Foreign Bribery

THE **INQUIRY**

Briefing paper on the Senate Inquiry into Australia's foreign bribery regime

October 2015

DLA PIPER

INTRODUCTION

On 24 June 2015, the Commonwealth Senate Standing Committee on Economics (the Senate Committee) was referred an inquiry into foreign bribery (the Inquiry). To date, 39 organisations and individuals have made written submissions to the Inquiry. The Senate Committee will provide its report to the Senate by July 2016.

This guide aims to give you an overview of the issues being considered by the Inquiry. We have analysed the terms of reference for the Inquiry (the **Terms**), the submissions received to date, and the changes which we think may result from the Inquiry. Throughout the progress of the Inquiry and in its aftermath we will continue to monitor and provide updates. So watch this space for your guide to the Inquiry and what you and your organisation need to know about how Australia's anti-bribery framework may change.

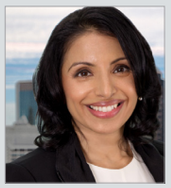
Background: While review of Australia's foreign bribery laws had been foreshadowed by successive governments for a number of years, other than a public consultation process about the facilitation payments defence in 2011, no substantive action was taken until 5 March 2015, when Senator Sam Dastyari called for the urgent reform of Australia's anti-bribery legislative and regulatory framework and approach to enforcement. On 24 June 2015, in response and support, Senator Xenaphon moved that these issues be referred to the Senate.

The **Terms** provide a set of issues for consideration, ultimately to review *"the measures governing the activities of Australian corporations, entities, organisations, individuals, government and related parties with respect to foreign bribery."* The Terms also seek comment and opinion on the effectiveness of Australia's current anti-bribery regime and its compliance with international obligations. Our overview of the Terms can be found here.

The Senate Committee invited submissions in response to the Terms of Reference. A total of 39 submissions were received by the Committee, from a broad range of organisations and individuals, including government departments, legal academics, industry bodies, multinational corporations from various industry sectors (including financial services and extractive industries) and not-for-profit organisations. A **summary of their recommendations and comments, categorised by the key themes** emerging from the submissions, can be found here.

Based on our review of the law and the themes reflected in the submissions, we've summarised here **potential changes** that may follow from the Inquiry.

AUTHORS



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TERMS OF REFERENCE

The terms of reference for the Inquiry require a broad consideration of the effectiveness of, and any possible improvements to, Australia's measures against foreign bribery and the existing Commonwealth legislative framework governing anti-bribery.

The Terms provide specific topics for consideration, including:

- Improvements to implementation of Australia's obligations under the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), and the United Nations Convention against Corruption* (UNCAC);
- the range of offences applicable to foreign bribery;
- penalties that apply for contravention of the foreign bribery laws;
- resourcing and effectiveness of the Commonwealth agencies involved in investigating and prosecuting foreign bribery offences;
- mechanisms for international information gathering and evidence (including treaties, agreements, jurisdictional reach, etc.);
- measures to encourage self-reporting;
- official guidance on what is a culture of compliance;
- whistle-blower protection; and
- the economic impact of bribery.

In part, the Terms appear to be responding to controversial grey areas in Australia's current foreign bribery regime, such as the "facilitation payment" defence; the lack of alignment with foreign bribery regulation and enforcement in peer jurisdictions; and perceived deficiencies in the skills, structures and resources available to Australian investigative agencies. The inclusion of these issues seems to indicate that the Inquiry is intended to have some teeth, with the potential, ultimately, for an increase in the range of offences and penalties, a reduction of available defences, and improvement of enforcement arrangements.

THE SUBMISSIONS: KEY THEMES

AT A GLANCE

An analysis of the 39 submissions received by the Inquiry reveals a number of common themes.

20 submissions advocate expansion of the scope of Australia's current foreign bribery offences

