

# AUSTRALIA

## Moderate enforcement

1.3% of global exports

### Investigations and cases

In the period 2016-2019, there were 14 investigations commenced, three cases commenced and three cases concluded with sanctions.

In December 2019, in its Phase 4 Follow-up Report on Australia, the OECD WGB expressed concern about the continued low level of foreign bribery enforcement in the country, given the size of Australia's economy and the high-risk regions and sectors in which its companies operate.

In 2018, the Australian Federal Police (AFP) charged **Sinclair Knight Merz Pty (SKM)** (since 2013, **Jacobs Group (Australia) Pty Ltd**) and its former chief executive with conspiring to bribe foreign officials in the Philippines and Vietnam to secure infrastructure projects.<sup>1</sup> The investigation reportedly started in 2013, when the World Bank reached a settlement with SKM.<sup>2</sup> There are claims in the media that a

government minister and AusAid were informed about allegations in 2012, but aid contracts continued to be awarded to SKM.<sup>3</sup> Also in 2018, after a three-year AFP investigation, a director of trading company **Radiance International Pty Ltd**, Mozammil Bhojani, was charged with conspiracy to bribe two government officials in Nauru to secure favourable phosphate shipments for the company. The first hearing in his case was scheduled for June 2020.<sup>4</sup> A case relating to **Securrency/Note Printing Australia** concluded in November 2018 with the sentencing of the last individual prosecuted.<sup>5</sup> Prosecutions of four accused were permanently stayed by the High Court of Australia at the same time, on the basis that the Australian Criminal Intelligence Commission unlawfully used coercive powers to help the AFP question them.<sup>6</sup> In 2019, the AFP dropped its investigation into alleged payments totalling AU\$200,000 (US\$130,000) from gaming company **Tabcorp** to the Cambodian prime minister's family, considering it was not possible to obtain the evidence required for a criminal prosecution.<sup>7</sup>

In December 2018, the former CFO of **Leighton Holdings Ltd (CIMIC)** since 2015,<sup>8</sup> Peter Gregg, was convicted following a trial on two counts of falsifying company books.<sup>9</sup> The charges, brought by the Australian Securities and Investment Commission (ASIC) related to Leighton's operations in the Middle

<sup>1</sup> <https://www.theguardian.com/australia-news/2020/mar/01/this-is-a-practical-joke-the-moment-police-called-about-alleged-foreign-bribery>

<sup>2</sup> SKM self-reported corrupt misconduct to the World Bank relating to Bank-financed projects in the East Asia and Pacific region. In 2013, the World Bank reached a Negotiated Resolution Agreement with SKM and its parent companies, Sinclair Knight Merz Management Pty Ltd and Sinclair Knight Merz Holdings Ltd, imposing a conditional non-debarment on SKM and any firm it directly or indirectly controls for a period of 2.5 years, <https://www.worldbank.org/en/news/press-release/2013/07/24/world-bank-group-announces-settlement-sinclair-knight-merz>

<sup>3</sup> <https://www.theguardian.com/global-development/2018/dec/07/labor-ministers-knew-of-skm-bribery-claims-but-continued-giving-firm-work>. AusAid is now the Department of Foreign Affairs and Trade.

<sup>4</sup> *Global Legal Insights, Bribery and Corruption 2020: Australia*, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/australia>. According to media reports, Radiance had received an AU\$2.5 million (US\$1.6 million) Australian government contract to build housing for refugees held on the island, <https://www.abc.net.au/news/2018-09-17/company-linked-to-alleged-nauru-bribery-received-2.5m-from-aus/10258152>

<sup>5</sup> The case involved bribery of foreign public officials in several countries to secure contracts to produce banknotes. The companies Securrency International Ltd and Note Printing Australia and nine of their former executives and sales agents were charged with foreign bribery, conspiracy to commit foreign bribery and/or false accounting. The two companies involved had pleaded guilty in 2011 and four individuals pleaded guilty in the intervening years, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/australia>

<sup>6</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>; <https://www.smh.com.au/business/companies/seven-years-and-millions-of-dollars-later-australia-s-biggest-bribery-prosecution-finally-revealed-20181108-p50eut.html>

<sup>7</sup> See the *Exporting Corruption* Report 2018 for more details; <https://www.smh.com.au/business/companies/afp-drops-bribery-probe-into-tabcorp-s-cambodian-payment-20190911-p52q5d.html>

<sup>8</sup> According to CIMIC's 2019 annual report, its largest shareholder is HOCHTIEF Australia Holdings Limited, a wholly owned subsidiary of HOCHTIEF AG, which owned 72.8 per cent of CIMIC as at 31 December 2019. The largest shareholder in HOCHTIEF AG is Spanish-based company *Actividades de Construcción y Servicios, SA (ACS)*, which held 50.41 per cent of the shares as at 31 December 2019.

