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TI AUSTRALIA SUBMISSION TO THE INDEPENDENT REVIEW OF THE AUSTRALIAN PUBLIC SECTOR.

To whom it may concern,

Transparency International Australia is pleased to submit comments to the Independent Review of the Australian Public Sector.

SUMMARY

Transparency International Australia encourages the independent review panel to give consideration to measures which will strengthen Australia's integrity framework and establish stronger institutions and functions to detect, prevent and investigate bribery, corruption and fraud, in a coordinated and cohesive manner.

As the *Report to the Nations 2018 Global Study on Occupational Fraud and Abuse* noted

"Corruption represents one of the most significant fraud risks for organizations in many industries and regions. Understanding the specific factors involved in corruption schemes can help organizations effectively prevent, detect, and investigate them¹".

Recommendations.

1. Establish a broad based federal anti-corruption agency with both investigative and preventative powers as part of an enhanced multi-agency approach to prevent, detect and investigate cases of bribery and corruption, as well as breaches of the APS Code of Conduct.
2. Develop an integrity and corruption prevention strategic plan and framework with appropriate oversight, monitoring and coordination.
3. Allocate adequate resources to agencies tasked with the prevention, detection, investigation and prosecution of corruption and fraud cases.
4. Amend the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*, to require Designated Non-Financial Businesses and Professions to submit Suspicious transaction reports.

¹ Report to the Nations 2018 Global Study on Occupational Fraud and Abuse <https://s3-us-west-2.amazonaws.com/acfe-public/2018-report-to-the-nations.pdf>, p.13



5. Establish a public register of beneficial owners, including trusts, to help understand who the real beneficiary of a property and business transaction is, including politically exposed persons and their associates.
6. Address the mining approvals corruption risk issues, particularly strengthened due diligence, lobbying and industry influence, and transparency of project agreement-making terms.
7. Strengthen procurement and contracting through great alignment with the Open Contract Data Standard and improved and transparent due diligence into tender applicants.
8. Establish a transparent debarment regime which would allow authorities to prevent individuals and companies who have breached fraud, foreign bribery and anti-money laundering laws from tendering for and winning government-funded work.

TRANSPARENCY INTERNATIONAL AUSTRALIA

TI Australia (TIA) is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government. TIA was launched in March 1995 to raise awareness of corruption in Australia and to initiate moves to combat it. TIA believes that corruption is one of the greatest challenges of the contemporary world. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public-sector development and particularly hurts the poor. It drives economic inequality and is a major barrier in poverty eradication. Tackling corruption is only possible with the cooperation of a wide range of stakeholders. We engage with the private sector, government and civil society to build *coalitions against corruption*. Coalitions against corruption will help shape a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

TI Australia is the national chapter of [Transparency International \(TI\)](#), the global coalition against corruption, with a presence in over 100 countries. TIA fully supports TI's [Vision, Objectives and Guiding Principles](#) and [Mission and Strategy](#).

TI Australia, is registered with the Australian Charities and Not-for-Profits Commission (ACNC).

TI AUSTRALIA POSITION

TIA welcomes the opportunity to make the following general comments in response to the Review Terms of Reference, which we note are very broad. We also note that no reference to 'integrity' is made in the ToR, or indeed the purpose of this review. This is a missed opportunity in our view, and at a time when public trust in government is at an all-time low.

Suitability of the APS's architecture and governing legislation.

The existing APS architecture, governing legislation and enforcement agencies lack the required coherence, coordination and resources to prevent, detect and investigate cases of bribery and corruption, as well as breaches of the APS Code of Conduct.

Transparency International Australia's position remains that a broad-based federal anti-corruption agency is needed, as part of an enhanced multi-agency strategy, to ensure a comprehensive approach to corruption risks beyond the criminal investigation system, and to support stronger parliamentary integrity.

Transparency International Australia was the first public interest group to call for a more broadly-based federal anti-corruption body in 2005. Our position remains unchanged.



Effective institutions to prevent, detect, expose and remedy official corruption are vital at all levels of government. Under Articles 6 and 36 of the UN Convention Against Corruption (2004), governments including Australia, have committed to ensuring they have 'a body or bodies or persons specialised' in combatting corruption, through both prevention and enforcement.

The Commonwealth's current multi-agency approach is one with significant gaps, which would be best addressed through the addition or expansion of a general-purpose integrity commission with both investigative and preventative powers.

We draw your attention to our most recent [submission to the Senate Select Committee on a National Integrity Commission](#) (April 2017), which highlights the existing gaps.