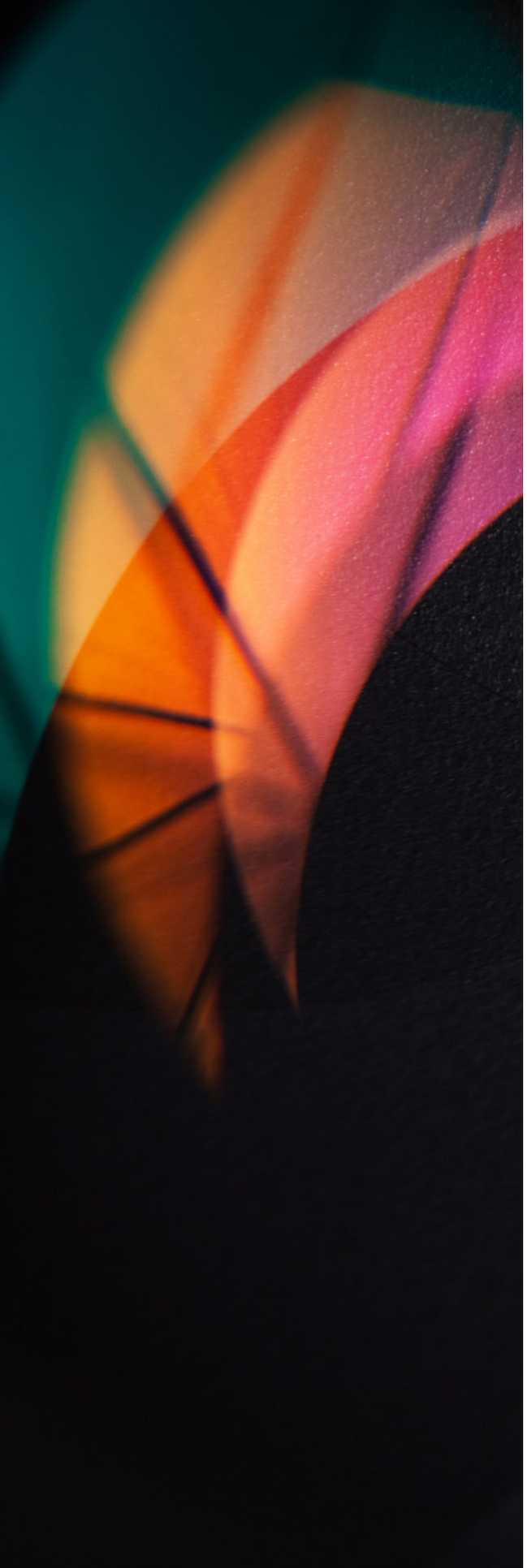
16 submissions call for abolition of the facilitation payments defence, or reform of the defence

18 submissions seek provision of official guidelines on the operation of the foreign bribery offences

14 submissions argue for improvement and expansion of the current regimes for protection of whistle-blowers

SUGGESTIONS FOR CHANGE INCLUDED:

- Reform of the legislative and regulatory framework for bribery offences, including an increase in the number of offences (for example, introduction of a false accounting offence), removal of the facilitation payments defence, and an increase in the range of penalties applied for non-compliance.
- Official Commonwealth government guidance on anti-bribery legislation, regulations and best practice/ hallmarks of compliance, similar to the FCPA Resources Guide or the UK Ministry of Justice Guidance.
- A "hotline" or anonymous call service, or opinion procedure, allowing organisations and individuals to ask questions and clarify issues without risk of liability. The service could include advice on whether a business payment appears to be legitimate or may be a "facilitation payment", advice on an individual's actions and reporting requirements, and/or advice for those seeking to self-report and wanting to clarify their options.
- Improved resourcing for the AFP and/or a stand alone investigatory body for foreign bribery offences.
- Introduction and adoption of the forthcoming ISO 37001 standards for anti-bribery, with the potential for non-mandatory certification of those standards.
- We discuss in more detail below some of the key themes emerging from the submissions to the Inquiry.



IMPROVING AND STRENGTHENING THE LEGISLATIVE AND REGULATORY FRAMEWORK

Where is Australia now?

The *Criminal Code 1995* (Cth) (Criminal Code) makes it an offence for individuals or corporations to bribe or attempt to bribe a foreign public official. A person is guilty of the offence if:

- a benefit is offered or provided to another person;
- the benefit is not legitimately due to that person; and
- the person offering or providing the benefit intends to influence a foreign public official in the exercise of their public duties, in order to obtain or retain a business advantage which is not legitimately due.

The two defences available to the offence of bribing a foreign official are:

- the conduct was expressly permitted by the laws that govern the foreign public official; or
- the benefit constituted a facilitation payment (as discussed in more detail below).

Individuals found guilty of bribing a foreign public official face up to a maximum of ten years imprisonment or a fine of up to $1.7 million. Corporations found guilty of the offence face a fine of up to $17 million or a proportionate penalty, based on either the annual turnover of the company or the value of the benefit received by the corporation, whichever is greatest.

Additionally, the *Corporations Act 2001* (Cth) (the Corporations Act) contains certain accounting and auditing requirements which may be contravened by the same conduct which constitutes a foreign bribery offence under the Criminal Code.

What the submissions say

The majority of the submissions received by the Inquiry took the view that Australia's current anti-bribery legislation is inadequate. Points of criticism included that the offence is narrow in its application, only applying when bribes are made or offered to foreign public officials; and that there is difficulty in making out the elements of the offence (as illustrated by the limited number of prosecutions which have been brought to date).

A notable proportion of the submissions believe the way forward, in order to update the framework and bring it in line with international best practice, is to incorporate into Australia's legislative regime a greater number of offences, and in particular follow the examples set by the United Kingdom (UK) and the United States (US). Additions which have been suggested include:

- broadening the offence so that it is not limited to circumstances involving foreign public officials;
- creating a books and records provision comparable to that in the *US Foreign Corrupt Practices Act* (FCPA), which would make it an offence for a corporation to fail to keep accurate financial records that record and explain its transactions; and
- creating a specific offence for corporations for failing to prevent bribery, as has already been enacted in the UK under the Bribery Act 2010 (UK) (the UK Bribery Act), with a corresponding defence of adequate procedures in place to prevent bribery.

In addition to expanding the range of offences, some submissions also suggested enhancing the range of penalties to include debarment from government contracts for those who have been found guilty of bribery offences. A limited number called for a parallel civil penalty regime to be introduced alongside the criminal offence, and an increase in the level of fines which can be imposed on those found guilty of bribery offences.

