

## Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (done at Vienna on 2 September 2010)

### Introduction

- 2.1 On 23 August 2011, the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization* (done at Vienna on 2 September 2010), was tabled in the Commonwealth Parliament.
- 2.2 The proposed Agreement is to establish the International Anti-Corruption Academy (the Academy) as a non-profit and self-sustaining organisation, based in Laxenburg, Austria. The Academy is a joint initiative of the United Nations (UN) Office on Drugs and Crime, the Republic of Austria and the European Anti-Fraud Office.
- 2.3 The Academy is intended to promote effective and efficient efforts to prevent and combat corruption by providing anti-corruption education, professional training and technical assistance. The Academy will also undertake academic research into corruption and foster international cooperation and networking opportunities in the fight against corruption.<sup>1</sup>

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<sup>1</sup> *National Interest Analysis [2011] ATNIA 18 with attachment on consultation Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization done at Vienna on 2 September 2010, [2010] ATNIF 54, (Hereafter referred to as 'NIA') paras. 3-4.*

## Australia's interest in the Agreement

- 2.4 Australia plays a significant role in global and regional efforts to combat corruption, including through its work as a Party to the *United Nations Convention against Corruption* (UNCAC) and the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and as a member of both the G20 and APEC Anti-Corruption Working Groups.<sup>2</sup>
- 2.5 Australia was actively involved in the development of the G20 Anti-Corruption Action Plan, which is directed at preventing and tackling corruption through establishing legal and policy frameworks that promote a clean business environment and assist developing countries in their efforts to combat corruption. As a member of the G20 Anti-Corruption Working Group, Australia actively contributes to the Group's activities through implementation of the Action Plan.<sup>3</sup>
- 2.6 As a member of the APEC Anti-Corruption Working Group, Australia has in recent years led a project to develop and implement a Code of Conduct for Business. The Code has been implemented in a number of countries (for example, Vietnam and Chile) and continues to attract interest<sup>4</sup>, and ratifying the Agreement would be a further opportunity for Australia to demonstrate our support for international efforts to combat corruption.<sup>5</sup>
- 2.7 Support for the Academy would reinforce Australia's commitment to international efforts against corruption.<sup>6</sup>
- 2.8 As a Party to the Agreement, Australia would be able to participate in mechanisms to guide and support the Academy's work as an important international organisation, including exercising a voting right at the meetings of the Assembly of Parties, and thus contributing to the Academy's overall policy direction and institutional arrangements.
- 2.9 Australian anti-corruption practitioners and field specialists would also be able to take advantage of the training and educational services the Academy offers, thereby increasing expertise and links at the working level with international counterparts.<sup>7</sup>

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2 NIA, para. 5.

3 NIA, para. 6.

4 NIA, para. 7.

5 NIA, para. 8.

6 NIA, para. 9.

7 NIA, para. 10.

## Obligations

- 2.10 **Article I** of the Agreement establishes the Academy as an international organisation, with full international legal personality, and provides that the Academy shall operate in accordance with the Agreement.<sup>8</sup>
- 2.11 **Article II** prescribes the Academy's purpose which is to promote effective and efficient prevention and combating of corruption by:
- providing education and professional training;
  - undertaking and facilitating research;
  - providing other relevant technical assistance; and
  - fostering international cooperation.<sup>9</sup>
- 2.12 **Article III** identifies the seat of the Academy in Laxenburg, Austria, although the Academy may establish facilities in other locations as required.<sup>10</sup>
- 2.13 **Article IV** defines the Academy's organisational structure consists of:
- an Assembly of Parties (comprising a representative from each Party to the Agreement);
  - a Board of Governors;
  - an International Senior Advisory Board;
  - an International Academic Advisory Board<sup>11</sup>; and
  - a Dean.<sup>12</sup>
- 2.14 **Articles V-IX** prescribes the role, appointment procedures and operating procedures of each organ.<sup>13</sup>
- 2.15 **Article X** stipulates that the Academy is to recruit and retain academic and administrative staff with the highest possible qualifications, and make appropriate arrangements for part-time or visiting academic staff. The

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8 NIA, para. 11.

