



Review of Integrity Concerns
and Governance Arrangements
for the Management of Regional
Processing Administration by
the Department of Home Affairs

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Letter to ministers

Senator the Hon Katy Gallagher
Minister for Finance

The Hon Clare O'Neil MP
Minister for Home Affairs

Attached is the report of the Review of Integrity Concerns and Governance Arrangements for the Management of Regional Processing Administration by the Department of Home Affairs.

All the recommendations contained in the Review have some relevancy to departments and agencies across government, especially those engaging in procurement and contract arrangements offshore in high-risk integrity environments.

Departments and agencies need to be aware of the potential sources of information within government so that effective due diligence can be exercised, especially with small-to-medium companies with little public profile and/or with a limited performance history in the relevant sector. A failure to do this exposes the Commonwealth to unacceptable risks and to reputational damage.

During the course of the Review, Home Affairs and other departments and agencies engaged constructively, providing information and responses in a timely and professional manner.

Finally, I would note the excellent work of the Secretariat, led by Philip Kimpton, and staff from the Departments of the Prime Minister and Cabinet and Finance.

My role was part-time, theirs full time. Through the report I refer to 'we' and 'our', recognising the team effort involved. However, the responsibility for the recommendations and views expressed herein, is mine alone.



Dennis Richardson
Reviewer

Acronyms and abbreviations

Table 1. Acronyms and abbreviations

Term	Meaning
AFP	Australian Federal Police
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
ANAO	Australian National Audit Office
APS	Australian Public Service
ASD	Australian Signals Directorate
ASIO	Australian Security Intelligence Organisation
ASIO Act	<i>Australian Security Intelligence Organisation Act 1979</i>
ASIS	Australian Secret Intelligence Service
AUSTRAC	Australian Transaction Reports and Analysis Centre
Broadspectrum	Broadspectrum (Australia) Pty Ltd, formerly Transfield Services (Australia) Pty Ltd
Canstruct	Canstruct International Pty Ltd
CEO	Chief Executive Officer
CFO	Chief Finance Officer
CPRs	Commonwealth Procurement Rules
DIBP	Department of Immigration and Border Protection
DIO	Defence Intelligence Organisation
DFAT	Department of Foreign Affairs and Trade
Finance	Department of Finance
GON	Government of Nauru
Home Affairs	Department of Home Affairs
HRHV	High Risk High Value
IS Act	<i>Intelligence Services Act 2001</i>

Term	Meaning
JCPAA	Joint Committee of Public Accounts and Audit
MTC Australia	Management and Training Corporation Pty Ltd
MOU	Memorandum of Understanding
Minister	Minister for Home Affairs
NACC	National Anti-Corruption Commission
NACC Act	<i>National Anti-Corruption Commission Act 2022</i>
NIC	National Intelligence Community
ONI	Office of National Intelligence
ONI Act	<i>Office of National Intelligence Act 2018</i>
Paladin	Paladin Holdings PTE Ltd
Paladin PNG	Paladin Solutions PNG Ltd
PEPs	Politically exposed persons
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PNG	Papua New Guinea
PSPF	Protective Security Policy Framework
SMR	Suspicious Matter Report

Executive summary

1. In July 2023, *The Sydney Morning Herald* and *The Age*, in conjunction with *60 Minutes*, ran a series of reports titled *Home Truths*. The reports alleged contractors engaged by the Department of Home Affairs to deliver regional processing services were suspected of systemic misuse of taxpayer money in Nauru and Papua New Guinea (PNG), and that Home Affairs did not act.
2. The Minister for Home Affairs, with the agreement of the Prime Minister, commissioned a review to examine integrity issues.

Background

3. Regional processing was initially introduced by the Australian Government in 2001 as part of the Pacific Solution, which ran through to 2007. The government recommenced regional processing in 2012, and reopened the Nauru and Manus Island centres. This was done against a backdrop of a sharp increase in illegal arrivals by boat, and intense media, public and political debate. In September 2013, Operation Sovereign Borders commenced.
4. The regional processing contract arrangements have been heavily scrutinised. Since 2016, at least ten internal and external investigations, varying in scope and complexity, have been conducted into aspects of Home Affairs' regional processing contracting.
5. The Australian National Audit Office (ANAO) was highly critical in its audits of 2016 and 2017. Home Affairs acted on the recommendations of both audits and subsequently made significant improvements. The 2020 ANAO audit accessed 24 million documents, reviewed four million, and took 10 months to complete. It found that 'procurement activities were conducted largely in accordance with Commonwealth Procurement Rules' and Home Affairs' management of the procurement of services was 'largely appropriate'.

Focus

6. Against this background, and given time and resources, we focused on two main issues:
 - a. Home Affairs' current procurement and contract management processes, with a particular focus on the garrison and welfare services contract with Management and Training Corporation Pty Ltd (MTC Australia); and
 - b. a selective review of the media claims relating to previous regional processing contracts.

Findings

7. While we did not undertake a formal audit of the existing contract with MTC Australia, a procurement policy officer from the Department of Finance spent two weeks

examining the procurement and contract arrangements. As reflected in the recommendations, we have made some suggestions for improvement, such as identifying foreign bribery and corruption as risks in certain environments. The Review believed, however, that the government could have confidence in the existing contract.

8. We did not see evidence of any ministerial involvement in the regional processing contract or procurement decisions, and the Secretary of Home Affairs said he never discussed such decisions with the Minister for Home Affairs. We did not come across any matter of deliberate wrong-doing or criminality.
9. The Review did not refer any individual to the Australian Federal Police (AFP) or National Anti-Corruption Commission (NACC). We passed on the contact details of three individuals, with their consent.
10. We noted that relevant agencies had active inquiries or investigations underway relating to regional processing issues.
11. Given these current investigations and inquiries, and the 2020 audit by the ANAO, we believed we could add best value by focusing on information flows and examining whether there was information in government agencies which, if accessed, would have been relevant to procurement and contracting decisions. The answer to that question was in the affirmative, particularly in respect of the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the AFP, and to a significantly lesser extent, other intelligence agencies.
12. In respect of the matters examined, coordination, communication and information flows within Home Affairs were inadequate, and communication from Home Affairs to AUSTRAC was inadequate. The responsibility for this rested with senior SES managers, and not with non-SES officers in the contract and procurement areas.
13. Proper due diligence was lacking when it came to contracts with relatively small companies with limited or no public profile, and where operations were to be in high-risk environments. In this context, over the years, Home Affairs (and therefore the Commonwealth) has had contractual relationships with:
 - a. a company whose owners were suspected, through the ownership of another company, of seeking to circumvent US sanctions against Iran, and with extensive suspicious money movements suggesting money laundering, bribery and other criminal activity;
 - b. companies under investigation by the AFP;
 - c. a company whose CEO was being investigated for possible drugs and arms smuggling into Australia, although, at the time it would have been unrealistic to have expected those responsible for contract and procurement to be aware of this; and
 - d. an enterprise suspected of corruption.

14. It is possible that, even with access to the information available within government agencies, Home Affairs may have had no option but to enter into contracts with these companies. Certainly, the department was operating within an environment of high pressure where time was often of the essence. However, with proper due diligence, Home Affairs could have considered alternative suppliers, and, if this was not possible, the implementation of mitigating measures. But this was not done. Intelligence and other information, which was readily available, was not accessed. As a consequence, integrity risks were not identified.
15. Information flows from the AFP to Home Affairs were not always adequate. In one instance, the AFP did not advise Home Affairs over a three year period that it was investigating an individual who it knew had a contractual relationship with Home Affairs.
16. The formation of the portfolio of Home Affairs in 2017, which brought together a range of agencies, including the AFP and AUSTRAC, does not appear to have had any positive impact on working arrangements, at least in this area, again highlighting that coordination, cooperation and information sharing flows from policy, practice, mindset and culture, not from structure per se.
17. Contract and procurement areas across Commonwealth departments and agencies do not, as a matter of course, seek to access information held by AUSTRAC or the AFP. The shortcomings by Home Affairs need to be seen in this wider context, although Home Affairs did have a specific Memorandum of Understanding with AUSTRAC, and was aware of its access to financial information. It is important for departments and agencies to be aware of possible avenues of enquiry through AUSTRAC, and to a lesser extent the AFP, especially when considering entering into contractual arrangements with relatively small companies with limited public profile, or performance history, and/or in offshore environments with enhanced integrity risks.
18. The scope of the *National Anti-Corruption Commission Act 2022* (NACC Act) excludes foreign governments, but the exclusion likely does not extend to state-owned enterprises which are separate legal entities in their own right and which are involved in a chain of contract providers to the Commonwealth.

Recommendations

Recommendation 1

Home Affairs should enhance its integrity risk process and culture to better inform procurement and contract decision-making for regional processing arrangements by:

- more carefully considering the environment in which a procurement is conducted or a contract is delivered, and the ethical conduct and integrity of tenderers, suppliers and supply chains; and
- undertaking risk-informed due diligence activities throughout the procurement and contract management lifecycle.

Implementation considerations

Due diligence activities:

- should include accessing information, especially information held by the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Federal Police (AFP), in respect of corporate entities and key individuals;
- are particularly relevant when engaging immature/relatively small companies in high-risk environments; and
- should be performed periodically throughout the term of the contract, as well as triggered by events such as variations, extensions and the appointment of subcontractors.

Recommendation 2

Home Affairs should foster and promote an 'ask and tell' operating environment that encourages collaboration, cooperation, proactive enquiry and information sharing.

Implementation considerations

Measures taken by Home Affairs, particularly in relation to regional processing arrangements, should encourage:

- improved communication and information flows between the department's Intelligence Division and areas dealing with procurement and contracts;
- frank and transparent disclosure of information to support decision-makers; and
- officials to exercise curiosity and an enquiring mind in the course of their duties.

Recommendation 3

The Department of Finance, in consultation with the AFP, and the Office of National Intelligence (ONI) on behalf of the National Intelligence Community (NIC), should develop a protocol for lawfully sharing law enforcement and intelligence information with Commonwealth entities, to inform procurement and contracting decisions in high risk environments. The information sharing protocol should be considered and endorsed by the Secretaries' Committee on National Security.

Implementation considerations

Indicators of high integrity risk include:

- environments where bribery, fraud or corruption are known to be relatively common;
- service providers (including subcontractors) with immature business structures and/or operations, limited public profile, limited experience delivering goods or services to which the contract applies, or untested performance history in the sector; and
- contracts of high value and/or complexity.

Arrangements under the protocol should:

- operate on the principle that information should be shared unless legislation or specific circumstances prevent it;
- not divert the resources of NIC agencies or change Australian Intelligence Missions or priorities unless there are exceptional circumstances agreed at the agency head level;
- be consistent with Protective Security Policy Framework Policy (PSPF) Policy 9 on access to information; and
- embed education and awareness practices to support their application.