In addition, we Note:

Lack of a corruption prevention plan or framework

The APS lacks a comprehensive corruption prevention plan and, or, framework. This includes the lack of requirement for agencies to have their own corruption prevention plans or strategies. Historically fraud and corruption prevention frameworks have been seen as one and the same, and the [Commonwealth Fraud Control Framework](#) was reissued in August 2017. However, research undertaken through an Australian Research Council Linkage Project, '[Strengthening Australia's National Integrity System: Priorities for Reform](#)', funded in May 2016 and led by Griffith University with support from Transparency International Australia, the NSW Ombudsman, the Queensland Integrity Commissioner and Crime and Corruption Commission, Queensland, will demonstrate that this is clearly not the case. Learn more about the project [here](#).

Further, the Transparency International Global Corruption Barometer released March 2017, showed that 76 per cent of citizens think at least some federal parliamentarians are involved in corruption, including 12 per cent who believe that most or all are involved.

Integrity and corruption prevention need their own strategy and framework. These needs upgrading to ensure appropriate monitoring, oversight and co-ordination.

Please note, the [National Integrity Systems Symposium – Australia's Public Integrity Institutions: Strengths, weaknesses options](#), will be held on the 21 August in Canberra. The APS Review Panel is encouraged to attend.

APS Code of Conduct

A review and upgrade of the framework to detect and investigate breaches of the APS Code of Conduct is required. The absence of centralised coordination and oversight, such as the mandatory reporting obligations on agencies regarding misconduct matters, that typically exist at a State level, is an inherent weakness.

Further, the framework gaps to identify 'grey area corruption' and misconduct across the federal sector, means that these issues are at risk of not being dealt with appropriately, or strategically. We note the important role of the Australian Public Sector Commissioner (APSC) in supporting the Code of Conduct investigative regime, however this is not 'real time' monitoring, does support systematic quality-control of how matters are, or not, dealt with, nor does it provide scope for the APSC to step-in or take such matters in hand. This relies on an appeal or complaint to other Commissioners /agencies.

Insufficient Resources

Transparency International Australia has long maintained that insufficient resources are being allocated to prevent, detect, investigate and where appropriate prosecute corruption and fraud cases. This also includes corruption risk assessment and due diligence and corruption resilience training among the compliance and governance functions within APS agencies. While the Code of Conduct has its place, resources are needed to ensure it is embedded in the



governance framework of all agencies as part of an overall, coordinated corruption prevention system across the federal sector.

Ensuring our domestic, foreign, trade and security interests are coordinated and well managed

Anti-Money Laundering and Counter Terrorism Financing

An effective and long overdue approach to ensuring our domestic, foreign, trade and security interests are coordinated and well managed would be to strengthen Australia's Anti Money laundering and Counter Terrorism Financing (AML/CTF) laws to combat money laundering in Australia.

Money laundering has a direct impact on people and communities in both developed and developing countries. It is a global problem on a grand scale, and Australia is exposed.

It is estimated that US\$1.1 trillion a year leaves developing countries alone in the form of illicit financial flows. These flows help to fund illegal activities and criminal organisations, they hinder much-needed economic growth, and help to perpetuate conflicts around the world. Laundered money and illicit financial flows, often ends up invested in Western banks, the property market and luxury goods.

The recent case involving the CBA and breaches of the Australian AML/CTF laws by failing to report suspicious transactions on 53,750 separate occasions, highlights the risk of illicit financial transactions, often the proceeds of crime, being laundered through Australia and other major financial markets.

Australia does regulate major money laundering and terrorism financing channels, such as banking, remittance and gaming, however, most designated non-financial businesses and professions (DNFBP), including real estate agents, lawyers and accountants, are still not subject to anti-money laundering/ counter-terrorist financing requirements and have insufficient understanding of their risks.

Money laundering extends beyond the financial services sector and the current AML/CTF law has not kept pace. Non-financial entities such as real estate agents, accountants and lawyers are not required to submit Suspicious Transaction Reports.

Research undertaken by Transparency International, [Doors Wide Open](#), confirms that the real estate market has long provided a way for individuals to secretly launder or invest stolen money and other illicitly gained funds. This is the case in Australia.

Purchasing property is an easy and convenient place to hide hundreds of millions of dollars from criminal investigators, tax authorities or others tracking criminal behaviour and the proceeds of crime.

In many such cases, property is purchased through anonymous shell companies or trusts without undergoing proper due diligence by the professionals involved in the deal. The ease with which such anonymous companies or trusts can acquire property and launder money is directly related to the insufficient AML/CTF laws and enforcement practices in attractive markets – including no requirement to report suspicious transactions.

The countries analysed in [Doors Wide Open](#) – Australia, Canada, the United Kingdom and the United States – have committed in different forums, such as through the Financial Action Task Force and the G20, to do more to prevent and curb money laundering and terrorist-financing, including by regulating gatekeepers, such as real estate agents, lawyers and accountants, who may act as facilitators in transactions that can enable money laundering.

Despite Australia's international commitments, current rules and practices are inadequate to mitigate the risks and detect money laundering in the real estate sector.



