



Australian Perspectives on Anti-Corruption Laws and Compliance

Simon Bronitt



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Charles Sturt
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About



Our Evolving Vision: 2007-2013

- To achieve excellence and leadership in policing and security research nationally and internationally.
- To impact on policy and practice.
- To strengthen the security of Australia through promoting evidence-based research and policy-making.
- To train the next generation of policing and security researchers through PhD and Post Doctoral Programs.



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CONTEXT

Problems with Corruption in Australia

ANUPOLL (2012) – What Problem?

- 91% of Australians surveyed had never encountered a public official who hinted he or she wanted, or asked for, a bribe or favour in return for a service
- Growing public anxiety about corruption - a significant proportion (43%) of Australians surveyed believed that corruption is on the rise.
- Only half surveyed knew where to report corrupt activity, and of those, one half nominated the police, and 15 percent nominated the Ombudsman. Only 5 percent mentioned the existing anti-corruption agencies!

Source: Ian McAllister, Juliet Pietsch and Adam Graycar, Perceptions of Corruption and Ethical Conduct- The Australian National University Poll (ANUPOLL), Report No. 13(2012).

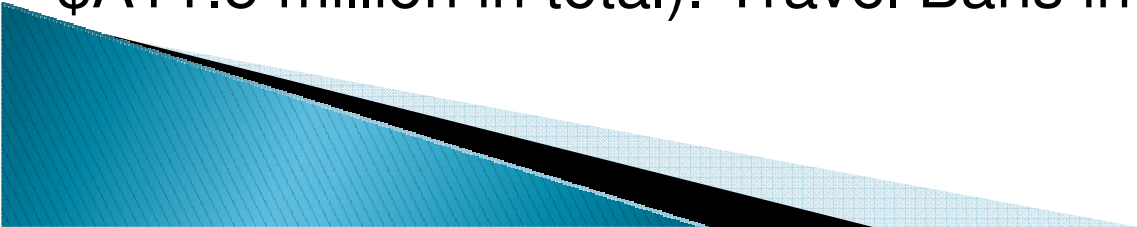


AN ALTERNATE VIEW

Is Australia really the Cayman Island of the Region?
Might be Unfair on the Cayman Island: see John Masters,
'Passing the Buck', <http://www.ceps.edu.au/events/72>.

Mr Sam Koin, Papua New Guinea Justice Department
Chair of Operation Sweep found significant funds being sent
offshore to Australia.

Koin pointed out that the Registrar of Land Titles in North
Queensland revealed that six well-known PNG politicians
have invested in million-dollar properties (worth more than
\$A11.5 million in total). Travel Bans in place.



Domestic Legal Regulatory Frameworks

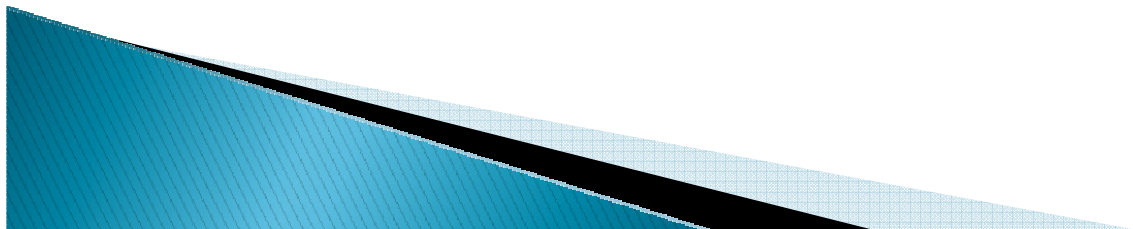
One Country – Nine Legal Systems

Federal Constitutional Power to Implement Treaties

United Nations Convention against Corruption (UNCAC) (entered into force 14 December 2005)

Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials (entered into force 15 February 1999)

United Nations Convention Against Transnational Organised Crime (UNTOC) (entered into force 2004).



Domestic Legal Regulatory Frameworks

Australia meets its international obligations through:

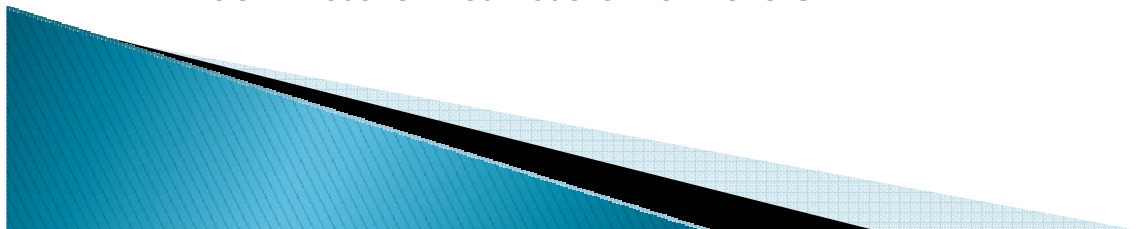
Legislation: eg Criminal Code, POCA

Enforcement Action: Cth DPP

Audit: Australian National Audit Office audits government agencies.

Self-Regulation by Industry: for example, the Australian Stock Exchange (ASX) voluntary Corporate Governance Guidelines, and

International cooperation: with regional and international authorities.