<sup>9</sup> Contrary to s.1307 of the Corporations Act, *Global Legal Insights, Bribery and Corruption 2020: Australia*

East, including in the Iraqi oil industry, and in Asia. Mr Gregg, acting on behalf of Leighton, allegedly made two payments totalling AUD\$21 million (US\$13.5 million) to a UAE company, **Asian Global Projects and Trading FZE**, for “marketing and advisory” services in relation to false steel supply deals. These payments were then backdated in Leighton’s books in order to appear legitimate.<sup>10</sup> Mr Gregg was sentenced to a total of two years in home detention.<sup>11</sup>

The company Leighton has not been charged with any offence in Australia, with a long-running AFP investigation ongoing since 2012.<sup>12</sup> Claims against Leighton came to public attention in a 2016 expose of **Unaoil** by the Australian newspaper *The Age* and the *Huffington Post*, based on a leak of 10,000 confidential documents.<sup>13</sup> In the UK, the Serious Fraud Office started criminal proceedings against **Unaoil Ltd** and **Unaoil Monaco** in mid-2018, relating to alleged corrupt payments to secure the award of a contract worth US\$733 million for **Leighton Contractors Singapore PTE Ltd** for a project to build two oil pipelines in southern Iraq.<sup>14</sup> In the United States, in a Unaoil-related case brought by the US Department of Justice (DoJ) in 2019, court documents reportedly alleged that senior Leighton executives were involved in offering bribes to win construction jobs in Iraq worth up to

US\$2 billion.<sup>15</sup> According to media reports in 2019, CIMIC entered an “investigation agreement” with the DoJ.<sup>16</sup> Also in 2019, CIMIC settled a long-running class action with investors over allegations that its senior executives had knowledge of corrupt behaviour relating to the Unaoil bribery scandal that hit the company’s share price.<sup>17</sup>

## Recent developments

In early 2020, the Australian Senate’s Legal and Constitutional Affairs Legislation Committee recommended that the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 be passed by the Senate.<sup>18</sup> The Bill aims to enhance the tools available to enforcement agencies and prosecutors to tackle corporate crime, including by: (a) simplifying the requirements to be met under the offence of bribery of a foreign public official (b) introducing an offence of failure of a company to prevent foreign bribery by an associate, and (c) implementing a Commonwealth deferred prosecution agreement (DPA) scheme.<sup>19</sup> In addition, the Australian Law Reform Commission is reviewing corporate criminal responsibility, focusing on “the need for effective laws to hold corporations to account for criminal misconduct”.<sup>20</sup>

<sup>10</sup> <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-196mr-former-leighton-holdings-executive-receives-decision-on-sentence/>; The Crown submitted that it was open for the Court to find that the true purpose of the payment was to secure the waiver of a financial obligation that one of LHL’s subsidiaries had in connection with its business in India, <https://www.abc.net.au/news/2018-12-11/leighton-executive-peter-gregg-found-guilty-falsifying-accounts/10606970>

<sup>11</sup> <https://www.afr.com/companies/infrastructure/peter-gregg-to-submit-errands-schedule-to-court-20190829-p52lyi>;  
<https://www.smh.com.au/business/companies/businessman-peter-gregg-faces-home-detention-for-falsifying-records-20190730-p52c15.html>

<sup>12</sup> <https://www.smh.com.au/business/companies/australian-firm-paid-multi-million-dollar-bribe-say-us-court-documents-20191115-p53auz.html>;  
<https://www.oilandgasmiddleeast.com/article-9951-illegal-iraq-payments-probe-underway-for-leighton>

<sup>13</sup> <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/the-company-that-bribed-the-world.html>

<sup>14</sup> <https://www.sfo.gov.uk/cases/unaoil/>; <https://www.sfo.gov.uk/2018/06/26/unaoil-group-companies-summonsed-as-part-of-sfos-ongoing-corruption-investigation/>; <https://www.afr.com/companies/cimic-signs-investigation-agreement-with-uss-doj-on-alleged-leighton-bribes-20190301-h1bw3u>. The SFO subsequently dropped its investigation into three of the executives, for which it was criticised, <https://www.theguardian.com/uk-news/2019/jun/30/serious-office-faces-questions-over-decision-to-drop-bribery-investigation>

<sup>15</sup> <https://grcsolutions.co/department-justice-indicts-australian-company-million-dollar-bribes-iraqi-officials/>; <https://www.justice.gov/opa/pr/oil-executives-plead-guilty-roles-bribery-scheme-involving-foreign-officials>