Many submissions were critical of the lack of formal guidance available in relation to Australian bribery offences. There is a clear desire for information based guidelines, such as those which have been produced in the UK and United States, which set out how the bribery offences operate and detail what practical steps can be taken to avoid being guilty of an offence. Some suggested introduction of an opinion procedure, so that corporations could seek official clarification on whether or not a transaction or action would be in breach of foreign bribery provisions, to enable them to more readily avoid engaging in problematic conduct.

THE CULTURE OF COMPLIANCE

Where is Australia now?

To establish corporate liability for foreign bribery offences, the prosecution needs to demonstrate that the corporation authorised or permitted the commission of an offence. That can occur where a board of directors, or a high managerial agent, intentionally or recklessly carried out the relevant conduct, or expressly or tacitly authorised or permitted that conduct. Importantly, it can also occur if the company's culture directed, encouraged, tolerated or led to the contravention, or if the company failed to create and maintain a corporate culture of compliance.

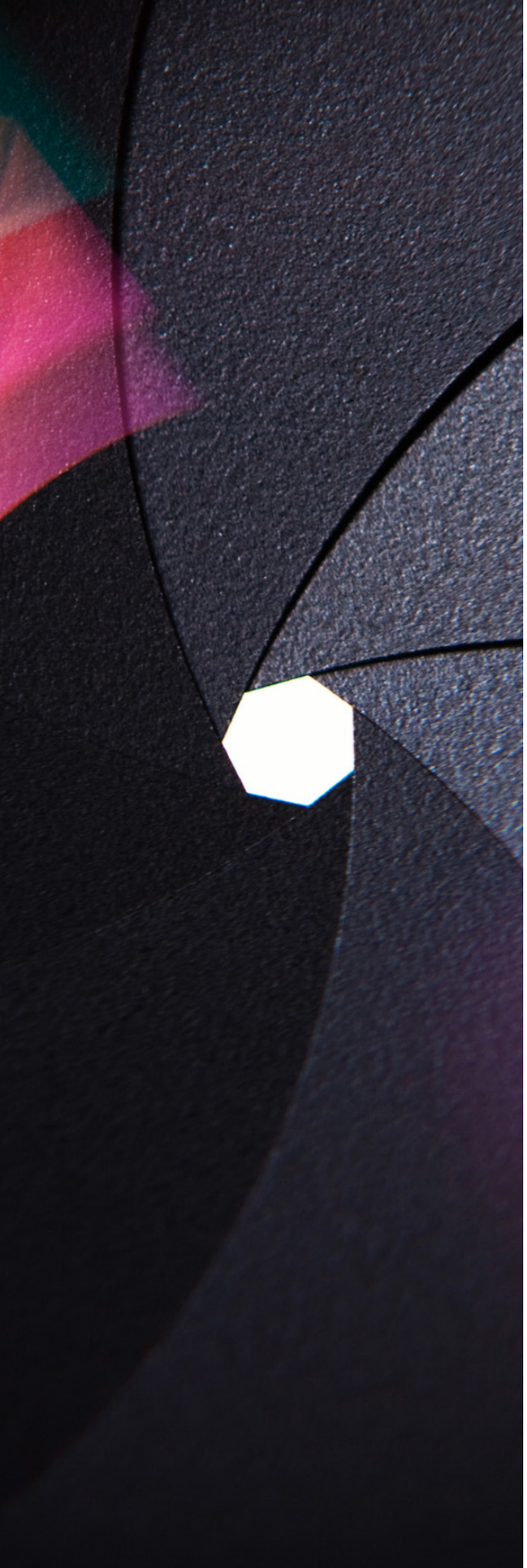
There is no recorded prosecution or conviction of an Australian company for a foreign bribery offence based on deficiencies in corporate culture, or a failure to create a culture of compliance. Currently, there is no formal guidance offered by Commonwealth agencies as to what are the hallmarks of an effective culture of compliance.

What the submissions say

The submissions broadly reflect three approaches to issues around developing and supporting a culture of compliance:

- that the creation and maintenance of a culture of compliance is best dealt with by the internal policies and controls of an organisation, supported by the promulgation of official guidelines on what constitutes such a culture;
- that internationally recognised standards such as the ISO 37001 standards for anti-bribery (still in development, and currently due for publication in mid-2016), should be incorporated into an organisation's internal policies and controls; and
- that there should be a review of the relevant provisions of the Criminal Code to make clearer the provisions relating to a failure to maintain a culture of compliance, coupled with a stronger enforcement regime and official guidance on what constitutes a culture of compliance.

The first approach is supported by the submissions of a few industry bodies and businesses. They advocate, among other things, supporting internal efforts by the publication of



official guidelines on the hallmarks of a culture of compliance, similar to the FCPA Resources Guide and the UK Ministry of Justice Guidance.

The second approach is also is supported by the submissions of some industry bodies and businesses. They called for the introduction of the ISO 37001 anti-bribery standards (either on a voluntary or mandatory basis). These submissions argued that doing so would facilitate a culture of compliance, not only within an organisation but also its supply chain. In the same vein, some suggested that public sector procurement bodies could make certified compliance with the standards mandatory as a condition of tendering for contracts with those bodies.