The report found Australia has severe deficiencies under all 10 areas identified in the research. It's the easiest place to launder money among the four countries and does not meet commitments made in international forums to tackle corruption and money laundering in real estate.

Beneficial Ownership

In Australia, real estate agents are not subject to the provisions of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*. Other professionals such as lawyers and accountants who may also play a role in the sector are not covered either. This means that properties can be bought and sold without adequate due diligence on the parties, including an assessment of the real beneficial owner.

Currently there are no requirements for real estate agents or any professional involved in real estate deals to submit Suspicious Transaction Reports, even if they suspect illegal activity is taking place, and there are no requirements or rules for verifying whether customers are Politically Exposed Persons or their close associates.

Of the countries analysed, only Australia has a check on foreigners wishing to purchase residential properties², but there is no requirement to disclose the identity of individuals (or beneficial owners) behind foreign companies purchasing property.

Further, the Australian National Audit Office (ANAO) undertook an audit of *Compliance with Foreign Investment Obligations for Residential Real Estate*³ in response to concerns that foreign investors were not complying with foreign investment obligations and purchasing properties they were not entitled to own. The audit identified several strengths in the system, and noted:

“The ATO has developed processes for compiling a land register of residential real estate but faces considerable challenges in populating the register with reliable data in coming years, which it needs to overcome in order to be effective.”

“The ATO has assessed and addressed compliance risks in relation to foreign investment obligations for residential real estate but has not yet compiled and implemented a compliance and enforcement strategy.”

“The ATO has partially effective processes to detect non-compliance with foreign investment obligations for residential real estate.”

As noted above, the lack of requirement to identify the beneficial owners behind foreign companies purchasing property, is a significant gap in Australia's capacity to detect non-compliance with obligations, and to prevent the risk of money laundering and investment by politically exposed persons.

The establishment of a public register of beneficial ownership would greatly assist, and ensure Australia keeps pace with the EU, the UK and others who have acted to address the beneficial ownership issue. Recent [media](#) outlines new requirements of ownership disclosure by oversea owners of UK property. This is in addition to the existing UK People with Significant Control Register (2016).

² Foreign investors are required to receive approval before acquiring an interest in residential real estate. Taking an interest in residential real estate prior to receiving approval is a breach of the *Foreign Acquisitions and Takeovers Act 1975*. Australia attracts a large volume of foreign investment applications for residential real estate, with 40 149 applications in 2015–16, and approvals that year totalling \$72.4 billion in proposed investments. See <https://www.anao.gov.au/work/performance-audit/compliance-foreign-investment-obligations-residential-real-estate>

³ <https://www.anao.gov.au/work/performance-audit/compliance-foreign-investment-obligations-residential-real-estate>



Transparent and effective use of taxpayers' money in delivering outcomes

Transparency International Australia encourages the review panel to consider strengthened and more transparent procurement, contracting, and the awarding of licences and approvals in high risk sectors such as mining, infrastructure and defence.

Mining Approvals

Recent research undertaken by TIA, [Corruption Risks in Mining Approvals in Australia](#), identified a number of corruption vulnerabilities in the mining approvals process in QLD and WA including:

- Inadequate due diligence investigation into the character, integrity and track record of project applicants
- Lack of investigation into the beneficial ownership of companies and proponents seeking to operate a mine
- Inadequate verification of the accuracy of Environmental Impact Statements in the approvals process for large infrastructure projects elevated through the Coordinated Projects process in QLD
- Lack of transparency and public notification of the terms of negotiation of State Agreements in WA, prior to executing the agreement
- Low levels of transparency and accountability of large mining infrastructure project approval
- Inadequate protection of whistle-blower's in both State and Commonwealth regulatory frameworks for mining approvals
- Inappropriate industry influence and lobbying to influence both the policy and political agenda of government in the development of major resource projects
- An under-regulated system of political donations which can allow interest groups to influence policy and decision-making
- The 'revolving doors' of personnel between government and industry
- The risk of State capture when the approvals process allows the exercise of discretion either by a Minister or senior government representative
- Low levels of transparency of agreements between Native title parties and mining companies
- Poor or 'unbalanced' representation of Native title parties' interests

These corruption vulnerabilities can and do impact on ensuring transparent and effective use of taxpayers' money and inhibit the likelihood of delivering outcomes that meet the interests of citizens more broadly.

Procurement and Open Contracting

Australia has been a leader in transparency of public procurement there remain real opportunities for improvement. The issuing of licenses, contracts, permits, approvals and compliance oversight, remain vulnerable to associated risks of conflicts of interest, discretionary powers of licensing authorities, inadequate due diligence into project proponents (including their overseas operations), limited transparency and accountability of contract terms and inadequate and meaningful community consultation.

