of the development of the anti-corruption framework could be improved. CSA is of the view that the discussion paper does not delve deeply enough into the issues concerning policy coordination and leadership for stakeholders to provide in-depth feedback on the measures currently in place.</p> <p>CSA is also aware that the analysis of the current regime has not considered all of the relevant agencies involved in Australia's multi-agency approach. For example, CSA notes that the Commonwealth Inter-Departmental Committee on anti-corruption does not include all of the participants deemed to be relevant to Australia's multi-agency approach, as outlined in the multi-agency table on page 13 of the discussion paper.</p> <p>CSA notes further that some agencies which have a particular interest in tackling corrupt practice, such as the Auditor-General, receive very little consideration throughout the paper, and the Australasian Council of Auditors-General (ACAG) in fact receives no mention at all, particularly in chapter 6 of the discussion paper. CSA believes that the omission of ACAG is particularly disconcerting as we note that their mandate includes effective public sector accountability. Themed audits are conducted by the ACAG which could include a review of aspects of corruption risk. The results of these reviews would provide input into the multi-agency approach to gather data on corruption risk.</p> <p>Information which has similarly been gleaned from state authorities such as the work undertaken by the NSW Government's Independent Commission Against Corruption, or the Queensland's Crime and Misconduct Commission, is also neither considered nor referred to in the discussion paper. While CSA appreciates that the discussion paper has adopted a national approach to anti-corruption practices, CSA does not believe that the wealth of useful information generated at the state and territory level should be precluded from being incorporated into the review process.</p> <p>CSA notes further that the plan provides little clarity and guidance as to how the review of the current arrangements will be undertaken, including the comprehensiveness of the review process. There is no plan or recommendation within the discussion paper which elaborates on how each agency will undertake a review of their specific, anti-corruption practice, nor is there any guidance as to how this information will be utilised. For example, CSA notes that information about failed</p>

	<p>prosecutions concerning alleged corrupt practices by the Commonwealth Director of Public Prosecutions (CDPP) would provide a wealth of information with respect to addressing problems with the current legislative approach to anti-corruption. CSA notes, however, that the multi-agency model (Chapter 4) provides only a summary of the types of offences commonly prosecuted by the CDPP which relate to corruption.</p> <p>In a similar vein, information which elaborates on the relevant audit and compliance measures required by multinational government organisations, such as AusAid, would provide a wealth of information about the effectiveness of current anti-corruption measures. However, this information appears to be neither sought nor considered in the review of the national anti-corruption practices.</p> <p>The narrow approach to the review is also manifest in the reluctance of the review to explore governance measures as a consideration for tackling corrupt behaviour. Instead, CSA notes that there is only consideration given to the legislative regime and guidelines.</p> <p>CSA strongly believes that transparency and accountability for organisations and agencies are the cornerstones of preventing corruption. CSA refers to the example of the private sector to illustrate this point and we advocate that the lessons of the private sector could translate into the national review process. CSA notes the value placed on the Australian Securities Exchange (ASX) Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i> within both listed and non-listed companies as a means of engendering a culture of good governance. For listed companies, CSA also notes the ASX Listing Rules which require directors of a company to pass 'fit and proper' requirements before being allowed to trade on the ASX.</p> <p>These governance frameworks, however, also depend heavily on the education and training materials which are concurrently issued by the ASX, the Australian Securities and Investments Commission (ASIC) and other associations and organisations, such as CSA.</p> <p>CSA recommends that:</p> <ul style="list-style-type: none"> • further consideration be given to a framework for leveraging off the intelligence provided by each agency's specific anti-corruption practices, including risk identification and assessment processes; and the results of failed prosecutions of alleged corruption practices, and • the strategic overview of the anti-corruption plan contain provisions for the development of education and training materials for organisations and agencies to assist them with addressing corrupt practices within their respective organisation or agency. <p>CSA's view is that this is best effected by the anti-corruption plan undertaking further consideration of the relevant education and training information which is currently available as well as an analysis of this information with a view to providing definitive principles or guidance to organisations and agencies about dealing with corrupt practices. CSA is of the view that the development of education and training materials must focus on empowering employees to act in accordance with their agency's values despite opposing pressures.</p>
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<p>Question 2: What are the most important corruption threats to Commonwealth interests?</p>	<p>CSA notes that important corruption threats to Commonwealth interests may be those of the emerging markets and that those agencies and governments who wish to engage in business or political alliance in these will be well aware that many of the emerging markets rank poorly on the 2010 Corruption Perceptions Index.²</p> <p>CSA notes, for example, that the Australian Government has commissioned the development of a White Paper, <i>Australia in the Asian Century</i>. The White Paper will consider the likely economic and strategic changes in the region and what more can be done to position Australia within this context. Many of the countries canvassed in the paper, however, rate poorly on the 2010 Corruptions Perceptions Index with many of the countries in the Asia-Pacific region rating below five on a scale from 10 (highly clean) to zero (highly corrupt). These results indicate a serious corruption problem in this region.</p> <p>CSA is disappointed that that the discussion paper does little to recognise or engage with these emerging corruption threats to Commonwealth interests. There is only a brief, passing reference to the upheavals in the Middle East and North Africa as demonstrative of the risks posed by emerging markets, but no further consideration of how corrupt practices in emerging markets may pose a threat to Commonwealth interests.</p> <p>CSA is of the view that the anti-corruption plan needs to engage further with an analysis of not just the current risks but also emerging risks. Furthermore, the discussion paper also needs to look at the substantive measures which are being adopted by other governments, for example, the UK <i>Bribery Act 2010</i> (the Bribery Act), which; expands the possibility of liability for corrupt acts beyond jurisdictional boundaries; extends the crime of bribery to cover all private sector transactions; and creates new liability offences for failing to prevent bribery if the company has not implemented adequate due diligence measures to prevent corruption.</p> <p>CSA recommends, given the potential for public sector agencies to have international business dealings, that a further comprehensive analysis of corruption threats posed by the emerging markets be developed and presented to stakeholders for comment.</p>
<p>Question 3: To what extent is the Commonwealth vulnerable to those threats?</p>	<p>CSA notes that the extent to which the Commonwealth is vulnerable to the threats identified in response to Question 2 is contingent on how well the anti-corruption plan identifies risks and implements risk management measures. Not planning for identified threats will make the Commonwealth vulnerable.</p> <p>CSA reiterates that the discussion paper does not provide enough detail on or consideration of the depth of corruption risks which may impact upon Australia. For example, CSA notes some agencies outsource their call centres or utilise cloud computing facilities. Moreover, many of these outsourced functions are now provided internationally by companies in the emerging markets. The implication, therefore, is that agencies now need a comprehensive process which addresses the challenges posed by these changing practices.</p> <p>CSA remains concerned, however, that the discussion paper adopts a</p>