Recommendation 4

Redacted

1. Scope and methodology

Terms of reference

1.1 Terms of reference for the Review are set out in Appendix A.

Focus of the Review

1.2 Within the time and resources available, the Review focused on:

- a. Home Affairs' current procurement and contract management policies and processes, especially in relation to MTC Australia; and
- b. a selective review of claims of historical mismanagement of regional processing procurement and contract arrangements.

We did not, for instance, examine claims going back to earlier contractors such as Broadspectrum (Australia) Pty Ltd, as too many people, both inside and outside government, had moved on. Likewise, we did not examine claims of overcharging by, or misconduct within, service providers.

1.3 Consistent with the terms of reference, the Review did not consider the policy of regional processing.

1.4 The Review was not:

- a. an audit – it was administrative in nature without a statutory or other remit to undertake an audit (noting the most recent Auditor-General report into garrison and welfare contracts had access to 24 million documents, reviewed four million of them, and took 10 months to complete); or
- b. a criminal investigation – the Review did not have the authority or expertise to undertake a criminal investigation. Criminal investigations are rightly vested with the Australian Federal Police (AFP), and the National Anti-Corruption Commission (NACC) has appropriate authorities to investigate and make findings on serious and systemic corruption.

1.5 The terms of reference expressly permitted the Review to make recommendations for referrals to the AFP and/or the NACC. The Review did not make any formal referrals to those agencies. The Review passed the contact details of one individual to the AFP and two individuals to the NACC, with the consent of those individuals, who we believed might have information relevant to their inquiries. At the request of two further individuals, we provided contact details for the AFP.

- 1.6 We believed the Review could add best value by focusing on information flows and examining whether there was information in government agencies which, if accessed, would have been relevant to decision making.
- 1.7 The Review accessed relevant documents both within and beyond Home Affairs, including Cabinet submissions and minutes from 2012 onwards, diplomatic reporting and reports from across the National Intelligence Community.
- 1.8 We provided a draft of the Review to the departments of Home Affairs and Finance, for fact checking.

Consultation

- 1.9 The Review interviewed heads of relevant government departments and agencies and relevant officials across Home Affairs – see Appendix B.
- 1.10 The Review informed all staff of Home Affairs of the Review’s terms of reference and invited any relevant information. This precipitated a single response.
- 1.11 The Review interviewed a number of people from outside government. We did not seek broader public submissions.

External advice

- 1.12 The Review obtained two legal advices from the Australian Government Solicitor on key matters considered by the Review.

Governance

- 1.13 The Reviewer was appointed by The Hon Clare O’Neil MP, Minister for Home Affairs, in consultation with the Prime Minister. The independent Reviewer was supported by an SES officer, a legal adviser and a graduate from the Department of the Prime Minister and Cabinet and by a procurement policy and framework adviser from the Department of Finance.

Terminology

- 1.14 We used the term ‘Home Affairs’ to cover both the department by that name today and its predecessors, the Department of Immigration of Border Protection and the Department of Immigration and Citizenship.

2. Allegations in media

- 2.1 In July 2023, *The Sydney Morning Herald* and *The Age*, in conjunction with *60 Minutes*, ran a series of reports titled *Home Truths*. The reports alleged contractors, who had been engaged by Home Affairs to deliver regional processing services, were suspected of systemic misuse of taxpayer money in Nauru and Papua New Guinea (PNG), over many years.
- 2.2 Some of the matters raised in the media include the following:
- a. Home Affairs oversaw the payments of millions of taxpayer dollars to Pacific island politicians through a chain of dubious contracts.
 - b. Home Affairs was aware of bribery allegations involving Politically Exposed Persons (PEPs)¹ and that PEPs received numerous suspicious payments from subcontractors and the department failed to act despite being aware of the allegations.
 - c. Former Paladin director Ian Stewart had reported numerous attempts of bribes by PEPs to Home Affairs and claimed a departmental official pressured him to use a subcontractor suspected of being involved with corrupt PNG officials.
 - d. When Mr Stewart made his complaints public in 2019, Home Affairs sought to downplay its knowledge of corruption concerns and urged Paladin executives to pass on their concerns only via phone calls, in order to avoid putting the concerns on the record.
 - e. Despite being aware of criminal investigations (or later charges/convictions), Home Affairs continued to engage and extend contracts associated with Radiance International Inc.

¹ Politically Exposed Persons (PEPs) are individuals who hold prominent public positions or roles in a government body or international organisation, either in Australia or overseas. Immediate family members and/or close associates of these individuals are also considered PEPs. <https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/politically-exposed-persons-peps>, accessed: 25 September 2023.

3. Historical context

- 3.1 Regional processing was initially introduced by the Australian Government in 2001 as part of the Pacific Solution, which ran through to 2007. The Government recommenced regional processing in 2012, and in August and September of that year, reopened the Nauru and Manus Island regional processing centres. This was done against a backdrop of a sharp increase in illegal arrivals by boat, and intense media, public and political debate. In September 2013, Operation Sovereign Borders was commenced.
- 3.2 Over time, the governments of Papua New Guinea (PNG) and Nauru sought to exercise greater control and involvement in regional processing – for example through Nauru’s *Nauru (RPC) Corporation Act 2017* (NRPCC Act). This Act put in place new legal arrangements that gave the Government of Nauru (GON) an approval role in regional processing and settlement related contracts, which affected Australia’s ability to procure services, and enter into contracts. Over time, the GON wanted to maximise domestic service delivery, requiring greater use of local contractors and support services. The PNG Government too, ahead of the eventual closure of the regional processing centre on Manus Island, expressed a consistent desire to take on greater responsibility for managing regional processing.
- 3.3 Regional processing arrangements in Nauru have significantly evolved since 2012, moving from a closed centre with high intensity service delivery and security requirements, to open centre arrangements between 2015 and 2019, and full community arrangements from 2019 to 2023. Regional processing is Nauru’s principal source of government revenue.
- 3.4 The Manus Island regional processing centre was located on the PNG Navy Base Lombrum. The centre was in operation from November 2012 until it was formally closed on 31 October 2017, after the PNG Supreme Court ruled in April 2016 that detention of individuals at Manus Island was unconstitutional. The Australian Government announced in July 2013 that transferees sent to PNG would never be resettled in Australia. When the Manus regional processing centre formally closed in 2017, hundreds of transferees refused to leave the centre and a stand-off ensued. Transferee arrangements were ultimately redistributed across three sites on Manus Island.² On 23 November 2017, a few were resettled in the United States as part of a refugee swap deal. Between August and November 2019, the last former transferees were moved to Port Moresby. In October 2021, PNG assumed responsibility for the remaining transferees in PNG.
- 3.5 In May 2020, the Australian Government confirmed the intended end of its involvement in regional processing in PNG and the establishment of an enduring

² East Lorengau Refugee Transit Centre (ELRTC), West Lorengau Haus; and Hillside Haus.

capability in Nauru, with regional processing maintained in a low contingent state. In September 2021, the Commonwealth signed a new Memorandum of Understanding with the GON for an ongoing state of operational readiness, either active state (full serve capability) or contingent state (capability held in a state of readiness) to receive new unauthorised maritime arrivals.

Governance in Nauru and Papua New Guinea

- 3.6 Nauru and PNG constitute high-risk integrity environments. In 2022, PNG was ranked 130th on Transparency International's Corruption Perceptions Index with a score of 30 out of a possible 100. Research by Transparency International New Zealand³ found that in PNG 'corruption is pervasive, deep-rooted and entrenched in every aspect of politics and business'⁴. This includes mismanagement of public funds, bribery⁵ and widespread links between law enforcement, government officials and criminal networks.⁶
- 3.7 International non-government organisations claimed that cronyism, bribery⁷ and other corrupt behaviours were prevalent in Nauru, with⁸ 'no effective mechanisms in place to fight corruption in the state apparatus'⁹.

Reviews, audits, investigations and inquiries

- 3.8 The regional processing contract arrangements have been heavily scrutinised. Since 2016, at least ten internal and external investigations, varying in scope and complexity, have been conducted into aspects of Home Affairs' regional processing contracting. A list of reviews, investigations, audits and inquiries is at Appendix C.

³ The research was commissioned under the Transparency International Indo-Pacific Partnership program, which was jointly funded by DFAT and the New Zealand Ministry of Foreign Affairs and Trade.

⁴ C. Nguyen, W. J. Hopkins, *Corruption and Money Laundering in the Pacific: Intertwined challenges and interlinked responses*. Transparency International New Zealand, Wellington, 2022, p. 21. https://uploads-ssl.webflow.com/5f3c5d2bb263505e25811876/6269bc87c4a9ce0f4a870808_4782_TI_Pacific%20Corruption%20Report%202022_FA_web.pdf, accessed: 7 September 2023.

⁵ BPNG, *Money Laundering and Financing of Terrorism – National Risk Assessment*. Bank of Papua New Guinea, Port Moresby, 2017, p. 17. <https://www.bankpng.gov.pg/wp-content/uploads/2019/04/Money-Laundering-and-Financing-of-Terrorism-National-Risk-Assessment-4.pdf>, accessed: 7 September 2023.

⁶ Global Initiative Against Transnational Organized Crime (2023b), *Organised Crime Index, Country Profile Papua New Guinea*. ocindex.net/assets/downloads/english/ocindex_profile_papua_new_guinea.pdf, accessed: 7 September 2023.

⁷ Freedom House (2023), *Freedom in the World Index – Nauru Country Report*. <https://freedomhouse.org/country/nauru/freedom-world/2023>, accessed: 7 September 2023.

⁸ Global Initiative Against Transnational Organized Crime (2023a), *Organised Crime Index, Country Profile Nauru*. ocindex.net/assets/downloads/english/ocindex_profile_nauru.pdf, accessed: 7 September 2023. Also see: M. Findlay 2007, 'Misunderstanding Corruption and Community: Comparative Cultural Politics of Corruption Regulation in the Pacific', *Asian Journal of Criminology*, vol. 2, no. 1, pp. 47-56. DOI:10.1007/s11417-007-9023-2, accessed: 7 September 2023.

⁹ Global Initiative (2023a).