The final and third approach was the most prevalent. Those submissions supporting a review of the current legislative provisions concerning a culture of compliance made various suggestions, including:

- an amendment to the corporate criminal liability provisions to allow for a corporation's liability to be determined by the combined knowledge of its relevant officers;
- an amendment to the Criminal Code to enhance the offence of a failure to create a corporate culture of compliance;
- a reversal of the burden of proof, so that the burden is on the organisation to show that it had in place and enforced a culture of compliance, similar to the requirement in the UK for a company to demonstrate it had "adequate procedures" in place;
- clarification of director liability under the Criminal Code for the bribery offence;
- enhanced disclosure requirements;
- the introduction of a Foreign Bribery Resources Guide, similar to the guidelines published in the UK and the US for anti-bribery. Some submissions suggested that these guidelines include the identification of internal compliance measures or programs that are required to exhibit a culture of compliance; others proposed these guidelines merely provide key principles;
- an anonymous "opinion" or "hotline" allowing companies to seek information and/or an opinion on a particular issue or circumstance;
- a self-disclosure regime, allowing for the reduction of a penalty based on the level of compliance; and
- the introduction of enforceable undertakings that would require organisations to develop and implement anti-bribery compliance programs.

FACILITATION PAYMENTS

Where is Australia now?

Facilitation payments are benefits of a "minor nature" used to expedite or secure the performance of a routine government action of a minor nature. Section 70.4 of the Criminal Code distinguishes these payments from prohibited bribes, so that making payments which meet the legislative definition will not constitute contravention of the foreign bribery provisions. The facilitation payments defence (or comparable defences) have been removed in many jurisdictions (such as the UK). Australia has been criticised for failing to do so.

What the submissions say

The majority of the submissions to the Inquiry call for repeal of the facilitation payments defence. Many also supported the following changes to accompany that repeal:

- a notice and/or grace period, so that organisations can amend their practices and phase out the use of any subsequently prohibited payments;
- a "hotline", providing advice on any questionable payments and their legitimacy; and
- increased guidance on what constitutes a facilitation payment, what the consequences of making a payment will be and how to avoid needing to make facilitation payments when operating in foreign markets.

A minority supported the retention of the facilitation defence, arguing they were necessary for small to medium sized enterprises in particular, which lacked the financial or political clout to achieve outcomes in some jurisdictions without making facilitation payments, and that any removal of the defence should only apply to large organisations. They suggested instead, increased and proactive scrutiny and monitoring of facilitation payments, and better guidance around the operation of the defence.

WHISTLEBLOWING AND SELF-REPORTING

Where is Australia now?

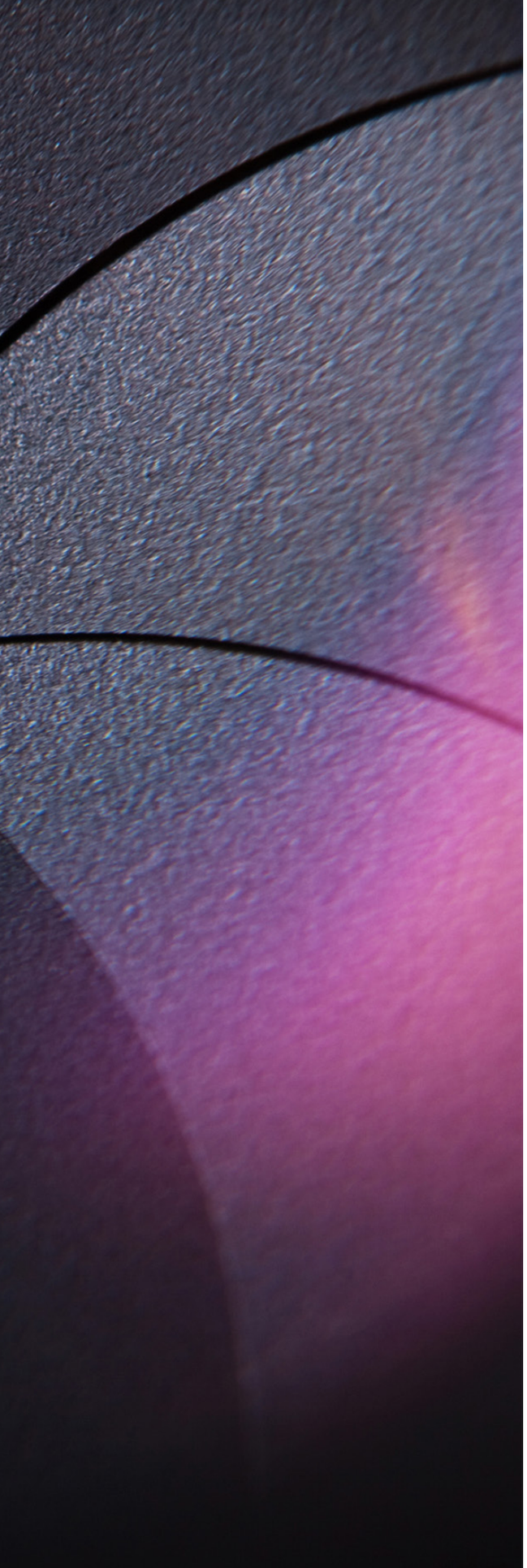
Australia's anti-foreign bribery regime does not presently provide any incentive, either by way of protection or reward, for private sector whistleblowers to report a criminal offence. Nor does that regime contain any protections against negative consequences for whistleblowers, such as termination of their employment because of the whistleblower's disclosure, or other retaliatory actions or threats to the whistleblower. Whistleblowers in Australia may be afforded some protection under the Corporations Act for reporting breaches of that legislation, and under the *Public Interest Disclosure Act 2013* (Cth) (the Public Interest Disclosure Act) for disclosure of corrupt conduct in the public sector. However, Australia lacks a structured regime for private sector whistleblowers and reporting in respect of foreign bribery.

