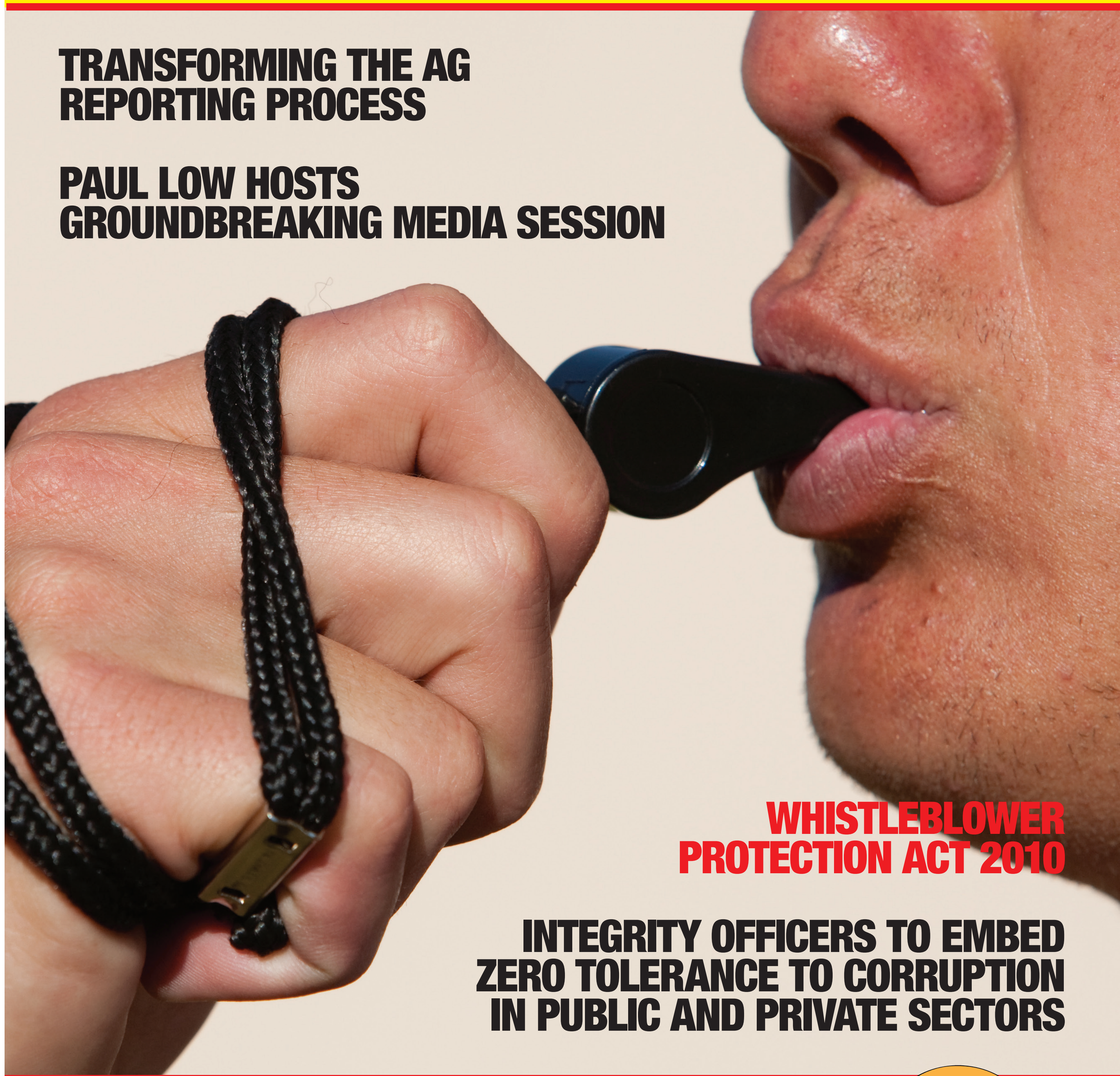
National Key Result Areas

NKRA AGAINST CORRUPTION

MONITOR

NKRA E-NEWSLETTER
1/2014



TRANSFORMING THE AG REPORTING PROCESS

PAUL LOW HOSTS GROUNDBREAKING MEDIA SESSION

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INTEGRITY OFFICERS TO EMBED ZERO TOLERANCE TO CORRUPTION IN PUBLIC AND PRIVATE SECTORS