- 3.9 The 2016 Australian National Audit Office (ANAO) audit¹⁰ of Home Affairs' procurement of garrison support and welfare services for regional processing facilities in Nauru and PNG 'identified serious and persistent deficiencies in ... procurement activity'¹¹ regarding facility establishment, contracts and value for money. The audit said '[t]he Department used approaches which reduced competitive pressure and significantly increased the price of the services without government authority to do so.'¹²
- 3.10 The 2017 ANAO audit¹³ of the department's contract management of garrison support and welfare services for regional processing facilities in Nauru and PNG found that the department had 'fallen well short of effective contract management practices.'¹⁴ While the initial 2013 procurement processes suffered from 'circumstances of great haste'¹⁵, the audit found these shortcomings mostly remained in place for the 2014 contracts. ANAO consequently determined that the recurrence of deficiencies in the department's management – going back to the 1997 detention centre contracts – 'resulted in higher than necessary expense for taxpayers and significant reputational risks for the Australian Government and the department.'¹⁶ The report acknowledged that the department had established 'a comprehensive and risk based performance framework for the contracts'¹⁷ but that the system depended on 'self-assessment by providers'¹⁸ with no risk rating reviews occurring and billions of dollars in payments under the contracts approved by officers without the required authorisation or with no departmental records at all.
- 3.11 A 2019 internal audit¹⁹ undertaken by Ernst & Young (EY) into Home Affairs' procurement, tendering and subsequent contract management in regard to Paladin, identified only minor suggestions for improvement. Overall EY found that Home Affairs had complied with the Commonwealth Procurement Rules (CPRs), achieved value for money, encouraged competition, maintained sufficient and appropriate evidence to demonstrate compliance with its contract management policies, procedures and framework and conducted a risk assessment.²⁰

¹⁰ ANAO, Report No. 16 of 2016-17: *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*.

¹¹ *Ibid.*, p. 8.

¹² *Ibid.*

¹³ ANAO, Report No. 32 of 2016-17: *Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services*.

¹⁴ *Ibid.*, p. 8.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 9.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Department of Home Affairs (October 2019), *Review of the Tendering, Procurement, and Contract Management Processes Associated with Paladin Holdings PTE Ltd.* <https://www.homeaffairs.gov.au/foi/files/2023/fa-230501489-document-released.PDF>, accessed: 18 September 2023.

²⁰ *Ibid.*, p. 5.

- 3.12 In regard to 'the nature of the procurement and operating environment in PNG'²¹ the internal audit found a heightened 'potential for fraud and corruption procurement risks.'²² The audit said 'that these risks should have been identified and documented with appropriate management actions also considered and documented.'²³
- 3.13 In responding to EY's finding, the department said that '[d]uring the procurement process, no issues were identified in relation to fraud, corruption and/or collusion. [Property and Major Contracts Division] followed all procurement processes including conducting a risk assessment in relation to the procurement in compliance with the CPRs. Should issues have been identified, the procurement process would have explicitly addressed these concerns, and mitigations would have been put into place before any arrangement was entered into.'²⁴
- 3.14 In the 2020 ANAO audit, the Auditor-General referred to the Home Affairs' 2019 internal audit and criticised the department's approach to risk assessment. The audit highlighted the importance of proactivity as 'the purpose of a risk assessment is to anticipate and identify risks before they arise rather than to deal with them once they have.'²⁵
- 3.15 The 2020 ANAO audit examined procurement processes associated with Canstruct, Broadspectrum and Paladin among other contractors. The audit had access to 24 million documents, reviewed four million, and took 10 months to complete. It found that 'procurement activities were conducted largely in accordance with the CPRs'²⁶ and Home Affairs' management of the procurement of services 'was largely appropriate.'²⁷
- 3.16 The Auditor-General further noted that Home Affairs had 'substantially implemented the recommendations'²⁸ made in previous reports, including appropriate contract management and procurement processes as well as risk and probity management processes. At the same time, the department only conducted limited due diligence enquiries and was once again unable to 'demonstrate the achievement of value for money for the PNG procurements.'²⁹

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ ANAO, Report No. 37 of 2019-20: *Procurement of Garrison Support and Welfare Services*, p. 35.

²⁵ Ibid.

²⁶ Ibid, p. 8.

²⁷ Ibid.

²⁸ Ibid, p. 9.

²⁹ Ibid.

- 3.17 The 2022 ANAO audit³⁰ concerned the status of Home Affairs' implementation of recommendations by the Joint Committee of Public Accounts and Audit (JCPAA) and the Auditor-General. The ANAO concluded that implementation by Home Affairs 'was largely effective [and] the Department now has largely fit-for-purpose arrangements to respond to, monitor and implement agreed recommendations.'³¹
- 3.18 In line with the *Auditor-General Act 1997*, the ANAO has undertaken annual reviews of Home Affairs' financial year statements, and in particular has considered the accuracy of detention and regional processing centres' expenses.³²
- 3.19 During the course of the Review, the JCPAA tabled *Report 498* on 9 August 2023.³³ The JCPAA examined Home Affairs' maritime surveillance services contract, which is beyond the scope of the Review. The JCPAA was critical of the department's contract management processes labelling the identified 'deficiencies in almost every aspect' both 'serious' and 'unacceptable'.³⁴
- 3.20 In light of the JCPAA finding 'that there would be benefit in greater oversight of the department's procurement and contract management processes'³⁵, it recommended that from September 2023 until contract expiry in December 2027, Home Affairs report back to the JCPAA every six months 'on its progress in tendering and procuring a new surveillance contract'.³⁶

³⁰ ANAO, Report No. 25 of 2021-22: *Implementation of Parliamentary Committee and Auditor-General Recommendations – Department of Home Affairs*.

³¹ *Ibid.*, p. 8.

³² ANAO, *Financial statement audit reports 2003-04 to 2022-23*. https://www.anao.gov.au/pubs/financial-statement-audit?query=&items_per_page=60, accessed: 19 September 2023.

³³ Parliament of Australia, Joint Committee of Public Accounts and Audit. *Report 498: 'Commitment issues' – An inquiry into Commonwealth procurement*. https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000011/toc_pdf/Report498'Commitmentissues'-AninquiryintoCommonwealthprocurement.pdf, accessed: 18 September 2023.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 96.

³⁶ *Ibid.*, p. 97.

4. Information sharing

General principles

- 4.1 Self-evidently, information is critical to government – from policy to operations, to commercial matters with third parties. Adequate and relevant information is also a requirement reinforced by the obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Australian Public Service Code of Conduct.³⁷
- 4.2 Not all information held by government agencies can or should be shared. There are legal and policy restrictions on some information that determine to whom, when and for what purposes it can be shared; as well as how it should be collected, stored, used, managed and disposed of. Some information – such as that held by law enforcement and regulatory agencies – will require careful judgement calls about when and to whom information should be shared. Sharing intelligence will often depend on what use the material is to be put, and how it ought to be protected.
- 4.3 Generally, and absent some clear legislative provision preventing it, information can be shared between agencies provided it is for a proper purpose.³⁸

Intelligence

- 4.4 The Review used the term ‘intelligence information’ to mean broadly ‘any information that was acquired or prepared by or on behalf of an intelligence agency in connection with its functions’³⁹ but is more specifically defined in enabling legislation for most National Intelligence Community (NIC) agencies.
- 4.5 There are some necessary and understandable limitations on the extent to which intelligence information is shared in government and how it is mandated to be used. These include secrecy provisions, privacy law and legal privilege that restrict information access and dissemination in some cases. It can be an offence under the *Crimes Act 1914* or Criminal Code to share or disclose information inappropriately.

³⁷ See *Public Governance, Performance and Accountability Act 2013*, s 25. Also see *Public Service Act 1999*, s 13(2).

³⁸ See for example the discussion in *Comprehensive Review of the Legal Framework of the National Intelligence Community, Volume 3 of 4: Information, Technology, Powers and Oversight*, (December 2019), paragraphs 33.97 and 33.98. ‘Submissions and previous reviews have suggested a level of uncertainty or concern regarding information sharing provisions, and submitted that the complexity of current legislation is a serious impediment to the effective sharing of information for intelligence purposes. The Review has sought, at length, to explore these issues and identify systemic challenges to NIC information sharing legislation. However, agencies have only identified localised issues, which are either currently being, or can be, addressed by targeted amendments. Furthermore, many case studies of information sharing ‘barriers’ put forward by agencies, did not in fact demonstrate the asserted complexity or inconsistency. Nor did they demonstrate that current legislative provisions are needlessly or unjustifiably complex or inconsistent, or demonstrably impact agency operations, having regard to the underlying principles for the differences between, and limitations on, information sharing provisions.’

³⁹ *National Anti-Corruption Commission Act 2022*, s 239(6).

- 4.6 The principal policy on information security is the government's Protective Security Policy Framework (PSPF).⁴⁰ The information security part of the PSPF sets out rules on, among other things, the classification system and access to information. A core requirement of PSPF Policy 9, on access to information, requires each entity to enable appropriate access to official information, including sharing information within the entity and with other relevant stakeholders, ensuring that those who access sensitive or classified information have an appropriate security clearance and need to know, and that the entity controls access to support systems and infrastructure.
- 4.7 There appears to be no blanket legislative ban on the use of intelligence for procurement or contracting purposes. However it largely depends on the nature of the intelligence and the secrecy provisions that apply to it. Ultimately, it will need to be considered on a case by case basis, each time an agency proposes to use intelligence for a procurement or contracting decision. And of course, this can only be done in consultation with the relevant intelligence agency.

Australian Federal Police

- 4.8 In correspondence with the Review, the Australian Federal Police (AFP) set out legal and policy constraints on the AFP supporting Commonwealth agencies in probity in procurement and contract management. Key elements for consideration by the AFP included ensuring operational integrity and presumption of innocence, and adhering to the legal framework.
- 4.9 The AFP also explained how it manages sensitive investigations, following the review by John Lawler APM⁴¹ and implementation of his recommendations, through the Sensitive Investigations Oversight Board.

AUSTRAC

- 4.10 The Australian Transaction Reports and Analysis Centre (AUSTRAC) is a regulatory authority with access to significant data concerning financial movements. In particular, Suspicious Matter Reports (SMR) can contain information on transactions possibly related to money laundering, terrorism financing, proceeds of crime or other serious crimes under Australian law, and are submitted by financial institutions under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) framework.⁴²

⁴⁰ See Department of Home Affairs, *Protective Security Policy Framework*. <http://www.protectivesecurity.gov.au/>, accessed: 28 September 2023.

⁴¹ J. Lawler APM (2020), *Review into the AFP's Response to and Management of Sensitive Investigations*. <https://www.afp.gov.au/sites/default/files/PDF/LawlerReview.pdf>, accessed: 28 September 2023.

⁴² AML/CTF Act, s 41.

- 4.11 In May 2017, AUSTRAC and the then Department of Immigration and Border Protection (DIBP) signed a Memorandum of Understanding (MOU) regarding cooperation and the access to and use of AUSTRAC information; it has not been varied or revoked since Home Affairs was established.⁴³ The MOU sets out special provisions for SMRs focused mainly on protecting the identity of persons furnishing the reports and limiting use in legal proceedings.⁴⁴ The MOU provides that an official may disclose AUSTRAC information to another official of the same agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the agency.⁴⁵
- 4.12 The acting AUSTRAC CEO advised that AUSTRAC's information, including SMRs, could be disclosed to those parts of Home Affairs responsible for regional processing procurement and contract management.