By contrast, whistleblower regimes in the US and UK offer a suite of protection for whistleblowers, including protections against retaliatory behaviours, immunity, plea deals with deferred or reduced sentences, and in some instances in the US, financial rewards for providing authorities with original information or evidence leading to significant successful prosecutions.

There is also considerable uncertainty as to the consequences and benefits that might flow to a corporation from self-reporting contravening conduct that it detects. While it is generally understood that doing so will assist in mitigating penalties that would otherwise apply to that conduct, currently there is no clarity about what process should be followed in self-reporting or as to what sanctions may follow. Australia does not currently have mechanisms such as deferred prosecution agreements which exist in other jurisdictions such as the UK and the United States.

What the submissions say

Most submissions commenting on whistleblower protection and reporting incentives called for a formal statutory program that would either broaden the whistleblower protection provisions



of the Corporations Act, align with the existing provisions of the Public Interest Disclosure Act or form part of the Criminal Code, to incorporate safeguards for private sector parties reporting foreign bribery. The OECD too has previously highlighted the need for a strengthening of Australia's "patchwork" protection of whistleblowers, and continued to do so in its follow-up report to its October 2012 "Phase 3 Report", released earlier this year.

Particular recommendations included:

- Deferred prosecution agreements, settlement agreements, non-prosecution agreements, mitigated sentences and/or immunity as possible protections for whistleblowers and/or self-reporting corporations.
- Sanctions for companies that victimise whistleblowers, an obligation to respond to internal whistleblower reports, and requirements for companies to report publicly on whistleblower reports received, which all also serve to alter the perceived cultural bias against whistleblowers in Australia.

UK protection laws, such as the *UK Public Interest Disclosure Act 1998*, and US rewards law, such as the *US False Claims Act*, were cited as offering potential frameworks on which Australia might base a whistleblower regime. However, submitting parties advocated caution in adopting the latter US rewards based "bounty" system.

RESOURCING AND EFFECTIVENESS OF AGENCIES

Where is Australia now?

The Australian Federal Police (AFP) is responsible for the investigation of foreign bribery offences, while the Commonwealth Department for Public Prosecutions (CDPP) determines whether to undertake prosecutions. The Australian Securities and Exchange Commission (ASIC) also takes a minor role in the investigation and enforcement of the foreign bribery laws, where contravention of Corporations Act requirements may also be involved.

As of 2012, of the 28 foreign bribery referrals to the AFP, 21 were closed with no action. Despite Australia's foreign bribery laws having been created in 1999, the first criminal prosecution under those laws was brought only in July 2011. It is estimated that the AFP currently has 15 open investigations, some of which are understood to have been on foot for a number of years.

In 2014, partly in response to OECD and public criticism of Australia's track record in enforcing foreign bribery laws, the Fraud and Anti-Corruption (FAC) Centre was formally established. It aims to provide a multi-agency, coordinated approach to the investigation and prosecution of foreign bribery offences. The FAC Centre participating agencies, besides the AFP itself, include ASIC, the Australian Taxation Office, the Australian Crime Commission, the Australian Customs and Border Protection Service, the Department of Foreign Affairs and Trade, and various other Commonwealth departments and agencies.

What the submissions say

Many of the submissions to the Inquiry support an overhaul of the existing investigation and enforcement regime. They highlight the apparent shortcomings in the existing arrangements and suggest various reasons for these shortcomings, including:

- insufficient skills and experience relating to international finance, corporate governance and international business, especially within the AFP;
- ASIC's eschewing of an active role in the foreign bribery arena, despite its ability to handle complex financial issues and its knowledge regarding corporate governance;
- a fracture between investigation and the decision to prosecute;
- miscommunication between the various agencies, resulting in important aspects of foreign bribery being left un-investigated or prosecuted;
- lack of a national strategy, including in terms of operational mandates, information sharing, professional cultures and capabilities across the various agencies;
- a prevailing impression that the CDPP is overly risk averse and is therefore avoiding commencing foreign bribery prosecutions due to cases usually involving complex financial and evidentiary issues (a criticism which has been strongly denied by the CDPP in its submission to the Inquiry); and
- lack of funding and resourcing.