² Available from http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

	<p>relatively narrow view of corruption risk and the manner in which these risks affect Australian organisations and agencies.</p> <p>CSA recommends that further consideration be given to strengthening the overall framework with the consideration of the wider sources where vulnerabilities may occur.</p>
<p>Question 4: Are risk mitigation strategies adequate? If not, how could they be improved?</p>	<p>CSA is of the view that the discussion paper does not provide enough information with respect to the operation of risk management strategies in dealing with corrupt practices. It is difficult, therefore, for stakeholders to adequately provide feedback in this regard.</p> <p>In particular, CSA notes that the discussion paper does not provide a strategic overview which details how information learnt from the current anti-corruption regime will be utilised. By adopting a predominantly Australian approach, the discussion paper further provides no plan for how current risk mitigation strategies can be compared with either domestic or international examples.</p> <p>There is, similarly, no provision of what performance measures might be expected for the whole of government corruption risk framework.</p> <p>CSA is also concerned about the potential over-reliance on input from a variety of multi-agencies which makes management and oversight of the risk management strategies difficult to implement. While it is acknowledged that a multi-agency approach is required, the plethora of these agencies will make the overall framework cumbersome to administer effectively.</p>
<p>Question 5: Are there ways in which the Commonwealth could enhance communication and information sharing with stakeholders, including civil society?</p>	<p>CSA acknowledges that various recent initiatives have attempted to try and communicate the risks of corruption to stakeholders and the broader civil society. CSA believes, however, that the key to better engagement is the development of a strategy for the provision of education and training for stakeholders, as this will promote a culture of anti-corrupt behaviour in many organisations and agencies.</p> <p>CSA is concerned that the reliance on the practices in the current regime, as evidenced in the discussion paper, fails to adequately account for the fact that many of the existing practices developed in response to discrete issues, rather than as part of a more strategic overview of addressing corrupt behaviour. CSA believes that the anti-corruption plan must address this imbalance through the provision of definitive principles or guidance to organisations and agencies about dealing with corrupt practices, based on the wealth of education and training currently available.</p> <p>For example, CSA notes the risks and vulnerabilities posed by advances in media, and in particular the use of social media. Data contained on social media platforms may be outsourced and held in a variety of locations around the world, with many agencies and organisations powerless to stop any potential abuse of this information, particularly through organised crime syndicates. The response from agencies is varied, and CSA notes that there is no overarching guidance which can assist organisations in developing their own policy.</p> <p>The anti-corruption plan has the opportunity to provide this guidance,</p>

	<p>through the implementation of a principles-based approach to risk management strategies. The provision of a framework within which agencies and organisations can better their governance and ensure that they have considered all the factors that they need to know in relation to corruption risks will provide greater certainty to all. This might include different considerations such as an analysis of the different functions of the organisation, or how to develop processes for choosing and engaging with external service providers.</p> <p>CSA recommends, therefore, that the government consider a more principles-based approach to corruption risk mitigation strategies.</p>
<p>Question 6: Is there anything else about Commonwealth anti-corruption practices, policies, programs or organisational arrangements you would like to discuss?</p>	<p>CSA reiterates our two main concerns with respect to the discussion paper.</p> <p>First, CSA notes that the lack of a strategic overview results in stakeholders having very little insight into how the present arrangements are being considered and how new information will be adopted into the whole-of-government anti-corruption plan. For example, CSA notes that there is currently no assessment of the effectiveness of or compliance with the plan. There is, similarly, no indication as to what performance measures might be implemented, or the values upon which success against the plan will be measured.</p> <p>Second, CSA notes the narrow focus of the discussion paper which considers, predominantly, the current legislative regime and guidelines in relation to anti-corruption only. CSA strongly advocates that the improvement of organisational governance practice be considered key to any anti-corruption plan, and recommends that anti-corruption measures are best implemented through increased transparency and accountability of organisations. This approach requires an organisation to engage in organisational change, in order to embed these practices into the core of the organisation's operations. However, CSA notes that the discussion paper makes little reference to governance as a tool for combating corruption, and instead relies on the current legislative framework to breed compliance. CSA does not believe that this approach will produce the desired outcome for the anti-corruption plan.</p> <p>Instead, CSA strong recommends the development of a principles-based approach to anti-corruption practice which would engender organisational change based on education and training. Such education and training underpins improved governance within any organisation or agency and must be considered in relation to any anti-corruption plan.</p>