Other intelligence agencies

- 4.13 With respect to the Australian Security Intelligence Organisation (ASIO), Australian Secret Intelligence Service (ASIS), Australian Signals Directorate (ASD), Defence Intelligence Organisation (DIO) and Office of National Intelligence (ONI), restrictive secrecy provisions⁴⁶ do not contain a broad exception which authorises intelligence to be used and disclosed for the purpose of a Commonwealth official's functions and powers. However, each of the secrecy provisions contain exceptions that in certain circumstances, could authorise the disclosure of information for a procurement or contracting decision.
- 4.14 The restrictive secrecy provisions all contain a similar exception which authorises a communication made in the course of a person's duties as a staff member or agent, within the limits of authority conferred by the Director-General of the relevant intelligence agency: see ss 39(1)(c)(iii), 40(1)(c)(iii) and 40B(1)(c)(iii) of the *Intelligence Services Act 2001* (IS Act), s 18(2)(e) of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) and s 42(1)(c)(iii) of the *Office of National Intelligence Act 2018* (ONI Act). If disclosing intelligence relevant to a procurement or contracting decision is within the limits of authority conferred on the staff member by the Director-General of the relevant intelligence agency, these secrecy regimes will not be a barrier.
- 4.15 Alternatively, the restrictive secrecy provisions all contain a similar exception which allows the Director-General of the relevant intelligence agency (or their delegate) to

⁴³ AUSTRAC, Department of Immigration and Border Protection (17 May 2017), *Memorandum of Understanding between the Australian Transaction Reports and Analysis Centre and The Department of Immigration and Border Protection regarding cooperation and the access to and use of AUSTRAC information or documents containing AUSTRAC information* (AUSTRAC-DIBP MOU).

⁴⁴ AUSTRAC-DIBP MOU, paragraphs 27, 28, and 31-35.

⁴⁵ AUSTRAC-DIBP MOU, paragraphs 44 and 45.

⁴⁶ IS Act, s 40(1) and s 40B(1), ASIO Act, s 18(2) and ONI Act, s 42(1).

approve a particular communication of information which would otherwise be covered by the secrecy provision: see ss 39(1)(c)(iv), 40(1)(c)(iv) and s 40B(1)(c)(iv) of the IS Act, s 18(2)(f) of the ASIO Act and s 42(1)(c)(iv) of the ONI Act. This would enable the Director-General of the relevant intelligence agency (or their delegate) to approve the communication of intelligence to a Commonwealth official for use in a procurement or contracting decision, subject to other Commonwealth information protecting mechanisms.

- 4.16 Additionally, there are Privacy Rules that apply to ASIS, ASD, DIO and ONI which impose restrictions on the communication of intelligence information concerning Australian persons. As a general principle, ASIO can only collect intelligence on an Australian where it concerns a matter relating to security, as defined in the ASIO Act. ASD, ASIS and DIO cannot target Australians or Australian entities except for very specific purposes set out in legislation, which generally require the authorisation of the relevant minister. To the extent that intelligence is concerned with foreign nationals, the Privacy Rules will not be a barrier.
- 4.17 There are no non-disclosure or further use limitations in the restrictive secrecy provisions – meaning there is nothing in the terms of the legislation which says that the agency could not use the intelligence for a procurement or contracting decision if it had been provided for a particular, non-procurement related purpose. However, if intelligence is disclosed subject to caveats or conditions such as ‘for intelligence purposes only’, the recipient entity should seek the relevant intelligence agency’s consent to use the intelligence in a procurement or contracting decision.

5. Previous regional processing contracts

- 5.1 The Review considered whether information available within government contained material relevant to regional processing procurement or contract management. The Review further considered whether, if relevant information existed, it was available and accessed by Home Affairs, and if so, whether it informed decision-making.
- 5.2 Collection agencies and the Australian Transaction Reports and Analysis Centre (AUSTRAC) advised that they had never been asked for material on regional processing procurement and contract management.
- 5.3 Home Affairs' Intelligence Division advised that regional processing procurement and contract management had never been identified as a collection or assessment priority by Home Affairs.
- 5.4 Senior officers responsible for regional processing procurement and contract management in Home Affairs over the years, and with whom we met, advised they had, at least before March 2023, not received intelligence relating to procurement and contract management, and had not asked for it.
- 5.5 However, it quickly became clear to the Review that there was considerable information within government relevant to regional processing procurement and contract management and available to Home Affairs at the time decisions were being made.
- 5.6 In the course of our enquiries, we spoke with National Intelligence Community (NIC) agencies and the Department of Foreign Affairs and Trade (DFAT) about what material was available and relevant to regional processing arrangements. At our request, the Office of National Intelligence (ONI), Australian Signals Directorate (ASD), Australian Secret Intelligence Service (ASIS), Australian Security Intelligence Organisation (ASIO), DFAT, Defence Intelligence Organisation (DIO), Australian Criminal Intelligence Commission (ACIC), Home Affairs and AUSTRAC undertook a search of their databases using a number of key words.
- 5.7 With the exception of limited distribution reports for the Australian Federal Police (AFP), Home Affairs had access to AUSTRAC, DFAT and other intelligence information throughout relevant periods of the Review, through being able to search various databases. Home Affairs advised us it did not task or seek to access AUSTRAC data in relation to regional processing procurement and contract management. Home Affairs also had routine access to DFAT cables and other intelligence reporting.

- 5.8 Not a single person we spoke to at Home Affairs made the connection – without prompting – between intelligence reporting and the complex procurement processes Home Affairs was undertaking in what was known, through routine diplomatic and other reporting, to be high risk environments.
- 5.9 The Review considered a number of case studies of procurement and contract management activities by Home Affairs. There was a range of intelligence material available to Home Affairs that was relevant to regional processing contracting. That information was not broadly accessed by Home Affairs, and there was no evidence that it was made available to the areas of the department responsible for procurement and contract management for regional processing. There was no evidence that this intelligence material informed decision-making. Common elements from the case studies included:
- a. an absence of effective communication within Home Affairs (between the intelligence division and the regional processing procurement and contract management team) and from Home Affairs to intelligence agencies – this being the responsibility of senior SES to ensure effective coordination;
 - b. some of the companies had limited public profiles and operated in what was known to be a high risk environment. The companies took on very significant contracts in areas where they had limited relevant performance history; and
 - c. Home Affairs continued to vary or extend the contracts without undertaking due diligence appropriate to the situation, which would have given it pause for thought at each decision point.

6. Obligations to report suspected criminal/corrupt activity

General principles

6.1 In considering the nature of information available to government agencies in the course of performing their functions, the Review sought to understand the obligations that might exist, and if so upon whom, to report integrity concerns such as suspected criminal activity.

Obligations on APS employees and Commonwealth officials

- 6.2 Australian Public Service (APS) employees have an obligation to report misconduct by public servants. The *Public Service Act 1999* (PS Act) sets out expected standards of behaviour for agency heads and APS employees. The *Australian Public Service Commissioner's Directions 2022* determine the scope and application of the APS Values, and provide that 'having regard to an individual's duties and responsibilities, upholding the [Ethical Value of the PS Act] requires ... reporting and addressing misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way'.⁴⁷ Australian Public Service Commission (APSC) guidance provides that an APS employee who observes something they believe may amount to misconduct, including criminal behaviour, should report it within the agency in the first instance. These reporting obligations also apply to public servants overseas.
- 6.3 Commonwealth officials have broad obligations to report suspected fraud relating to the Commonwealth entity. While the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) does not impose a general positive obligation on Commonwealth officials to report suspected criminal activity that they observe in the course of their duties, the PGPA Act provides a legislative framework for Commonwealth fraud control, including appropriate systems of risk oversight and management. The PGPA Act imposes a number of duties on officials, including acting honestly, in good faith and for a proper purpose. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) requires the accountable authority of a Commonwealth entity to take all reasonable measures to prevent, detect and deal with fraud, including a process for officials of the entity and other persons to report suspected fraud confidentially. Based on s 10 of the PGPA Rule, the Commonwealth Fraud Control Policy, and Resource Management Guide No 201 on preventing, detecting and dealing with fraud, a Commonwealth official would likely be required to report instances of suspected fraud, in circumstances where the suspected fraud relates to, or is against, the Commonwealth.

⁴⁷ *Australian Public Service Commissioner's Directions 2022*, s 14(f).

- 6.4 Any positive reporting obligations that arose for Commonwealth officials would need to be balanced with obligations that regulate the use or disclosure of certain information, for instance under the Criminal Code, secrecy provisions, the *Privacy Act 1988* and the *Public Interest Disclosure Act 2013* (PID Act).
- 6.5 We note for completeness that the Attorney-General's Department (AGD) is developing policy to extend the PGPA Rule, Fraud Control Policy and Guidance to clarify and expand agencies' obligations flowing from the commencement of the National Anti-Corruption Commission (NACC).⁴⁸

Obligations under the NACC Act

Mandatory referral obligations

- 6.6 Under the *National Anti-Corruption Commission Act 2022* (NACC Act), an 'agency head' (including the CEO of the Australian Transaction Reports and Analysis Centre (AUSTRAC)) who becomes aware of a corruption issue⁴⁹ must refer the issue to the Commissioner if: the issue concerns the conduct of a person who is, or was, a 'staff member' of the agency while that person is, or was, a staff member; and the agency head suspects that the issue could involve corrupt conduct that is serious or systemic. Heads of intelligence agencies (including heads of the Australian Security Intelligence Service, Australian Signals Directorate, Australian Security Intelligence Organisation, Office of National Intelligence and Defence Intelligence Organisation) and Public Interest Disclosure officers also have mandatory referral obligations to either the Commissioner or to the Inspector-General of Intelligence and Security.
- 6.7 The mandatory referral obligation applies where an agency head becomes aware of a corruption issue concerning the conduct of a person who is or was a 'staff member' of the agency at the time of the conduct. A 'staff member' is broadly defined in s 12 of the NACC Act. It encompasses circumstances where the agency is responsible for administering a Commonwealth contract – an individual who is a contracted service provider for the contract, and an officer or employee of a contracted service provider for the contract, and someone who provides goods or services for the purposes (whether direct or indirect) of the contract.
- 6.8 It is likely that these obligations would generally apply in circumstances where the suspected corrupt conduct is identified by a Commonwealth official receiving or accessing information in an intelligence report. However, there are some exceptions, including that the mandatory referral obligations would not require a person to disclose information where that would be contrary to an exempt secrecy provision.

⁴⁸ Discussed in more detail in Chapter 8.

⁴⁹ A 'corruption issue' is an issue of whether a person has engaged, is engaging, or will engage in 'corrupt conduct' (NACC Act, s 9). The definition of 'corrupt conduct' is set out in NACC Act, s 8.

6.9 Other than the head of agency, no mandatory referral obligations apply under the NACC Act to any other staff member of an agency (nor to the agency itself), although any person may make a voluntary referral. However, it is likely that where an agency has set up internal mandatory procedures for its staff members to report suspected corrupt conduct, then we expect that failure to act in accordance with such procedures could result in a potential breach of the APS Code of Conduct.

