

Your Ref:

Our Ref: International Law / Relations Section: 21000325/83

30 May 2011

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

By Post and Email: UNCAC.Review@ag.gov.au

Dear Sir / Madam

CONSULTATION ON THE REVIEW OF AUSTRALIA'S IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Thank you for the opportunity to make submissions on Australia's compliance with chapters three and four (articles 15-50) of the United Nations Convention against Corruption (UNCAC), which addresses criminalisation of corruption, prevention of corruption, law enforcement, asset recovery and international cooperation.

According to the Attorney-General's Department, Australia meets its obligations under UNCAC through:

- a combination of Commonwealth legislation;
- various Government bodies such as the Attorney-General's Department, Australian Federal Police and Australian Crime Commission (amongst others);
- procedural safeguards such as auditing;
- self-regulation; and
- cooperation with regional and international authorities.

Article 36 of UNCAC requires State Parties to ensure the existence of a body or bodies (or persons) specialised in combating corruption through law enforcement. These bodies must be independent and function in accordance with the fundamental principles of the legal system of that State Party. They must also carry out those functions effectively and without undue influence. It should be considered whether, in meeting this obligation, it is necessary or desirable to consider the establishment of a specialist Commonwealth anti-corruption agency (with functions similar to those of State bodies, the Queensland Crime and Misconduct Commission, Independent Commission Against Corruption New South Wales, and Western Australia's Corruption and Crime Commission).

Chapter IV of UNCAC deals with Australia's obligations with respect to international cooperation. International cooperation in investigations and criminal and civil proceedings must, as stated in article 43, be implemented in a manner appropriate and consistent with Australia's legal system. That means that obligations under UNCAC must not override the rights provided under Australian law or Australia's obligations under other international conventions. In particular, mutual assistance between Australian

law enforcement authorities and international law enforcement authorities should not expose Australian citizens to torture or the death penalty. This requirement should be embedded in law, not merely provided for in guidelines (for example the Australian Federal Police's Practical Guide on International Police-to-Police Assistance in Potential Death Penalty Situations).

We also note that Australia has the opportunity to work with its near neighbours in the region (in particular Fiji, Papua New Guinea and East Timor) and to assist those parties to develop systems and expertise to combat corruption. We encourage the Australian Government to work with the States and with State entities to advance this objective.

If you have any concerns regarding the contents of this letter or would like to discuss this issue further, please do not hesitate to contact Ms Binny De Saram, a Policy Solicitor with our office on (07) 3842 5885 or b.desaram@qls.com.au

Yours faithfully

Bruce Doyle
President