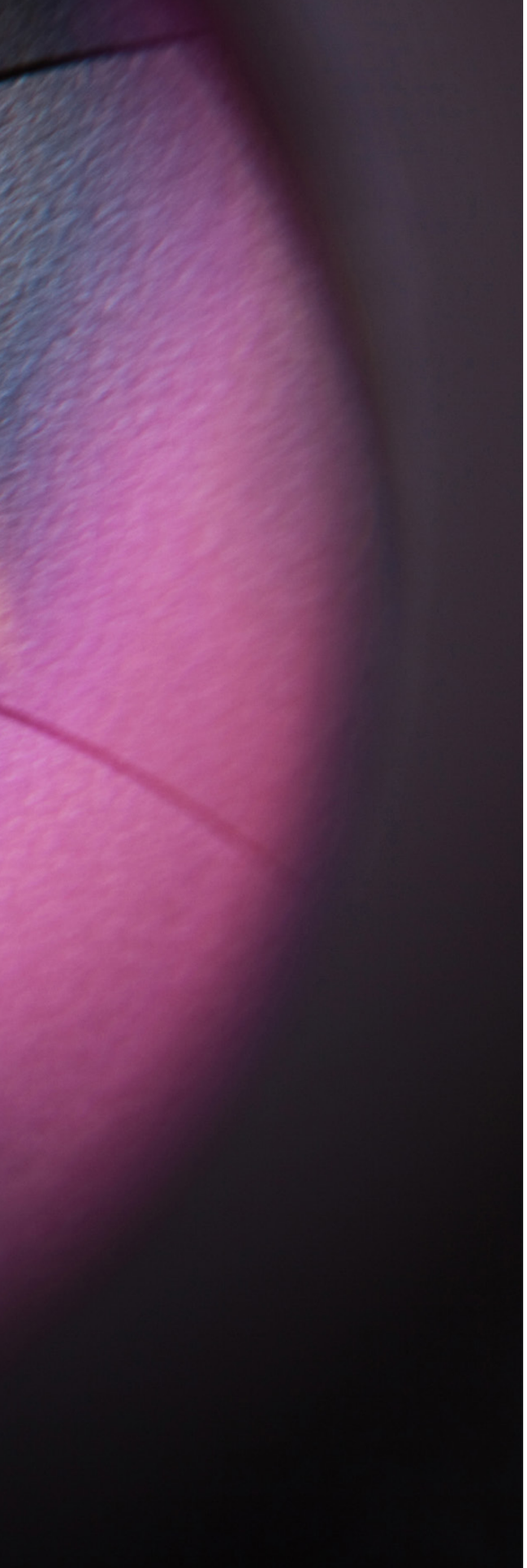
The submissions generally advocated one of the following two positions:

- that the AFP remain the lead agency for investigating foreign bribery, provided that it becomes more appropriately funded and resourced, with appropriately qualified and experienced investigators. This approach should be supported by a mandate and legislative support for a more proactive approach to investigations and subsequent prosecutions; or
- that there should be a single, dedicated body for the monitoring and investigation of foreign bribery. This could either be a standalone independent anti-corruption and bribery body, or a small specialist agency cooperating and relying on the resources of other agencies.

A range of additional recommendations were made for inclusion in a new investigations and enforcement regime, including that:

- ASIC's powers be expanded to encompass foreign bribery, and that it be given an increased role and greater legislative powers to conduct investigations in this area, including:
  - coercive powers, such as the power to undertake compulsory examinations and to require reasonable assistance during investigations; and
  - support from a greater range of civil penalty provisions.
- clear guidance be developed as to the overarching Commonwealth compliance and enforcement strategy;
- more proactive preventative and detective measures be introduced, including "without notice" compliance reviews, and routine compliance investigations of companies operating in high risk environments.

Some submissions also suggested that in the absence of an overhaul of current investigatory



arrangements, there should be an external review of the resourcing and effectiveness of the agencies currently involved, focusing on the commitment to and strategy for combatting foreign bribery.

SUPPRESSION ORDERS

Where is Australia now?

In Australia, litigation will ordinarily be conducted in open court. However, the courts have power to order the non-publication or "suppression" of certain information, facts and evidence in a case, including the identities of persons. Generally, given that such orders are inconsistent with the principle of open justice, they will only be made in exceptional circumstances, such as where trade secrets or issues of national security are involved.

The use of suppression or non-publication orders in cases concerning foreign bribery has become controversial, with significant criticism surrounding recent requests by the Australian Government for the identity of certain foreign officials to be supressed in cases concerning bribery.

What the submissions say

Few submissions commented on the issue of suppression orders. Those that did argued that:

- there should be no general allowance for suppression orders in foreign bribery cases;
- suppression orders should not be sought by the Government to seek to shelter "friendly" politicians;
- suppression orders should only be used in exceptional circumstances; and
- that in direct contrast to seeking secrecy by way of suppression orders, the relevant authorities and the Government should be required to provide timely public updates of details of cases and investigations concerning foreign bribery.

EVIDENCE AND INFORMATION GATHERING

Where is Australia now?