The NACC Act outside Australia

6.10 The NACC Act applies both within and outside Australia (s 5). The Act does not generally apply to foreign governments. But there are two scenarios involving foreign actors which might enliven the mandatory referral obligation:

- a. the first is where a staff member of an agency is themselves suspected of having engaged in corrupt conduct in the course of their dealings with the foreign actor, for example because they had been implicated or complicit in the foreign actor's misdeeds. In this circumstance, the referral obligation could arise due to the involvement of the staff member, regardless of the role or nature of the foreign actor; and
- b. the second is where the foreign actor is themselves a 'staff member' for the purposes of the Act; in this circumstance the foreign actor would need to be a natural person. This would likely capture a foreign national who worked in a contracted service provider (Australian or foreign entity) providing goods or services to the Commonwealth, and who is suspected of engaging in corrupt conduct. The government of a foreign country, or part of a foreign country, is expressly excluded from being a 'contracted service provider' for the purposes of the Act (s 13(3)).

6.11 The NACC Act requires the Commissioner or Inspector-General of Intelligence and Security to consult the Secretary of the Department of Foreign Affairs and Trade (DFAT) if a corruption issue or public inquiry relates in any way to an official of a foreign country or conduct in a foreign country of a foreign person (s 240).

6.12 The concept of a 'contracted service provider'⁵⁰ in the NACC Act captures all parties in an interconnected chain of contracts made under a Commonwealth contract, provided each party in the chain is a contracted service provider responsible for providing goods or services for the purposes of the head Commonwealth contract. This could be applied any number of times down a chain of subcontracts provided that every party in that chain was a contracted service provider. A chain of subcontracts would be broken where a party was excluded from being a contracted service provider because of s 13(3) (for example because they were a foreign government). The extent to which contracted service providers (or their officers or employees) are 'staff members' for the

⁵⁰ See NACC Act, s 12(1)(f) and compare s 13(1).

purposes of the NACC Act would depend on the extent of their responsibilities and activities for the purposes of the Commonwealth contract.

- 6.13 A foreign state-owned enterprise could be encompassed by the mandatory referral obligation under the Act if an officer or employee of the enterprise fell within the definition of 'staff member'. While legal advice would need to be sought in individual cases, it seems to us that a foreign state-owned entity may not be considered to be a 'government of a foreign country', and therefore may not automatically be excluded from the definition of 'staff member'. But it would be necessary to consider all the circumstances in working out whether a particular foreign actor who was closely affiliated with the government of the country would be captured by the exclusion provision.

7. Regional processing in 2023

Existing frameworks and contracts in Home Affairs

7.1 This chapter examines the processes around the key regional processing contract Home Affairs currently has with Management and Training Corporation Pty Ltd (MTC Australia). It is not intended to be a comprehensive audit of the Department's procurement compliance.

Nauru facilities, garrison, transferee, arrivals and reception services contract

MTC Australia is an Australian private company registered in 2014 and operating in New South Wales and Queensland. MTC Australia's parent company is headquartered in Centerville, Utah and employs more than 8,000 staff worldwide.

MTC Australia is responsible for the provision of facilities, garrison, transferee arrivals and reception services in Nauru. Following a limited tender procurement process applying Commonwealth Procurement Rules (CPRs) paragraph 2.6, MTC Australia signed a contract on 11 January 2023 for an initial term of three years from 1 October 2022 with an option to extend by up to three years in aggregate. The contract value, as at 30 August 2023, was \$421,830,424.60.

MTC Australia commenced delivering transition-in services under a Letter of Intent, signed 9 August 2022. A second Letter of Intent was signed on 29 September 2022 and was later extended to 31 January 2023 to allow for the finalisation of the procurement and negotiation of the contract.

Under the contract, MTC Australia is ultimately responsible for ensuring all subcontractors, and their personnel, remain compliant with the contract.

Risk

7.2 Commonwealth entities must establish processes to identify, analyse, allocate and treat risk when conducting a procurement. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the procurement. Entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend relevant money and the terms of the contract.⁵¹

7.3 The Resource Management Framework, within which sits the Commonwealth Procurement Framework, comprises a number of resources to support Commonwealth entities to establish their internal risk frameworks in relation to procurement. These resources broadly comprise the CPRs, the Commonwealth Risk Management Policy,

⁵¹ CPRs, 13 June 2023, paragraph 8.1.

the Protective Security Policy Framework and the Commonwealth Fraud Control Framework.

- 7.4 These frameworks and policies require entities to use measures proportionally to address their unique risk environments recognising that an entity's size, operations and risk environment will greatly influence how that entity determines its risk tolerances. For example, the level of risk tolerance accepted by a national security entity may be very different to that of an administrative entity.⁵²

Home Affairs Risk Management Framework

- 7.5 Home Affairs' Risk Management Framework, established under the department's Accountable Authority Instructions, provides a structured approach for the department to identify and manage risk. The framework, consisting of: policy and guidance, governance, formal and informal assurance, and culture and capability building, supports decision-makers at all levels and is aimed at ensuring that all officials have clear guidance and direction on how to manage risk.
- 7.6 The Home Affairs Risk Management Policy supports Home Affairs in meeting its risk management obligations in accordance with the *Public Governance, Performance and Accountability Act 2013*, the Commonwealth Risk Management Policy and the principles found in ISO 31000:2018 Risk Management – Guidelines.
- 7.7 Home Affairs works in complex and changeable environments, and there are some circumstances where the department may accept a higher level of risk to ensure it achieves its goals. In these circumstances, the department will need to adjust its risk tolerance. Home Affairs considers this is acceptable provided there is a clear and recorded decision - made by a decision-maker who is authorised to accept that level of risk on behalf of the department - which sets out the rationale for adjusting tolerance and any additional controls (such as processes or procedures) which will apply in that specific circumstance.
- 7.8 Accordingly, Home Affairs has implemented an internal framework whereby procurements that are considered high risk and high value are subjected to a greater level of rigour.

⁵² Department of Home Affairs, *Protective Security Policy Framework – Policy 3: Security planning and risk management*. <https://www.protectivesecurity.gov.au/publications-library/policy-3-security-planning-and-risk-management>, accessed: 12 September 2023.

High Risk and High Value (HRHV) framework

The HRHV Procedure was first implemented in March 2017, with the HRHV framework introduced on 29 July 2019. A revised HRHV Procedural Instruction (HRHV PI) was launched in May 2021. The introduction of escalated oversight arrangements for HRHV procurements has been a key feature of the department's continuous improvement with regards to risks that may stem from such procurements. At the time the Review was conducted, HRHV PI was being reviewed to include 'trigger events' that may move existing contracts into the HRHV framework.

Procurements meeting the following criteria must be considered by the Chief Procurement Officer to determine if the activity should fall within the HRHV assurance framework:

- strategic procurement activity valued \$10-50 million and identified as having a high or extreme risk that might impact on the department's strategic objectives or its ability to execute the procurement, or potentially result in damage to reputation or significant legal, operational or financial risks are considered for HRHV status by the Chief Procurement Officer; or
- valued at \$50 million or more.

Where a procurement is determined to be HRHV, a Steering Committee (HRHV SC) is established, led by an SES Band 2 Chair and comprising the following non-delegable members: Chief Procurement Officer; CFO; Chief Risk Officer; and First Assistant Secretary Disputes and Corporate Law Division (in an advisory role). The HRHV SC provides advice and assurance to the Financial Delegate (a SES Band 3) that each of the four stages of procurement approval (planning, approach to market, evaluation and contract) are consistent with legal principle and practice, the department's Accountable Authority Instructions, Financial Management Guidelines, Risk Management Framework, and the CPRs.

7.9 Having senior procurement, finance and risk officers as mandatory members of a procurement steering committee, and mandatory legal and probity advisers, provides support and oversight to business areas undertaking these significant processes. It also ensures that the process is informed by broader strategic considerations, and that the procurement is appropriately conducted.

7.10 The Review considered how the HRHV framework was applied to the procurement for the MTC Australia contract by reviewing the key procurement documentation relating to the four stages of procurement approval. This included a range of materials pertaining to: Determination and Approval Minutes; Procurement, Risk Management and Probity Plans; risk assessments; tender evaluation documentation; and contract negotiation documentation. Based on these documents, the Review considers the procurement process followed the HRHV PI, noting that the HRHV process applied was streamlined to cater to the tight turn-around required to secure the contract services.

7.11 HRHV oversight can also be extended to the management of contracts. In accordance with the HRHV PI, the HRHV SC allocated HRHV status to the MTC Australia contract requiring additional governance and controls with respect to high risk payments. This determination was made based on a number of factors such as the complex key performance measures, the high level of complexity in delivering in a location such as Nauru, and the potential for reputational damage. HRHV status on a contract means that authority to make payments remains at the deputy secretary level with authorisation from both the CFO and the First Assistant Secretary of the Disputes and Corporate Law Division.

Tailored risk assessments

7.12 As discussed in Chapter 3, regional processing arrangements are delivered in a unique political, legislative and geographic environment and these factors must be taken into consideration when making decisions.

7.13 While Home Affairs' internal policies and templates provide guidance for procurement officials to develop risk assessments, the template risks provided to prompt further consideration by officials were largely focused on compliance and procurement process risks with less (or no) emphasis on those risks relating to, for example:

- a. national interests, including international relations;
- b. geographic risks⁵³ (that is, conditions in a particular country which may make certain risks, such as foreign bribery, corruption or fraud, more likely); and
- c. company standing, including any particular risks that may arise relating to ownership, structure, governance and its position in supply chains.

7.14 Geographic risk factors are generally classified as those related to:

- a. the regulatory framework – such as alignment with international conventions;
- b. governance – such as strength of inspectorates, rule of law and level of corruption;
- c. socio-economic context – such as poverty and education rates, vulnerability and discrimination of specific populations; and
- d. political context – such as presence of conflict.

7.15 More informed strategies can be put in place to mitigate risks and establish contractual controls when an entity has a better understanding of the geographic risks and the relevant threats and vulnerabilities associated with the environment in which the procurement is being conducted and the contract delivered. Risk assessments also help to identify possible criminal convictions, links to organised crime, suspicious

⁵³ The OECD Due Diligence Guidance for Responsible Business Conduct indicates that geographic risks can generally be classified as those related to the regulatory framework, socio-economic context and political context. See OECD, *Due Diligence Guidance for Responsible Business Conduct*. <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>, accessed 13 September 2023.

international financial transactions, professional misconduct and conflicts of interest that represent an intolerable risk.