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TRANSFORMING THE AG REPORTING PROCESS

EXPEDITING AND TRACKING CASES REPORTED IN THE AUDITOR GENERAL'S REPORT

The Attorney-General's Annual Report contains the financial audit and a performance audit of all 14 federal ministries and departments, including two government-owned companies.

The financial audit highlights weaknesses in financial management while the performance audit raises issues and concerns relating to the performance of government projects.

The AG's Report is tabled in Parliament in October. Until then no follow-up action is possible because under Section 8 of the Audit Act 1957 the contents of the AG's Report cannot be divulged until the parliamentary hearing.

This delay makes the Malaysian Anti-Corruption Commission's (MACC) job all the more difficult when the enforcement agency starts its investigations. It gives rise to the public perception that the MACC is inept at investigating instances of corruption and abuse of power highlighted in the AG's Report.

To improve the performance delivery of the AG's Report the Anti-Corruption NKRA (Anti-COR NKRA) has introduced four initiatives in the second phase of the Government Transformation Process (GTP 2.0).

Initiative 1: Fast-tracking access to AG Performance Audit Report for Immediate Action

Since the contents of the Performance Audit are not subjected to the Audit Act, the Performance Audit is tabled separately at every Parliament session or at a minimum of thrice a year.

This fast tracking of access to the AG's Performance Report and frequency in tabling will allow greater scrutiny over the Government's expenditure, provides timelier response.

It also enables the MACC to commence investigations on incidences of corruption or abuse of power highlighted in the report.

The First Series of the AG's Report 2013 (Series 1) was tabled in Parliament on April 7, 2014. It contained 109 recommendations to improve the inadequacies identified.

Meanwhile, Series 2 of the AG's Report 2013 tabled in Parliament on June 16, 2014, contained 230 suggestions.