<sup>16</sup> <https://www.afr.com/companies/cimic-signs-investigation-agreement-with-uss-doj-on-alleged-leighton-bribes-20190301-h1bw3u>;  
<https://www.pleasebeinformed.com/publications/node/2808/page/0/2>

<sup>17</sup> <https://www.smh.com.au/business/companies/construction-giant-cimic-settles-bribery-class-action-20191220-p53lz1.html>

<sup>18</sup> Report published 20 March 2020, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc\\_pdf/CrimesLegislationAmendment\(CombattingCorporateCrime\)Bill2019.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc_pdf/CrimesLegislationAmendment(CombattingCorporateCrime)Bill2019.pdf;fileType=application%2Fpdf). The re-introduction of the Bill, which had lapsed earlier in 2019, was welcomed by the OECD WGB, <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>

<sup>19</sup> [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc\\_pdf/CrimesLegislationAmendment\(CombattingCorporateCrime\)Bill2019.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc_pdf/CrimesLegislationAmendment(CombattingCorporateCrime)Bill2019.pdf;fileType=application%2Fpdf)

<sup>20</sup> <https://www.alrc.gov.au/inquiry/corporate-crime/>. A final report was due in April 2020.

Whistleblower protections in the private sector were strengthened when the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 came into force in July 2019, increasing penalties, requiring public companies to have a whistleblower policy and eliminating good faith requirements.<sup>21</sup>

In November 2019, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the anti-money laundering (AML) regulator, announced that it had applied for civil penalty orders in the Federal Court against **Westpac Banking Corporation** (Westpac) alleging “systemic failures to comply with Australia’s AML-CTF [Countering Financing of Terrorism] laws”.<sup>22</sup> AUSTRAC alleges that Westpac breached money laundering laws more than 23 million times and failed to report more than AU\$11 billion (US\$7.7 billion) in payments into and out of Australia.<sup>23</sup> In December 2019, the Australian Prudential Regulation Authority launched its own investigation into Westpac.<sup>24</sup>

## Transparency of enforcement information

The AFP investigates bribery and corruption allegations at the Commonwealth/Federal level in Australia which encompass any allegations of foreign bribery.<sup>25</sup> The Australian Securities and Investment Commission (ASIC) is the corporate regulator and may be involved in foreign bribery investigations and prosecutions where there are corporate books and records offences.<sup>26</sup> The AFP and the Commonwealth Director of Public Prosecutions (CDPP) do not publish statistics

regarding investigations, prosecutions or case outcomes. The Attorney-General’s Department publishes annual statistics on requests for mutual legal assistance (MLA) made and received in relation to criminal matters, but does not distinguish foreign bribery.

The AFP may issue media releases when filing charges and ASIC issues releases when a case concludes. Australian courts publish all their decisions and remarks made during sentencing.<sup>27</sup>

## Beneficial ownership transparency

There are no central registers of beneficial ownership of companies or trusts in place, despite a previous Australian government commitment to introduce one. The Open Government Partnership website lists the Australian government’s commitment to beneficial ownership transparency as “delayed”.<sup>28</sup> In 2018, ASIC highlighted practical challenges to such reforms and queried the benefits,<sup>29</sup> while in 2019, the Australian Treasury Department reportedly denied that it had made a commitment to implement a beneficial ownership register.<sup>30</sup>

## Inadequacies in legal framework

The proposed DPA scheme, if the 2019 Bill is passed, does not require a corporation to make a formal admission of criminal liability, although it must include a statement of facts for each offence. For a DPA to be approved, the CDPP must be satisfied that it is in the public interest. If so, the approving

<sup>21</sup> <https://www.legislation.gov.au/Details/C2017B00259>

<sup>22</sup> <https://www.austrac.gov.au/about-us/media-release/civil-penalty-orders-against-westpac>; <https://www.moneylaunderingnews.com/2019/11/westpac-banking-corporation-faces-money-laundering-scandal-in-the-land-down-under/>

<sup>23</sup> <https://www.bloomberg.com/news/articles/2019-11-27/why-heads-are-rolling-at-another-big-australian-bank-quicktak>. One transaction involved money transferred from Australia to the Philippines, which was subsequently linked to serious allegations of child trafficking and sexual exploitation.

<sup>24</sup> <https://www.theguardian.com/australia-news/2019/dec/17/westpac-scandal-apra-launches-full-investigation-into-bank-over-child-exploitation-allegations>

<sup>25</sup> <https://www.afp.gov.au/search/node/bribery>

<sup>26</sup> <https://www.ag.gov.au/Crime/Foreignbribery/Documents/Foreignbriberyagencyrolesandresponsibilities.PDF>

<sup>27</sup> Courts publish decisions on their own websites. For example, the Australian Federal Court: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications>. Decisions of all courts can be found at <http://www.austlii.edu.au/>, a joint facility run by the University of Technology Sydney and the University of UNSW Faculties of Law.