- 7.16 The Review found that the risk assessment for MTC Australia was tailored (beyond the template risks) to identify risks specific to the MTC Australia procurement. The Review observed that risks were appropriately escalated in accordance with risk assessment processes when they were found to be outside the department's risk appetite and tolerance.
- 7.17 Home Affairs had in place a Fraud and Corruption Control Risk Assessment for Regional Processing Facilities (endorsed by a number of SES on 13 March 2018). The assessment identified a number of risks such as: service provider staff misuse of departmental information for a benefit; external parties colluding to have tenders approved; and service provider staff falsely claiming payments and benefits. Controls broadly included: police criminal history checks; clearly defined instructions on conflicts of interest; audits and control activities; established investigation protocols; and internal investigation (including potential referral to the Australian Federal Police and/or the Australian Commission for Law Enforcement and Integrity). This risk assessment was in existence at the time the MTC Australia procurement was undertaken; however, it does not appear to have been referenced in approval documentation considered by the HRHV SC or Delegate when approaching the market or entering into the contract.

Risk culture

- 7.18 The effectiveness of risk frameworks and practices depends on the risk culture of an entity. 'A positive culture for managing risk is strongly influenced by organisational culture and exists when officials understand the risks facing their entity and consistently make appropriate risk-based decisions. A positive risk culture is one where staff at every level appropriately manage risk as an intrinsic part of their day-to-day work. Such a culture supports an open discussion about uncertainties and opportunities, encourages staff to express concerns, and maintains processes to elevate concerns to appropriate levels'.⁵⁴
- 7.19 Detrimental risk behaviour such as undertaking risk management without tailoring or adaptation to the specific circumstances or viewing risk purely through a compliance lens can seriously limit the extent to which risks are identified, assessed and managed.
- 7.20 Home Affairs advised that, through a series of continuous improvements informed through both internal retrospection and external audits, the information collected in regards to risks is now more comprehensive and reporting is far more regular. The Review heard from

⁵⁴ Department of Finance, *Commonwealth Risk Management Policy – Element 3: Risk Culture*.

<https://www.finance.gov.au/government/comcover/risk-services/management/risk-management-toolkit/element-3-risk-culture>, accessed: 9 September 2023.

Home Affairs officials that attitudes towards risk had also improved over time and there was generally a culture of willingness to enhance processes and controls.

Consideration of suppliers' ethical behaviour

- 7.21 Officials must consider, among other things, a potential supplier's relevant experience and performance history when assessing value for money. This could include consideration of any unethical behaviour and/or deficiencies in performance under prior contracts.⁵⁵
- 7.22 There are no government-wide criteria or decision making approaches for undertaking due diligence activities as different Commonwealth entities have different objectives, and requirements, and operate in different contexts. Despite these differences, there are common disqualifying criteria, such as criminal convictions, professional misconduct and conflicts of interest that represent an intolerable risk. When undertaking due diligence, it may also be important to assess the suitability of the individuals who own or are associated with an organisation, not just the organisation itself.⁵⁶

Risk-informed due diligence activities

- 7.23 In environments where there was a high risk of fraudulent and corrupt behaviour, such as those in which the regional processing arrangements were established, more robust due diligence activities in relation to a tenderer's ethical conduct and integrity should be applied and used to inform decision making and control mechanisms within contracts.
- 7.24 Home Affairs had in place processes and templates to assist procuring officials to evaluate procurements, including guidance on establishing evaluation plans and teams, developing evaluation criteria and methodology and preparing evaluation reports. Activities include conducting due diligence enquiries such as referee checks, interviews, presentations, site visits, demonstrations and product testing. Compliance with the contract, procurement-connected-policies,⁵⁷ confidentiality and conflicts of interest are considered and financial viability assessments of preferred tenderers are also undertaken.

⁵⁵ Department of Finance (19 May 2023), *Procurement Policy Note – Ethical conduct of tenderers and suppliers*. <https://www.finance.gov.au/government/procurement/procurement-policy-note>, accessed: 18 September 2023.

⁵⁶ See Commonwealth Fraud Prevention Centre, *Suitability Assessment Toolkit* (July 2021) at <https://www.counterfraud.gov.au/library/suitability-assessment-toolkit>, accessed: 8 September 2023.

⁵⁷ Australian Government policies linked to the Commonwealth Procurement Framework through the Commonwealth Procurement Rules. <https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-connected-policies>, accessed: 8 September 2023.

- 7.25 The Tender Evaluation Report for MTC Australia, endorsed by the HRHV SC and the Delegate, contained a detailed value for money assessment which was informed by a Technical Evaluation, Commercial and Pricing Evaluation and Non-Technical Evaluation. The evaluation assessed the tenderer's overall capability, capacity, price and risk, and identified MTC Australia as the preferred tenderer subject to a number of items being clarified during negotiation.
- 7.26 Home Affairs placed less emphasis on the assessment of a tenderer's ethical conduct and integrity. Considering the issues that had been raised in previous contracts for regional processing and the previous allegations, the Review expected to find greater levels of due diligence. There was no evidence of security or criminal checks, that Home Affairs made inquiries with the Australian Transaction Reports and Analysis Centre (AUSTRAC) or engaged with other intelligence agencies with respect to the consideration of contracting with MTC Australia). While this might be justifiable given MTC was a large international company with established Australian operations in garrison and welfare services, these types of assurance activities are relevant when a high risk environment is coupled with businesses which do not have an established public profile or history of performance in the sector to which the contract applies. Home Affairs should consciously and clearly make a decision as to the extent of its due diligence, given all the factors at play, in its procurement process.

Due diligence throughout the term of the contract

- 7.27 Under existing procurement guidance, officials should monitor the ethical behaviour of suppliers throughout the term of the contract. This could be performed as part of periodic performance reporting under the contract, including managing the ongoing risks that may occur over the lifecycle of a contract. Provisions that allow for the termination of a contract for a material breach, including breaches of confidentiality and security requirements, should be included in all Commonwealth contracts.⁵⁸
- 7.28 Home Affairs' Contractor and Consultant Management Framework appropriately encourages contract managers to monitor the ethical behaviour of suppliers throughout the contract term and manage ongoing risks over the lifecycle of the contract. The Framework requires contract managers to seek urgent legal advice upon becoming aware of unethical behaviour such as material breaches of confidentiality and security requirements or when being notified of a significant event.
- 7.29 The Review considered the findings of Home Affairs' 2018/19 internal audit report for a previous regional processing contract which identified that a range of risks had not been addressed. These risks related to oversight of subcontractors engaged by the service provider to assist in the delivery of services under the contract, and fraud by

⁵⁸ Department of Finance (19 May 2023), *Procurement Policy Note – Ethical conduct of tenderers and suppliers*. <https://www.finance.gov.au/government/procurement/procurement-policy-note>, accessed: 18 September 2023.

the service provider such as falsified invoices, falsified roles for persons/residents and inappropriate use of public monies. The Review focused on these specific risks when reviewing the MTC Australia contract and contract management materials to determine what processes Home Affairs had established to maintain oversight of subcontractors, what controls were in place relating to payments and what mechanisms Home Affairs had within the MTC Australia contract to act on unethical supplier behaviour.

Oversight of subcontractors

- 7.30 The MTC Australia contract required Home Affairs to initially approve subcontractors upon commencement and included an ongoing requirement for the department to approve major subcontracts. MTC Australia must not subcontract all the services and is ultimately responsible for its own and any subcontractors' compliance under the contract.
- 7.31 Home Affairs has retained a record of these subcontractors, their estimated cost of contract, and the goods and services they provide. The list provides Home Affairs with visibility of the supply chain and enables the department to meet its obligations under the CPRs to make the names of subcontractors available upon request.⁵⁹
- 7.32 The Review examined the MTC Australia Contract Management Plan and found that it contained detailed instructions for how the contract would be managed, for example, in relation to high risk payments, variations and performance management. These activities assist both parties to track the supplier's performance against the statement of work, provide visibility of risk and identify opportunities to support continuous improvement.
- 7.33 The process to be followed by Home Affairs when approving or declining a subcontractor had not been formally established at the time the contract was entered into and was not supported in the MTC Australia Contract Management Plan. Emails considered by the Review found that, up until September 2023, there was an informal process in place for reviewing and approving subcontract arrangements. This included: a review of the subcontract to ensure it was consistent with the head contract; confirming what impacts, if any, the subcontract would have on pricing; and confirming with internal Home Affairs business areas if there were additional issues which would need to be explored on the basis of the department having previously dealt with a subcontractor. If no issues were identified, the department would approve the subcontractor with a written reminder to MTC Australia that the engagement of a subcontractor did not relieve MTC Australia of any of its duties or obligations under the contract.

⁵⁹ CPRs, 13 June 2023, paragraph 7.21.

- 7.34 A formal process, in the form of a Standard Operating Procedure (SOP) for Major Subcontractor Assessments, was being developed at the time of the Review. The SOP contains the roles and responsibilities of the Facility Service Provider and the department and includes a Major Subcontractor Request Form for completion by MTC Australia when submitting a request to appoint a subcontractor. The form captures MTC Australia's confirmation of: the subcontractor's capability and capacity to perform the work; ability to meet its contractual obligations; compliance with various laws and regulations within the jurisdiction within which it operates; financial viability; and declaration of any potential or real conflicts of interest.
- 7.35 The SOP contains a process for escalation of complex arrangements. Examples of complex proposals include: known, declared or perceived conflicts of interests; exposure or links to Politically Exposed Persons (PEPs) or government entities; high value arrangements; arrangements assessed as high risk post application of treatments; and arrangements which fail to comply with industry, practice and commercial standards.
- 7.36 The SOP also includes an obligation for MTC Australia to provide a monthly report on progressive expenditure and changes to any of the subcontractors' legal, financial or compliance status.
- 7.37 However, there was no evidence in the Contract Management Plan or the SOP to suggest that Home Affairs carried out due diligence activities to assure itself of the subcontractors' ethical conduct or integrity such as: criminal or security checks; inquiries with AUSTRAC; or engagement with other intelligence agencies. These checks were not carried out on the initial approval of subcontractors or on later requests by MTC Australia to appoint subcontractors.
- 7.38 Contract management assurance processes can be improved by implementing periodic risk-informed reviews of the ethical conduct and integrity of suppliers and, where relevant, subcontractors and supply chains. Reviews should be periodic as well as triggered by certain events such as contract variations, extensions and appointments of subcontractors. By undertaking periodic reviews, the contract manager and delegate can be alerted to potential issues early and take considered and timely action in response. The use of a Supply Chain Risk Plan⁶⁰ may be a useful tool for monitoring suppliers' supply chains and addressing issues.

Controls relating to payments

- 7.39 The MTC Australia Contract Management Plan stated that, as part of the goods receipting process, the department must be satisfied that goods or services have been delivered in accordance with the contract, procurement or additional service fees.

⁶⁰ Supply Chain Risk Plans are recommended in the Department of Finance, *Contract Management Guide*. <https://www.finance.gov.au/government/procurement/contract-management-guide>, accessed: 14 September 2023.

Invoices are verified by the Administered Financials Management Section prior to approval to proceed with payment by the Contract Manager.