There is an array of laws, agreements and regulations supporting Australian authorities in gathering information and evidence for the purpose of foreign bribery investigations and prosecutions. Some of these include:

- the *Foreign Evidence Act 1994* (Cth) (the Foreign Evidence Act);
- the *Mutual Assistance in Criminal Matters Act 1987* (Cth);
- memoranda of understanding between Australian and foreign agencies;
- bilateral and multilateral legal assistance treaties and conventions; and
- memoranda of understanding between Australian agencies.

Australia may also make or receive mutual assistance requests with foreign agencies, including in relation to foreign bribery matters. The International Crime Cooperation Central Authority (within the Attorney General's Department (AGD)) is responsible for incoming and outgoing mutual assistance requests.

What the submissions say

Few submissions commented on the issue of evidence and information gathering. Those that did emphasised the difficulties involved in using the current legislative and regulatory framework. This included criticism regarding the technical rules for admissibility under the Foreign Evidence Act.

There is apparent consensus that one of the contributing factors to a lack of prosecutions and successful investigations of foreign bribery offences in Australia, is the difficulty in finding satisfactory evidence. Some of the suggestions made for reform include:

- whether the Criminal Code should be amended to deem a corporation liable of an offence unless and until it can demonstrate that it took adequate steps to instil and enforce a culture of compliance. Notably, some submissions strongly disagreed with any reversal of the onus of proof; and
- that the method of judicial rapprochement established under the bilateral multi-jurisdiction setting of the *Cross-Border Insolvency Act 2008* (Cth) be drawn upon as an example for supporting cooperation with foreign courts and foreign authorities.

COMPLIANCE WITH INTERNATIONAL OBLIGATIONS AND STANDARDS

Where is Australia now?

Australia ratified the OECD Convention in 1999. Australia is also a signatory to the UNCAC.

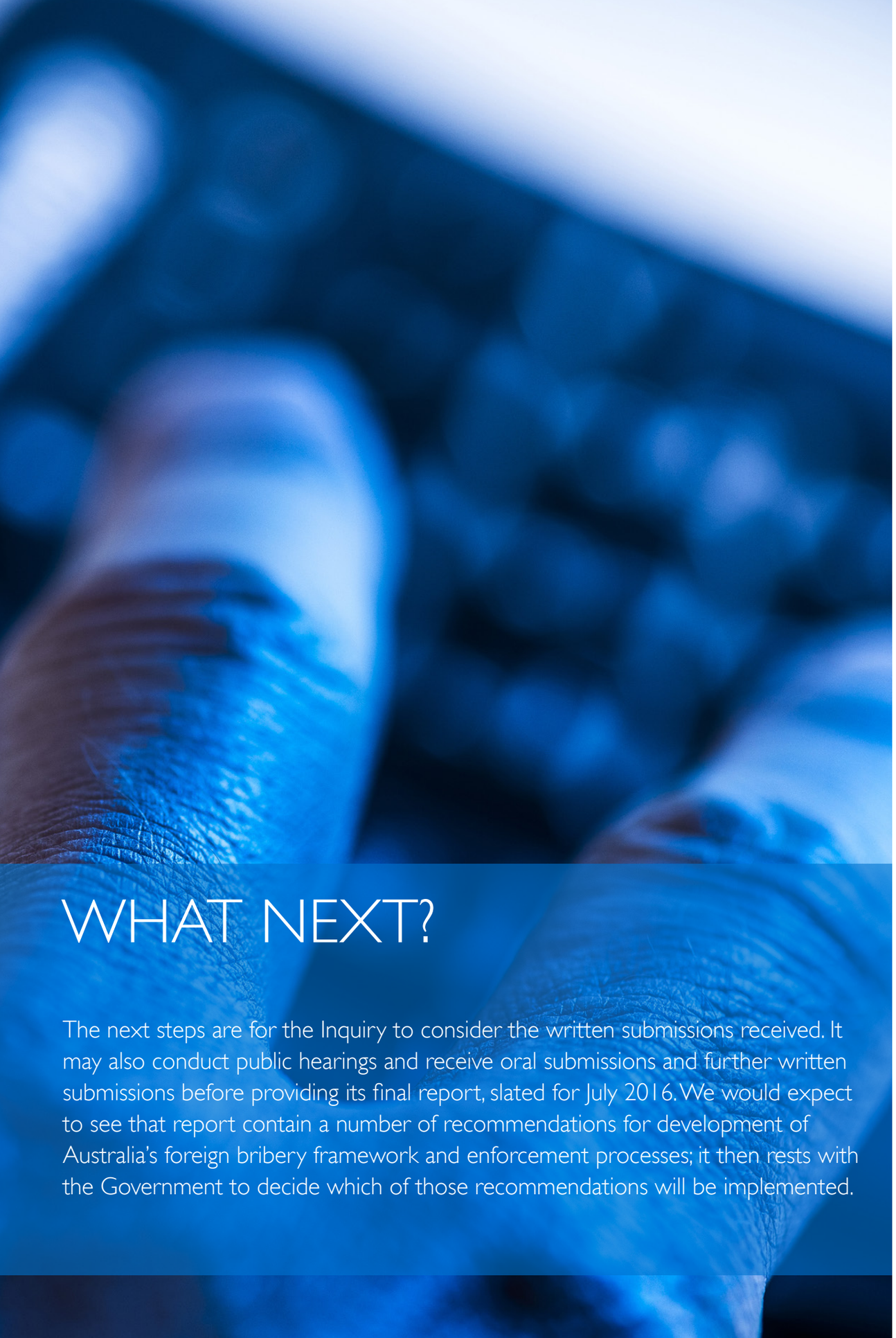
The OECD Working Group on Bribery in International Business Transactions (OECD Working Group) was established to monitor the implementation and enforcement of the OECD Convention. Its work includes undertaking reviews of signatory countries and their progress in fulfilling the OECD Convention.

