

# CHAPTER 1

## INTRODUCTION

### Background

1.1 On 21 June 2007, the Senate referred the provisions of the International Trade Integrity Bill 2007 (Bill) to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 1 August 2007.

1.2 The Bill amends the *Charter of the United Nations Act 1945*, the *Customs Act 1901*, the *Criminal Code Act 1995* and the *Income Tax Assessment Act 1997*. It implements the Australian Government's response to Recommendations 1-3 of the *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme* by Commissioner Terence Cole QC (Cole Inquiry Report).<sup>1</sup>

1.3 The Cole Inquiry Report was tabled in Parliament on 27 November 2006 and presented five principal recommendations to improve Australian law in relation to the Iraq sanctions regime. On 3 May 2007, the Attorney-General tabled the Australian Government's response in Parliament on Recommendations 1-3 of the Cole Inquiry Report (Appendix 1 to this report).<sup>2</sup> The Bill contains the legislative changes arising from these recommendations; however, the Bill goes further than the Cole Inquiry Report which focused on Australian law in the context of an Iraqi sanctions regime. The government considers that the findings and recommendations can be applied more broadly to the administration of all United Nations (UN) Security Council sanctions, regardless of the countries or goods to which they apply.<sup>3</sup>

1.4 The government's response to the Cole Inquiry Report also addressed some recommendations of the Organisation for Economic Co-operation and Development (OECD) Working Group on Foreign Bribery in International Business Transactions

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1 Commissioner The Hon Terence RH Cole AO RFD QC, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, November 2006, at <http://www.offi.gov.au/agd/WWW/unoilforfoodinquiry.nsf/Page/Report> (accessed 22 June 2007).

2 'Australian Government response to the Report of the Inquiry into Certain Australian Companies in relation to the UN Oil-for-Food Programme', at [http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_AustralianGovernmentresponsetotheReportoftheInquiryintoCertainAustralianCompaniesinrelationtotheUNOil-for-FoodProgramme](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AustralianGovernmentresponsetotheReportoftheInquiryintoCertainAustralianCompaniesinrelationtotheUNOil-for-FoodProgramme) (accessed 22 June 2007).

3 *Explanatory Memorandum (EM)*, p. 1; The Hon Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 14 June 2007, p. 3.

(OECD Working Group) Phase 2 report on Australia<sup>4</sup> which was adopted by the OECD in January 2006. The OECD guidelines allow countries two years to provide a written response to a Phase 2 report.<sup>5</sup>

1.5 The committee understands that the Attorney-General's Department (Department) has recently been advised that the OECD Working Group will not consider Australia's response before January 2008.<sup>6</sup> According to the Department, the recommendations of the OECD Working Group that have been addressed in the Bill are those which the government decided were relevant to its response to the Cole Inquiry Report. However, the Bill does not represent Australia's response to the OECD Working Group; that response is still under consideration by the government.<sup>7</sup>

1.6 The Bill aims to improve Australian laws to strengthen enforcement of all UN sanctions and to combat foreign bribery, and contains information gathering and handling provisions to improve the ability of agencies to administer UN sanctions. The Bill also introduces new offences for individuals or companies which:

- provide false or misleading information in connection with a UN sanctions regime;
- import or export goods prohibited by UN sanctions; or
- otherwise act in contravention of a Commonwealth law that enforces a UN sanction in Australia.

1.7 In his Second Reading Speech, the Attorney-General stated that:

The government is committed to promoting a culture of ethical dealing in connection with UN sanctions and international trade.

Legislation alone cannot accomplish this and it falls on Australian businesses to maintain their reputation of ethical dealing and integrity. Australia and our trading partners will benefit from seeking to eliminate the cancer of corruption in international trade.<sup>8</sup>

1.8 The amendments to the *Charter of the United Nations Act 1945* and the *Customs Act 1901* will commence on a day to be fixed by Proclamation. However, if

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4 OECD, Directorate for Financial and Enterprise Affairs, *Australia: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, approved and adopted by the Working Group on Bribery in International Business Transactions on 4 January 2006, at <http://www.oecd.org/dataoecd/57/42/35937659.pdf> (accessed 18 July 2007).

5 Attorney-General's Department, answers to questions on notice, p. 2.

6 Attorney-General's Department, answers to questions on notice, p. 2.

7 Attorney-General's Department, answers to questions on notice, p. 2.

8 The Hon Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 14 June 2007, p. 4.

they do not commence within six months of the day on which the Bill receives the Royal Assent, they commence on the first day after that six month period. In the period before commencement, the government will conduct consultation with business and industry stakeholders about the amendments and their implementation.<sup>9</sup> In his Second Reading Speech, the Attorney-General stated that the government would 'inform the public of the changes' contained in the Bill, 'focusing particularly on the financial sector and those businesses importing and exporting goods and services'.<sup>10</sup>

1.9 The amendments to the *Criminal Code Act 1995* and the *Income Tax Assessment Act 1997* will commence the day after the Bill receives the Royal Assent.

1.10 The government will provide \$4.6 million over four years to address the first three recommendations of the Cole Inquiry Report. According to the EM, this will enable the Department of Foreign Affairs and Trade (DFAT) to coordinate the implementation of UN and bilateral sanction regimes, and contribute to whole-of-government efforts to monitor and ensure compliance with Australian law on sanctions.<sup>11</sup>

### **Conduct of the inquiry**

1.11 The committee advertised the inquiry in *The Australian* newspaper on 27 June 2007 and 11 July 2007, and invited submissions by 11 July 2007. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 40 organisations and individuals.

1.12 The committee received 4 submissions which are listed at Appendix 2. Submissions were placed on the committee's website for ease of access by the public.

1.13 The committee held a public hearing with representatives of the Department, DFAT and the Australian Customs Service in Sydney on 17 July 2007. A list of witnesses who appeared at the hearing is at Appendix 3 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

### **Acknowledgement**

1.14 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

### **Note on references**

1.15 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the

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9 EM, p. 2; *Committee Hansard*, 17 July 2007, pp 2-3.

10 The Hon Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 14 June 2007, p. 4.

11 p. 2.

proof Hansard: page numbers may vary between the proof and the official Hansard transcript.