- 7.40 Home Affairs had a detailed MTC Australia Invoice Validation Framework that supported the validation activities and process for paying invoices. This also included a process for seeking clarification of issues that arose.
- 7.41 As detailed earlier in this section, the MTC Australia contract had HRHV status, requiring additional governance and controls in respect to high risk payments. This involved a High Risk Payment Authorisation Minute to be approved by a deputy secretary with written authorisation from the CFO, who checked consistency with the Accountable Authority Instructions and Financial Management Guidelines, and the first assistant secretary, Disputes and Corporate Law Division who checked consistency with legal practice and principle.

Home Affairs' ability to act on unethical supplier behaviour

- 7.42 Risk assessments should be used to inform the inclusion of control mechanisms in contracts to detect and report unethical behaviour at the commencement of the contract and throughout its term.
- 7.43 The Review found that where the risk assessment for the MTC Australia procurement identified contractual clauses as an appropriate control mechanism, these clauses were reflected in the MTC Australia contract. For example, the risk assessment identified fraudulent activities by service providers (including subcontractors) as a possible risk and indicated that the draft contract should include obligations relating to fraud and corruption.
- 7.44 Home Affairs' contract required MTC Australia to provide a Risk Management and Fraud Control Plan describing how the supplier will identify, prevent and manage risk of fraud in the performance of the contract, and how any instances of fraud or suspected fraud will be reported internally and to the department. The Review considered this plan a useful tool to assist both the supplier and the department to detect and manage fraud throughout the duration of the contract.
- 7.45 When considering the contractual options Home Affairs had available to it to respond to unethical conduct the Review identified the department's ability to terminate contracts for material breaches, including failure to declare or deal with conflicts of interest, and where the supplier engages in fraud, collusion, dishonest conduct, misleading and deceptive conduct, bribery or corruption in performing its obligations under the contract.
- 7.46 The Review noted that internal legal advisers had recently conducted an analysis of agreements to ascertain whether contracts contained clauses requiring head contractor compliance generally with laws and policies, anti-corruption laws and the CPRs, subcontractor compliance requirements and also requirements to use local

subcontractors and suppliers. The summary indicated that contractor compliance requirements have strengthened over time (spanning 2012 to 2023) and contractor compliance requirements were significantly strengthened in recent arrangements, , with contracts including a broad suite of compliance measures.

- 7.47 The Review noted that, since the establishment of the MTC Australia contract, Finance has made available a new 'Notification of Significant Events' clause.⁶¹ Home Affairs should consider including this clause, or similar, in future regional processing contracts and, where it is appropriate, in existing regional processing contracts.⁶²

⁶¹ The Notification of Significant Events clause, published in Clausebank in May 2023, provides the Commonwealth with additional rights in circumstances where adverse comments or findings are made about the Supplier or their personnel by legal or professional bodies, or other significant matters about them arise that could adversely impact on the Customer's reputation or its compliance with law or policy. <https://www.finance.gov.au/government/procurement/clausebank/notification-significant-events>

⁶² Home Affairs informed the Review that as of 25 July 2023 the clause was included in its template goods and services contracts.

8. Government integrity reforms

The bigger picture

- 8.1 There are range of integrity reforms underway across the Commonwealth. Some of the reforms, which complement the comments and recommendations in this report, include:
- a. the establishment of the National Anti-Corruption Commission (NACC) to detect, investigate and report on serious or systemic corruption in the Commonwealth public sector including conduct of Commonwealth ministers, parliamentarians and their staff, statutory office holders, staff of government entities and companies, and contractors;
 - b. the introduction of the Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023 to strengthen the legal framework for investigating and prosecuting foreign bribery – which would amend the *Criminal Code Act 1995* to extend the offence of bribery of candidates for public office, to remove the requirement that a benefit or business advantage be ‘not legitimately due’ and replace it with the concept of ‘improperly influencing’ a foreign public official, and to remove the requirement that the foreign public official be influenced in the exercise of their official duties;
 - c. expanded fraud and corruption prevention and control measures including expanded annual reporting requirements and other initiatives for Commonwealth entities (expanded below at paragraph 8.3);
 - d. strengthening the Commonwealth’s capacity to respond to supplier poor performance and to sanction supplier misconduct (expanded below at paragraph 8.4); and
 - e. Australian Public Service (APS) integrity reform initiatives including establishing a taskforce to consider the APS integrity landscape, and identify gaps and opportunities to build on reform work underway, and introducing a suite of integrity training and resources.
- 8.2 The Review considers the recommendations in this Report will complement the broader reforms and further promote integrity, transparency and accountability to prevent fraud, corruption and misconduct. These reforms should be considered when implementing the recommendations in this Report.

Expanded fraud and corruption control measures

- 8.3 The Attorney-General’s Department is leading on amendments to expand s 10 of the PGPA Rule (the Fraud Rule) to include corruption and update the Commonwealth Fraud Control Policy to assist entities to meet their obligations. The updates to the Fraud Rule will commence from 1 July 2024. The amendments to the Fraud Rule and

Fraud Policy will introduce new requirements for Commonwealth entities to take measures to prevent, detect and deal with corruption, alongside existing requirements for counter-fraud. These changes will complement the establishment of the NACC, and are part of a suite of reforms to improve the standards of integrity across the public sector.

Strengthening the Commonwealth's capacity to respond to poor performance and supplier misconduct

- 8.4 The Department of Finance is strengthening the Commonwealth's capacity to respond to supplier poor performance and to sanction supplier misconduct by:
- a. reminding entities of the ethical conduct considerations within the Commonwealth Procurement Framework and the existing mechanisms that support ethical practices in Commonwealth procurement;
 - b. introducing new 'notification of significant event' clauses to strengthen the government's ability to cancel contracts in response to unacceptable behaviour;
 - c. developing a Supplier Code of Conduct which will outline the behavioural standards expected from suppliers during procurement processes and engagements under contract;
 - d. developing a Contractor Reporting, Invoicing and Integrity Solution enabling data sharing across Commonwealth to monitor behaviour, enhance compliance and share material breaches for contractors and labour hire workers engaged through the Whole of Australian Government People Panel;
 - e. lifting the capability of procurement and contract management officials across the APS;
 - f. expanding guidance on conducting due diligence activities throughout the procurement process and during contract management; and
 - g. reviewing suitability of confidentiality provisions and processes and considering opportunities to strengthen the requirements for tenderers and suppliers to declare conflicts of interest.

Appendices

A. Terms of reference

Review of Integrity Concerns and Governance Arrangements for the Management of Regional Processing Administration by the Department of Home Affairs

Noting:

- Allegations reported by *60 Minutes* and the Nine papers relating to the Department of Home Affairs' management of regional processing contracts with Broadspectrum, Canstruct, Paladin, Management and Training Corporation (MTC) and other contractors over approximately the last decade; and
- Previous and ongoing investigations and inquiries into related matters, including by the Australian Federal Police and AUSTRAC.

An independent eminent person will be appointed to conduct a review of the contractual arrangements regarding regional processing, managed by the Department of Home Affairs and its predecessor, the Department of Immigration and Border Protection. The review will cover:

- Any integrity concerns about contracting arrangements regarding regional processing, whether public or otherwise, including the allegations and concerns raised by *60 Minutes* and the Nine papers;
- The Department's governance arrangements, oversight processes and systems for managing offshore processing, current and historic, including in relation to the engagement of sub-contractors by head contractors;
- Any other related concerns regarding arrangements for regional processing administration.

The review will not consider the policy of regional processing.

The review will:

- Review the handling of any matters in the public realm and detail any matters of concern not in the public realm;
- Where appropriate, make recommendations for referrals to bodies for investigation (e.g. AFP, NACC);
- Where appropriate, make recommendations to ensure that the Department's processes and systems meet Australian standards for propriety and probity.

In conducting the review, the reviewer should:

- Have regard to previous and any ongoing investigations, including by the AFP, AUSTRAC and the National Anti-Corruption Commission;

- Seek information, as appropriate and necessary, from any Commonwealth agencies to support this inquiry.

The reviewer will be engaged by the Secretary of the Department of the Prime Minister and Cabinet and supported by that Department, with costs to be met by the Department of Home Affairs.

The review will report to the Minister for Home Affairs and the Minister for Finance (the Ministers) by 30 September 2023, for consideration of the National Security Committee of Cabinet.

B. Consultation

List of government officials consulted by the Review team

Name	Position / Department / Role
Jan Adams AO PSM	Secretary, Department of Foreign Affairs and Trade
Mary Balzary	First Assistant Secretary, International Division, Department of Home Affairs
Pete Berlis	Assistant Secretary, Performance, Governance and Inquiries Branch, Department of Home Affairs
Craig Bickel CSM	Assistant Secretary, Mission Management Branch, Department of Home Affairs
Tiffany Blight	First Assistant Secretary, People and Culture, Department of Home Affairs
Matthew Blunn	Australian Government Solicitor
Elizabeth Brayshaw	Acting First Assistant Secretary, Integrity Frameworks Division, Attorney-General's Department
Paul Brereton AM RFD SC	Commissioner, National Anti-Corruption Commission
Mike Burgess	Director-General of Security, Australian Security Intelligence Organisation
Stephanie Cargill	Chief Financial Officer, Department of Home Affairs
Jeff Carige	Assistant Secretary, Support to Operations Branch, Department of Home Affairs
Sarah Chidgey PSM	Acting Secretary and Deputy Secretary, Attorney-General's Department
Nina Davidson	Acting Director-General, National Intelligence, Office of National Intelligence
Professor Glyn Davis AC	Secretary, Department of the Prime Minister and Cabinet
Bronwyn Fagan	Assistant Secretary, Commercial, Employment and Information Branch, Department of Home Affairs
Stephanie Foster PSM	Associate Secretary, Immigration and acting Secretary, Department of Home Affairs

Name	Position / Department / Role
Steven Groves	Former Chief Financial Officer, Department of Home Affairs
Paul Griffiths	First Assistant Secretary, Executive Division, Department of Foreign Affairs and Trade
Kerri Hartland	Director-General, Australian Secret Intelligence Service
Grant Hehir	Auditor-General, Australian National Audit Office
Jaala Hinchcliffe	Deputy Commissioner, National Anti-Corruption Commission; Former head of Australian Commission for Law Enforcement Integrity
Brian Hickey	Assistant Secretary, Capability Planning and Risk, Department of Home Affairs
Nerys Jones	Senior Director, Regional Processing and Resettlement Policy Branch, Department of Home Affairs
Melissa Kay	Assistant Secretary, Integrity and Professional Standards, Department of Home Affairs
Reece Kershaw APM	Commissioner, Australian Federal Police
Mat Kimberley	First Assistant Secretary, Polynesia, Micronesia and Development Division, Department of Foreign Affairs and Trade
Angus Kirkwood	Acting Group Manager Immigration Operations, Department of Home Affairs
Carol Lilley	Independent Chair, Audit and Risk Committee, Department of Home Affairs
Peter Manwaring	Senior Director, Regional Processing Contracts Branch, Department of Home Affairs
Richard Maude	Independent Intelligence Review
Ian McCartney APM	Deputy Commissioner, Australian Federal Police
Adam McCarthy	Chief Legal Officer and First Assistant Secretary, Legal Division, Department of Foreign Affairs and Trade