To date, the OECD Working Group has undertaken three formal phases of review of Australia's efforts in this regard. In December 2014, Australia provided a written report to the OECD Working Group on its progress in addressing the Phase 3 recommendations. The OECD Working Group considers that of the 33 recommendations, Australia has fully implemented 16, partially implemented 9 and that 8 are not implemented. The OECD Working Group has made further recommendations in its April 2015 report.

What the submissions say

A number of the submissions are generally critical about Australia's compliance with its international obligations. Despite some recognition that Australia has made improvements since the Phase 3 report, the broad consensus is that Australia's anti-bribery framework and enforcement is lagging behind.

Partly, the criticisms concern Australia's lack of a National Anti-Corruption Strategy or Plan, without which, it is argued, Australia's obligations cannot be met. One submission referred to Australia as a "reactive country", only making changes when pushed and failing to proactively meet its obligations. Another, from an investor body, argued that Australian companies operating overseas are disadvantaged because they are exposed to more stringent anti-bribery regimes in peer markets, to which the Australian framework is not aligned, and called for an alignment between Australia's framework and the UK and US regimes. The submissions otherwise largely draw on the OECD Working Group's reviews to identify particular failings in legislative reform and failure to address OECD recommendations about facilitation payments, whistle blower protection and expansion of the scope of the foreign bribery offences.



WHAT NEXT?

The next steps are for the Inquiry to consider the written submissions received. It may also conduct public hearings and receive oral submissions and further written submissions before providing its final report, slated for July 2016. We would expect to see that report contain a number of recommendations for development of Australia's foreign bribery framework and enforcement processes; it then rests with the Government to decide which of those recommendations will be implemented.

CURRENT GOVERNMENT/ AGENCY POSITIONS?

The cross-agency submission by the AGD on behalf of multiple Commonwealth agencies (including the AFP, ASIC, the Australian Taxation Office and others), perhaps gives an initial indication of current Government and agency positions on various of the issues the subject of the Inquiry. Among other things, that submission:

- indicated that AGD was already working on a proposed new offence of false accounting, partly in response to recommendations made to Australia by the OECD Working Group;
- stated there was no present intention to introduce an offence of failing to prevent bribery as per the UK Bribery Act;
- observed that recommendations for reform of whistleblower protection had also been made by the Senate inquiry concerning the performance of ASIC, which the Government had "noted";
- was otherwise silent on any pending legislative reform, instead providing lengthy narrations of the scope of existing laws and processes (and in doing so, implicitly suggesting that those laws and processes already dealt in large measure with matters about which other submissions have called for change, such as greater clarity on process for, and consequences of, self-reporting);
- pointed to the foreign bribery fact sheets and learning modules accessible from its website, and numerous improvements made to processes following earlier OECD criticisms and recommendations for change, again implicitly suggesting that agencies had already addressed calls for change in these areas;
- claimed that the Government's approach to suppression orders in recent bribery cases (including suppressing the names of foreign politicians allegedly involved in the facts in issue) did not detrimentally affect the conduct of those cases and appropriately protected Australia's international relations; but nevertheless that the Department of Foreign Affairs and Trade would "reflect" on how to handle such issues in the future.

THE MOST LIKELY CANDIDATES FOR REFORM

Nevertheless, and while it is early days to predict what changes may ultimately flow from the Inquiry, given the weight of submissions calling for reform and improvement, we can expect that the Inquiry will particularly give close consideration to:

- expansion of the current scope of Australia's foreign bribery offences in at least some of the ways called for in various submissions;
- more detailed official guidance on those offences than currently exists, including guidelines on what constitutes a culture of compliance;
- removal of the facilitation payments defence;
- alignment of protections for "private sector" whistleblowers with the protections available under the Public Sector Disclosure Act;
- establishment of a standalone body responsible for investigation of alleged foreign bribery, or alternatively reinforcement of the FAC Centre approach coupled with improved funding and resources, and clearer strategic direction for investigations in this area.

We may also see some changes even prior to, or separately to, the Inquiry delivering its recommendations:

- the introduction of the false accounting offence which is already in train;
- a more circumspect approach by the Government to seeking suppression orders in bribery cases;
- incremental improvements in general guidance and education from agencies about the foreign bribery offences; and
- in the private sector, adoption of the ISO 37001 standards once they are published (and potentially, that public procurement bodies begin to require consider certification with those standards as an integral part in any tender and procurement process).

DLA Piper will be tracking the Inquiry closely and will provide regular updates to interested clients and on its website www.dlapiper.com

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