Taking real steps to make sure that public spending delivers the best outcomes for citizens, creates the best value for money and enables government, business and citizens to see results can help rebuild trust. The key aspects of the open contracting approach – an open by design contracting system, accessible and useable open data on all stages of government contracting, and engagement of all actors to fix problems and innovate – can deliver on trust and better results in part by addressing some of the vulnerabilities highlighted above.

The Federal Government spent over \$47 billion AUD on contracts over \$10,000 in 2016-2017, around 10% of total spending⁴.

⁴ Current estimates for overall Federal spending in 2016-2017 is \$450.76 billion AUD. See: <http://www.abc.net.au/news/story-streams/federal-budget-2017/2017-05-09/federal-budget-2017-infographic-data-sliced-diced/8492204#spending/breakdown/2017/social-security-and-welfare>



The Australian National Audit Office (ANAO) has highlighted several challenges with the processes and the data on AusTender, including inaccuracies, inefficiencies, limited usefulness due to a lack of comparability to other data sets, and significant gaps⁵.

AusTender is a leading e-procurement platform. It can be made more powerful and useful to government, business and citizens if it operated as an open data platform. For example, use of structured open data on all stages of the government contracting process can help:

- Improve the accuracy, fullness, and comparability of AusTender data.⁶
- Better understand and monitor types of government spending through more sophisticated reporting and analysis including improved capacity to report on small business participation, in-sourcing labour to the Australian Public Service and other government information needs;
- Build intelligence around corruption risks and red flag contracting processes, bids or amendments for further examination, especially when able to be combined with other datasets such as ABS and ASIC registers and, ideally, beneficial ownership information;
- Contribute to outcomes-based monitoring and assessment of government contracts;
- Be combined with other data sets to inform public policy and programme management – for example linking with datasets on government budget allocations, or health or education facilities and outcomes.

Through the [Open Government Partnership Australia](#) has made a commitment to waste review how the information published and shared by the government matched the [Open Contracting Data Standard](#) (OCDS). This is welcome, however more needs to be done, including:

- **Transform Federal Government contracting information into open data** and invest in its use through multi-stakeholder engagement. Publish all AusTender data in open data, using the Open Contracting Data Standard.
- **Strengthen open and clean contracting, licence and permit approvals in sectors that can be vulnerable to corruption**, such as mining, construction, infrastructure and defence.
- **Progress the agenda of the G20 Anti-Corruption and Infrastructure Working Groups**, through a consultative assessment and alignment of Australia's infrastructure procurement practices with the OCDS, and lead discussions on open and clean contracting in infrastructure through the G20 Global Infrastructure Hub and G20 Infrastructure Working Group.
- **Establish a transparent debarment framework** which would allow authorities to prevent individuals and companies who have breached fraud, foreign bribery and anti-money laundering laws from tendering for and winning government-funded work.
- **Establish due diligence guidelines to accompany the Commonwealth Procurement Rules** to ensure a consistent approach across all government departments to assess the integrity, character and track record of tender applicants. Ensure monitoring, oversight and disclosure of due diligence assessment.

⁵ Maddocks, Review of AusTender data against the Open Contracting Data Standard

⁶ These issues have been highlighted in a series of recent reviews including: ANAO Audit Report No.19 2017-18, Australian Government Procurement Contract Reporting; ANAO Audit Report No.48 2014-15 Limited Tender Procurement, p. 19 and p. 56; Maddocks, Review of AusTender data against the Open Contracting Data Standard; and Mid-Term Review of Australia's First National Action Plan, p 90.



Transparency International Australia supports the submission to this Review by the Open Contracting Partnership which outlines what additional measures are required to strengthen Australia's contracting and procurement regime.

Tackling complex, multi-sectoral challenges in collaboration with the community, business and citizens

Multistakeholder platforms that engage representatives of government, business, and civil society can be an effective way to tackle complex multi-sectoral challenges. Examples include the Extractives Industry Transparency Initiative (EITI) and the Open Government Partnership (OGP).

They also provide an opportunity for the government and relevant departments to actively engage and demonstrate leadership and citizen engagement.

The OGP second National Action Plan is due to be finalised and submitted in August 2018. This provides an excellent opportunity for the government to promote the OGP and support the commitments made.

In comparison, the EITI Multistakeholder Group has made limited progress in recent years, despite strong support from industry and civil society.

CONCLUSION

In addition to the points made in this submission, please be advised that our partner for the [National Integrity Systems Assessment](#) project, Griffith University, is developing a comprehensive *Options Paper: Integrity Systems Reform*, of the national integrity framework. This will be released prior to the [National Integrity Systems Symposium – Australia's Public Integrity Institutions: Strengths, weaknesses options](#), to be held on the 21 August 2018 in Canberra.

Yours sincerely

A handwritten signature in black ink, reading "Serena Lillywhite", positioned above a horizontal line.

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