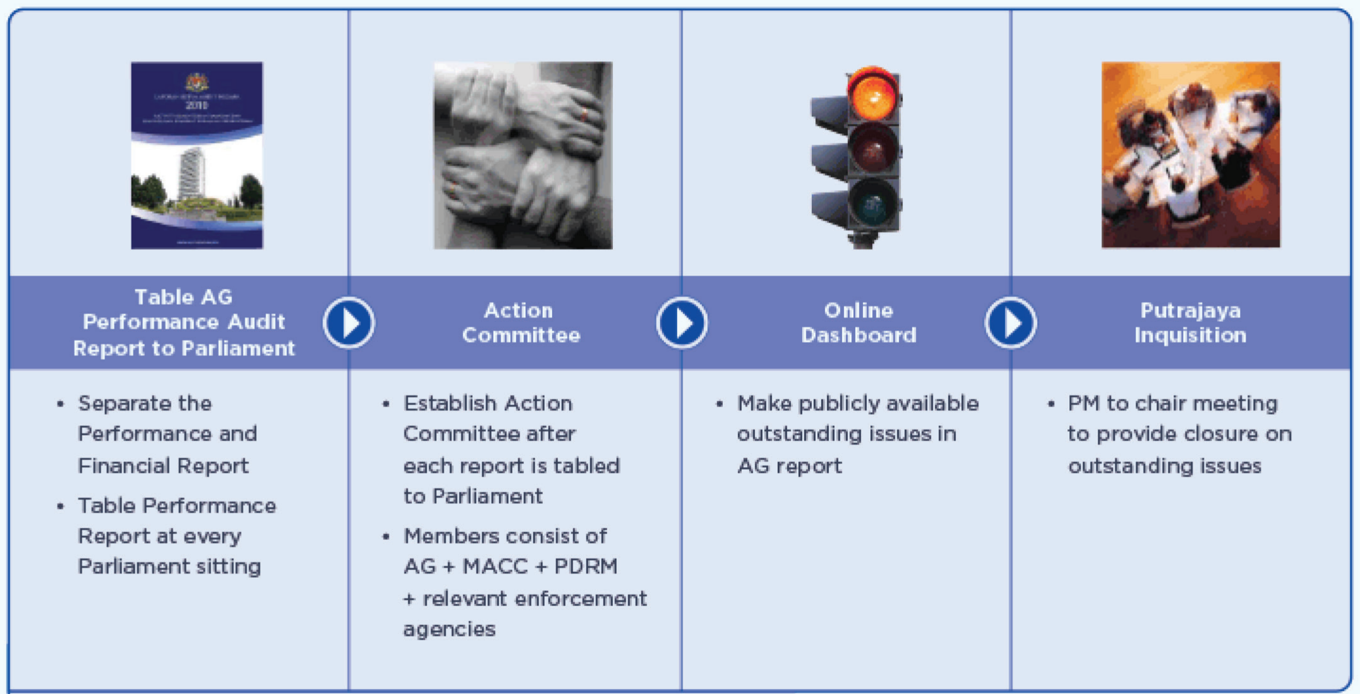

Figure 8: The value chain of initiatives under the Auditor General's report

Initiative 2: Action Committee on AG Report

The Anti-COR NKRA also calls for the establishment of an Action Committee to scrutinise specific issues and cases highlighted in the AG's Report.

Chaired by the Auditor General himself, the members of the Action Committee includes MACC officers, the Royal Malaysian Police Department (PDRM), apart from the auditors involved.

Initiative 3: AG's Online Dashboard

The Action Committee submits an online weekly status report, which is displayed on the AG's Online Dashboard. Launched on May 30, 2013, the AG's Online Dashboard is accessible on the National Audit Department's website.

The dashboard keeps the public informed on the status of outstanding issues in AG's Report. It also promotes transparency, induce a sense of urgency in resolving outstanding issues, and improve public perception of the government machinery.

Initiative 4: Putrajaya Inquisition

Chaired by the Prime Minister, the Putrajaya Inquisition committee comprises the relevant ministries and enforcement agencies. Its main goal is to clear all the backlog of cases. The committee will cease to function once the backlog is cleared.

PAUL LOW HOSTS GROUNDBREAKING MEDIA SESSION

KSUs GRILLED ON SERIES 2 AG'S 2013 REPORT FINDINGS

Minister in the Prime Minister's Department Datuk Paul Low with the cooperation from Performance Management Unit (PEMANDU) and the Chief Secretary's Office hosted the first-ever, a townhall media briefing on the findings of the Series 2 Auditor-General's Report 2013 on June 17, 2014.

The closed-door session, held a day after the tabling in Parliament, marked the beginning of a more transparent and accountable government in engaging the public.

"There must be real change in substance and not just form," Low said in his opening speech.

The Secretaries-General (KSU) of ministries which received negative comments in the report were put under the media spotlight as pressmen relentlessly grilled them for their explanations for the weaknesses and leakages highlighted in the Performance Audit.

Chief Secretary to the government Tan Sri Dr Ali Hamsa said that based on the findings of the Series 2 AG's Report, 25 reprimands were made as of June 16, 2014.

Ali said that 10 reprimands resulted in disciplinary action against 21 officers while the remaining 15 reprimands require improvement in rules and procedures.

"For corrective reprimands, the chief secretaries and secretaries-general in state governments have been requested to improve rules, procedures and work processes immediately," he added.

Meanwhile, the National Audit Department distributed a booklet on 'Public Sector Auditing in Malaysia' to members of the media attending the session.

"The booklet not only explains how the department carries out its audit but also lists down the achievements in terms of time, costs and quality," Auditor-General Tan Sri Ambrin Buang said.

The event was broadcasted live over Radio, Television Malaysia (RTM).