<sup>28</sup> [https://treasury.gov.au/sites/default/files/2019-03/C2017-004\\_CP\\_Increasing\\_Transparency\\_of\\_the\\_Beneficial\\_Ownership\\_of\\_Companies.pdf](https://treasury.gov.au/sites/default/files/2019-03/C2017-004_CP_Increasing_Transparency_of_the_Beneficial_Ownership_of_Companies.pdf); <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency>

<sup>29</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Economics/ASICReview2018/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/ASICReview2018/Report)

<sup>30</sup> <https://www.theguardian.com/australia-news/2019/feb/11/coalition-abandons-plan-for-register-to-help-beat-tax-avoidance>

officer must be satisfied that the terms of the DPA are in the interests of justice, and are fair, reasonable and proportionate. There is no requirement to publish the reasons for approving the DPA.<sup>31</sup>

The facilitation payments defence remains, despite concerns that such payments are often de facto bribes and that the defence is incompatible with UNCAC commitments.<sup>32</sup> Proposed improvements regarding public-sector whistleblower protection remain to be introduced.<sup>33</sup> There continues to be no debarment regime for companies convicted of bribery and corruption.<sup>34</sup> The anti-money laundering legal framework does not cover real estate agents, accountants, auditors and lawyers.

## Inadequacies in enforcement system

Australia's enforcement system remains inadequate and prosecutions remain low.<sup>35</sup> The SKM case sparked criticism of the perceived lack of resources dedicated to tackling foreign bribery, with reports focusing on the delay of almost five years between the AFP announcing its investigation and the matter going to court.<sup>36</sup> The investigation of Leighton Holdings has been ongoing since 2012. However, in 2019, the OECD WGB noted in its Phase 4 Report on Australia a significant increase in the AFP budget allocated to foreign bribery investigations.<sup>37</sup> With regard to the confiscation of assets and monies in foreign bribery cases, the amounts seized by the authorities are low when compared to the value of the bribes and contracts obtained. The OECD WGB concluded that the sanctions imposed were "remarkably low" and raised serious doubts as to

whether the current enforcement regime is sufficiently dissuasive.<sup>38</sup> No steps have been taken to address the OECD WGB's criticisms. The WGB also expressed concern in 2019 that Australia had taken no steps to ensure that it can provide MLA to Parties to the Convention that apply civil or administrative (not criminal) liability to legal persons.<sup>39</sup>

## Recommendations

- Publish statistics on foreign bribery investigations, prosecutions and case outcomes
- Develop a database of foreign bribery investigations and enforcement outcomes
- Adopt laws on the disclosure of beneficial ownership and establish a publicly accessible central register to increase transparency around corporate beneficial ownership
- Pass the 2019 Crimes Legislation Amendment (Combatting Corporate Crime) Bill as soon as possible
- Abolish the facilitation payments defence
- Remove exemptions from the Anti-Money Laundering and Countering Financing of Terrorism Act, so that real estate agents, accountants, auditors and lawyers are covered by the regime
- Introduce a debarment regime granting agencies the power to preclude companies found guilty of foreign bribery offences from being awarded contracts
- Expand the scope of MLA laws to allow requests to be made for civil or administrative proceedings.

<sup>31</sup> <https://www.ag.gov.au/Consultations/Pages/Deferred-prosecution-agreement-scheme-code-of-practice.aspx>

<sup>32</sup> <https://www.austrade.gov.au/ArticleDocuments/1358/Antibribery-Facilitation-Payments.pdf.aspx>

<sup>33</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf>; <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>

<sup>34</sup> In March 2018, the Senate Economics References Committee published a report on foreign bribery in which it recommended the adoption of a debarment framework requiring companies to disclose if they have been found guilty of foreign bribery offences, and granting agencies the power to preclude companies from being awarded contracts, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Foreignbribery45th/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Foreignbribery45th/Report)

<sup>35</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf>; <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>

<sup>36</sup> For example, <https://www.theguardian.com/australia-news/2018/jul/14/sinclair-knight-merz-foreign-bribery-case-sparks-call-for-greater-police-resources>

<sup>37</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>

<sup>38</sup> <https://www.theguardian.com/australia-news/2018/jul/14/sinclair-knight-merz-foreign-bribery-case-sparks-call-for-greater-police-resources>. For example, the Securrency/NPA pecuniary penalty order was the largest ever imposed in Australia, but significantly low in the context.

<sup>39</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>. The FATF has looked at the Australian approach more favourably, <http://www.fatf-gafi.org/countries/a-c/australia/documents/fur-australia-2018.html>