9 NIA, para. 12.

10 NIA, para. 13.

11 At this time, there is one Australian representative on the International Academic Advisory Board – the Hon. Barry O'Keefe. Mr Gresham Street, Acting Director, Anti-Corruption Section, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 2.

12 NIA, para. 14.

13 NIA, para. 14.

Academy is to encourage States, international organisations, universities and other institutions to consider supporting the Academy's staffing, including by secondment of staff.<sup>14</sup>

- 2.16 **Article XI** stipulates that the long-term goal is for the Academy to be self-sustainable and that the Academy will be financed through means such as voluntary contributions from Parties or from the private sector, tuition and other fees and other service revenue.<sup>15</sup>
- 2.17 **Article XII** stipulates that Parties are to keep each other informed of and consult on matters of interest concerning their cooperation under the Agreement, in accordance with each Party's applicable rules concerning disclosure of information and subject to any arrangements concluded for that purpose.<sup>16</sup>
- 2.18 **Article XIII** stipulates that the Academy may establish cooperative relationships with States, international organisations and public or private entities where they can contribute to the Academy's work.<sup>17</sup>
- 2.19 **Article XIV** stipulates that the Academy, the members of each of its organs, the staff and experts are to enjoy such privileges and immunities as agreed between the Academy and the Republic of Austria. The Academy may conclude agreements with other States to secure appropriate privileges and immunities.<sup>18</sup>
- 2.20 **Article XIX** Any disputes or questions affecting the Academy are to be settled by negotiation or another agreed mode of settlement, or failing that, referred to a tribunal of three arbitrators for final decision.<sup>19</sup>

## Ratification

- 2.21 The Academy's foundation and operation are not dependent on a majority or unanimous ratification of the treaty. The Departments of Foreign Affairs and Trade and Attorney-General's explained that sufficient signatures and support had already been garnered:

Currently, 53 member states are signatories. There are 10 ratifications [and] seven other countries... are close to ratification. [T]he agreement is very new and most countries have some kind of domestic process before they can ratify such an agreement. I

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14 NIA, para. 15.

15 NIA, para. 16.

16 NIA, para. 17.

17 NIA, para. 18.

18 NIA, para. 19.

19 NIA, para. 20.

think that in itself explains the disparity between the number of signatories and the number of ratifications.<sup>20</sup>

[T]he actual agreement entered into force generally on 8 March this year but... we are not aware of a minimum number of ratifications that are necessary for this to move forward. It has already been established as an organisation because it reached the sufficient number of signatories. That occurred on 8 March earlier this year.<sup>21</sup>

## Implementation

2.22 No changes to Australian legislation are required to give effect to the Agreement.<sup>22</sup>

## Costs

2.23 The Agreement does not impose any direct financial obligations on the Parties to the Agreement. Article XV of the Agreement provides that Parties to the Agreement shall not be responsible, individually or collectively, for any debts, liabilities or other obligations of the Academy. Australia may consider making financial or in-kind contributions to the Academy. According to the National Interest Analysis (NIA) any decision as to whether Australia will make a voluntary contribution to the Academy would be a matter for the Government to consider as part of the usual budget process.<sup>23</sup> Australia has made no financial contribution to the institution's establishment at this time.<sup>24</sup>

## Conclusion

2.24 The Committee supports international efforts to help end or curtail corruption and support for the Academy would reinforce Australia's commitment to that goal.

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20 Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, pp. 2-3.

21 Mr Gresham Street, Acting Director, Anti-Corruption Section, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 3.

22 NIA, para 21.

23 NIA, para 22.

24 Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, 31 October 2011, p. 2.

- 2.25 The Committee notes that Australia plays a significant international role in combating corruption, and that, domestically, the Australian public has a commendably low tolerance for corruption in Australian institutions.
- 2.26 Clearly, an international anti-corruption academy would be in concord with Australia's international stance on corruption, and Australia's domestic distaste for corruption. Given this, the Committee agrees that binding treaty action be taken.

### **Recommendation 1**

**The Committee supports *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization* (done at Vienna on 2 September 2010), and recommends that binding treaty action be taken.**