Name	Position / Department / Role
Adam Meyer	First Assistant Secretary, Intelligence Division, Department of Home Affairs
Lee-anne Monterosso	First Assistant Secretary, Procurement, Property and Contracts, Department of Home Affairs
Rachel Noble PSM	Director-General, Australian Signals Directorate
David Nockels	Former First Assistant Secretary responsible for Regional Processing Centre contracts, Department of Home Affairs
Michael Outram APM	Commissioner, Australian Border Force
Michael Pezzullo AO	Secretary, Department of Home Affairs
Matt Rippon	Acting Chief Executive Officer, Australian Criminal Intelligence Commission
Andrew Rice	Regional Director, Pacific, Department of Home Affairs
Claire Roennfeldt	First Assistant Secretary Capability; Previously responsible for Regional Processing Centre contracts; Department of Home Affairs
Justine Saunders APM	Chief Operating Officer, Department of Home Affairs
Andrew Shearer	Director-General, Office of National Intelligence
Sophie Sharpe	Deputy Secretary, Executive, Department of Home Affairs
Clare Sharp	General Counsel, Department of Home Affairs
Pierre Skorich	Acting Assistant Secretary, Fraud Prevention and Anti-Corruption, Attorney-General's Department
Dr Heather Smith PSM	Independent Intelligence Review
Peter Soros	Chief Executive Officer, Australian Transaction Reports and Analysis Centre
Nicole Spencer	Chief Risk Officer and First Assistant Secretary, Executive Coordination, Department of Home Affairs
Alana Sullivan	Former First Assistant Secretary in charge of regional processing contracts, Department of Home Affairs

Name	Position / Department / Role
Michael Thomas	First Assistant Secretary, People Smuggling Policy and Implementation Taskforce, Department of Home Affairs
Elise Wattam	Acting First Assistant Secretary/Chief Procurement Officer, Procurement, Property and Contracts Division, Department of Home Affairs
Jenny Wilkinson PSM	Secretary, Department of Finance
Kaylene Zakharoff	Deputy Commissioner, Strategy and Capability, Australian Border Force

C. Reviews

Reviews, audits, and investigations

Date	Entity	Details
30 June 2013	ANAO	Independent audit of financial year statements (FY 12/13 Immigration and Citizenship).
30 June 2014	ANAO	Independent audit of financial year statements (FY 13/14 Immigration and Border Protection).
30 June 2015	ANAO	Independent audit of financial year statements (FY 14/15 Immigration and Border Protection).
30 June 2016	ANAO	Independent audit of financial year statements (FY 15/16 Immigration and Border Protection).
13 Sept 2016	ANAO	Report No 16 of 2016/17: Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services
17 Jan 2017	ANAO	Report No 32 of 2016/17: Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services
30 June 2017	ANAO	Independent audit of financial year statements (FY 16/17 Immigration and Border Protection).
2016-2017	Home Affairs	Integrity & Professional Standards Investigation 2016/360
30 June 2018	ANAO	Regional Processing Centres' Expenses: Independent audit of financial year statements (FY 17/18 Home Affairs).
Feb – Sept 2019, 14 Oct 2019	Home Affairs (EY)	Internal Audit report 'Review of the Tendering, Procurement, and Contract Management Processes Associated with Paladin Holdings PTE Ltd'.
30 June 2019	ANAO	Independent audit of financial year statements (FY 18/19 Home Affairs).
28 May 2020	ANAO	Report No 37 of 2019/20: Procurement of Garrison Support and Welfare Services

Date	Entity	Details
30 June 2020	ANAO	Independent audit of financial year statements (FY 19/20 Home Affairs).
30 June 2021	ANAO	Independent audit of financial year statements (FY 20/21 Home Affairs).
3 May 2022	ANAO	ANAO No 25 of 2021/22: Implementation of Parliamentary Committee and Auditor-General Recommendations — Department of Home Affairs
30 June 2022	ANAO	Independent audit of financial year statements (FY 21/22 Home Affairs).

D. References

Legislation

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Australian Federal Police Act 1979

Australian Public Service Commissioner's Directions 2022

Australian Security Intelligence Organisation Act 1979

Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023

Criminal Code Act 1995

Commonwealth Procurement Rules (13 June 2023)

Intelligence Services Act 2001

National Anti-Corruption Commission Act 2022

Office of National Intelligence Act 2018

Privacy Act 1988

Public Governance, Performance and Accountability Act 2013

Public Governance, Performance and Accountability Rule 2014

Public Interest Disclosure Act 2013

Public Service Act 1999

Surveillance Devices Act 2004

Telecommunications (Interception and Access) Act 1979

Government and international institutions' publications

ANAO, *Report No. 16 of 2016-17: Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services.*

ANAO, *Report No. 32 of 2016-17: Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services.*

ANAO, *Report No. 37 of 2019-20: Procurement of Garrison Support and Welfare Services.*

ANAO, *Report No. 25 of 2021-22: Implementation of Parliamentary Committee and Auditor-General Recommendations – Department of Home Affairs.*

ANAO, *Financial statement audit reports 2003-04 to 2022-23.*

https://www.anao.gov.au/pubs/financial-statement-audit?query=&items_per_page=60, accessed: 19 September 2023.

Comprehensive Review of the Legal Framework of the National Intelligence Community, December 2019.

AUSTRAC, *Politically exposed persons (PEPs)*. Last updated: 14 December 2022.

<https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/politically-exposed-persons-peps>, accessed: 25 September 2023.

BPNG 2017, *Money Laundering and Financing of Terrorism – National Risk Assessment*. Bank of Papua New Guinea, Port Moresby. <https://www.bankpng.gov.pg/wp-content/uploads/2019/04/Money-Laundering-and-Financing-of-Terrorism-National-Risk-Assessment-4.pdf>, accessed: 7 September 2023.

Commonwealth Fraud Prevention Centre, *Suitability Assessment Toolkit* (July 2021). <https://www.counterfraud.gov.au/library/suitability-assessment-toolkit>, accessed: 8 September 2023.

Department of Finance, *Clausebank*, <https://www.finance.gov.au/government/procurement/clausebank/notification-significant-events>, accessed: 14 September 2023.

Department of Finance, *Commonwealth Risk Management Policy – Element 3: Risk Culture*. <https://www.finance.gov.au/government/comcover/risk-services/management/risk-management-toolkit/element-3-risk-culture>, accessed: 9 September 2023.

Department of Finance, *Contracts End Dates*. <https://www.finance.gov.au/government/procurement/buying-australian-government/contracts-end-dates>, accessed: 20 September 2023.

Department of Finance, *Contract Management Guide*. <https://www.finance.gov.au/government/procurement/contract-management-guide>, accessed: 14 September 2023.

Department of Finance (19 May 2023), *Procurement Policy Note – Ethical conduct of tenderers and suppliers*. <https://www.finance.gov.au/government/procurement/procurement-policy-note>, accessed: 18 September 2023.

Department of Home Affairs, *Protective Security Policy Framework*. <http://www.protectivesecurity.gov.au/>, accessed: 28 September 2023.

Department of Home Affairs (October 2019), *Review of the Tendering, Procurement, and Contract Management Processes Associated with Paladin Holdings PTE Ltd*. <https://www.homeaffairs.gov.au/foi/files/2023/fa-230501489-document-released.PDF>, accessed: 18 September 2023.

Lawler APM, J (2020), *Review into the AFP's Response to and Management of Sensitive Investigations*. <https://www.afp.gov.au/sites/default/files/PDF/LawlerReview.pdf>, accessed: 28 September 2023.

OECD, *Due Diligence Guidance for Responsible Business Conduct*. <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>, accessed 13 September 2023.

Parliament of Australia, Joint Committee of Public Accounts and Audit. *Report 498: 'Commitment issues' – An inquiry into Commonwealth procurement*. https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000011/toc_pdf/Repor

[t498'Commitmentissues'-AninquiryintoCommonwealthprocurement.pdf](#), accessed: 18 September 2023.

Articles and other publications

Australian Federal Police media release (14 September 2018), *Man arrested as part of foreign bribery investigation*.

<https://web.archive.org/web/20181230085958/https://www.afp.gov.au/news-media/media-releases/man-arrested-part-foreign-bribery-investigation>, accessed: 15 September 2023.

Findlay, M 2007, 'Misunderstanding Corruption and Community: Comparative Cultural Politics of Corruption Regulation in the Pacific', *Asian Journal of Criminology*, vol. 2, no. 1, pp. 47-56.

[DOI:10.1007/s11417-007-9023-2](https://doi.org/10.1007/s11417-007-9023-2), accessed: 7 September 2023.

Freedom House (2023), *Freedom in the World Index – Nauru Country Report*.

<https://freedomhouse.org/country/nauru/freedom-world/2023>, accessed: 7 September 2023.

Global Initiative Against Transnational Organized Crime (2023a), *Organised Crime Index, Country Profile Nauru*. ocindex.net/assets/downloads/english/ocindex_profile_nauru.pdf, accessed: 7 September 2023.

Global Initiative Against Transnational Organized Crime (2023b), *Organised Crime Index, Country Profile Papua New Guinea*.

ocindex.net/assets/downloads/english/ocindex_profile_papua_new_guinea.pdf, accessed: 7 September 2023.

Nguyen, C, Hopkins, WJ 2022, *Corruption and Money Laundering in the Pacific: Intertwined challenges and interlinked responses*. Transparency International New Zealand, Wellington.

[https://uploads-](https://uploads-ssl.webflow.com/5f3c5d2bb263505e25811876/6269bc87c4a9ce0f4a870808_4782_TI_Pacific%20Corruption%20Report%202022_FA_web.pdf)

[ssl.webflow.com/5f3c5d2bb263505e25811876/6269bc87c4a9ce0f4a870808_4782_TI_Pacific%20Corruption%20Report%202022_FA_web.pdf](https://uploads-ssl.webflow.com/5f3c5d2bb263505e25811876/6269bc87c4a9ce0f4a870808_4782_TI_Pacific%20Corruption%20Report%202022_FA_web.pdf), accessed: 7 September 2023.

The Australian Financial Review, 'Paladin cut deal with family of PNG powerbroker'. By Angus Grigg, Jonathan Shapiro, Lisa Murray, 17 February 2019. <https://www.afr.com/world/paladin-cut-deal-with-family-of-png-powerbroker-20190217-h1bd8m>, accessed: 3 October 2023.

The Sydney Morning Herald, 'Millions of dollars in detention money went to Pacific politicians'. By Nick McKenzie, Michael Bachelard, Amelia Ballinger, 23 July 2023.

<https://www.smh.com.au/politics/federal/millions-of-dollars-in-detention-money-went-to-pacific-politicians-20230718-p5dp51.html>, accessed: 28 August 2023.