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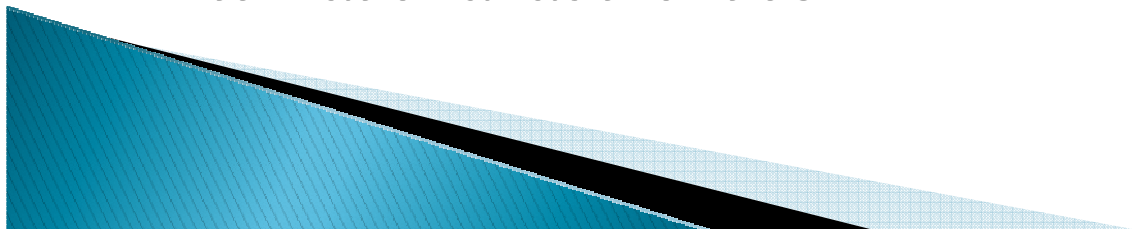
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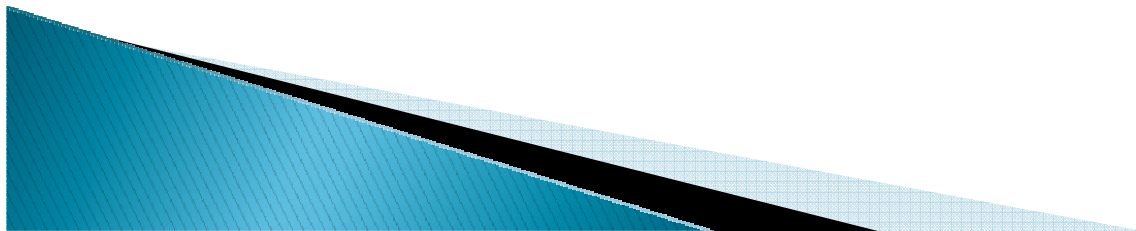
National Strategy on Anti-Corruption

Australian had no National Anti-Corruption Strategy or Plan until 2011!

Australia has no single National Anti Corruption Agency!

Australian Model: National Anti-Corruption Plan (NACP)
Multi-Agency/Whole of Government Model or Making
Virtue from Vice?

Aims to bring the relevant agencies together under a cohesive framework and strengthen the Government's capacity to identify and address corruption risks.



Criminal Law (Under)Enforcement

Corruption is dealt with under the following offences:

Bribery of a Commonwealth official (ss 141 and 142 Criminal Code, giving or receiving a bribe) (5 charges for receiving in 2011/12)

Bribery of a foreign public official and officials of public international organizations (s 70.2 Criminal Code) (nil charges in 2011/12)

Abuse of public office contrary (s142.2 Criminal Code) (1 charge in 2011/12) and Trading in influence (Section 142.3, Criminal Code (nil)

Embezzlement of property by a public official (Financial Management and Accountability Act 1997) and embezzlement of property in the private sector (s 131.3, Criminal Code)

Laundering of proceeds of crime (s 400, Criminal Code)



Policing Private Sector Corruption: The Challenge of Compliance?

Australian Transaction Reports and Analysis Centre (AUSTRAC) gathers financial intelligence on potential crimes, including corruption.

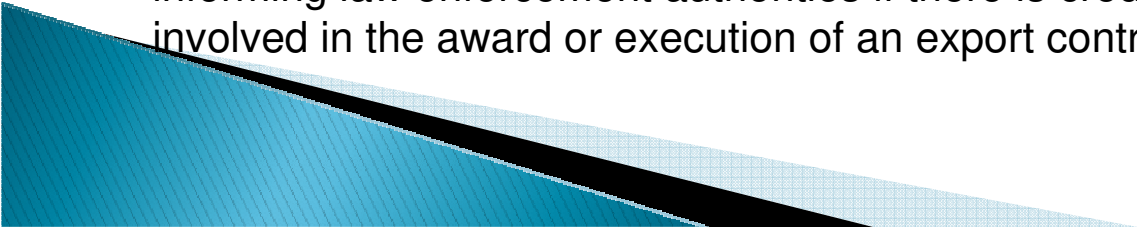
Australian Competition and Consumer Commission (ACCC) advice on how make a complaint—and advises small businesses how to avoid corrupt conduct.

Australian Prudential Regulation Authority (APRA) oversees banks, credit unions, building societies, insurance companies, and the superannuation industry.

Australian Securities and Investment Commission (ASIC) investigates offences (incl bribery) by corporations and corporate officers.

Export Finance and Insurance Corporation (EFIC):

informing exporters and, where appropriate, other relevant parties, of the legal consequences of engaging in bribery;
requiring exporters and, where appropriate, other relevant parties, to provide a 'no engagement in bribery' declaration; and
informing law enforcement authorities if there is credible evidence that bribery was involved in the award or execution of an export contract.



Conclusions

More Law? UK 'Off the Shelf' Solutions?

New Unexplained Wealth Powers:

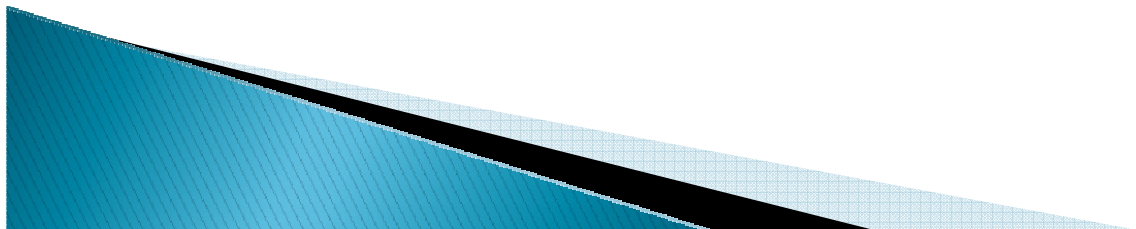
Crimes Legislation Amendment (Serious and Organised Crime) Act 2010 (Cth)

Insights from Criminology and Third Party Policing:

Are the third parties victims, offenders, informers, or all of the above (persons of interest)?

Whistleblowing Protection: Public or Private Models

A Role for *Qui Tam* Actions?



QUESTIONS?

Contact: s.bronitt@griffith.edu.au

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