WHISTLEBLOWER PROTECTION ACT 2010

Encouraging Public Participation In Fighting Corruption

By Mohd Azhar Ibrahim

Malaysia Prime Minister Datuk Seri Najib Tun Razak in his 2010 Budget announced the formulation of a new law to protect informers who expose corrupt practices and other misconduct from civil or criminal charges. Three months later the Whistleblower Protection Act 2010 (WPA) which is also known as Act 711, came into force on 15 December 2010.

In addition to fulfilling Malaysia's obligations under the United Nations Convention Against Corruption (UNCAC), the WPA is congruent with the Anti-Corruption NKRA Monitoring and Coordinating Division (Anti-COR NKRA) Government Transformation Programme (GTP 2.0) initiative to inculcate a zero tolerance policy against corruption.

The Act protects individuals who expose corruption or abuse of power in either the public or private sectors, from criminal or civil charges, including any detrimental action in retaliation for the disclosure. To qualify for protection the whistleblower must divulge the information directly to any of the seven key enforcement agencies prescribed in the Act. They are the:

1. **Royal Malaysian Police**
2. **Malaysian Anti-Corruption Commission**
3. **Securities Commission Malaysia**
4. **Companies Commission Malaysia**
5. **Royal Malaysian Customs Department**
6. **Immigration Department of Malaysia**
7. **Road Transport Department**

Forum panelists Anthony Kevin Morais , Deputy Head of Appellate & Trial Division in the Attorney General's Chambers (left), IDEAS CEO Wan Saiful Wan Jan, and Malaysia Bar Council President, Christopher Leong, taking questions from the floor.

This protection is revoked if:

1. **The whistleblower himself has participated in the improper conduct disclosed.**
2. **The whistleblower made the disclosure knowing it to be false.**
3. **The disclosure is frivolous or vexatious.**
4. **The disclosure involves questioning the merits of government or public body policy.**
5. **The disclosure is made to avoid dismissal or disciplinary action.**
6. **The disclosure contravenes any existing law which prohibits the publication of sensitive information**

Since the enactment of the WPA, the MACC had received 5,000 tip-offs relating to corruption and other wrongdoings annually with 39 whistleblowers given protection.

In 2013, the MACC conducted a survey to gauge public awareness of the WPA. The findings revealed that more than half of the 10,000 respondents were unaware the Act existed.

To promote awareness on the WPA and encourage public discussion, the MACC recently hosted a forum carrying the theme 'Whistleblowing – Your Right, Our Commitment' at the Malaysia Anti-Corruption Academy (MACA). Some 150 people comprising professionals, lawyers, representatives from civil society groups attended the forum.

Forum panelists included the Deputy Head of Appellate & Trial Division in the Attorney General Chamber, Anthony Kevin Morais; Institute for Democracy and Economic Affairs (IDEAS) Chief Executive Officer, Wan Saiful Wan Jan; and Malaysia Bar Council President, Christopher Leong. The distinguished panelists expounded their views and opinions on 'Whistleblowing in Malaysia: Its Nature, the Law, Protection and Challenges'.

According to the panellists, disclosing vital information to outsiders is an anathema to the Asian psyche. Asian cultural norm binds people who share a business or family relationship to an unspoken code of loyalty: they must not wash their dirty linen in public. This cloak of silence and secrecy is fertile breeding ground for people to engage in corruption.

" Unless the public trust the system, the Whistleblower Protection Act is not worth the paper it is written on. " *- Kevin Anthony Morais*

" To those who prefer to divulge information to the media instead of the enforcement agency, how confident are you that the media is truly independent " *- Wan Saiful Wan Jan*

" The success of the enforcement agencies depends on their getting inside information." *- Christopher Leong*

A person who has information on corruption or abuse of power can remain silent; divulge it to the enforcement agency, or reveal what he knows to the media.

He remains silent if he believes that reporting it to the authorities will not make any difference. If he believes that the enforcement agency will take action against the wrong doer and at the same time protect him from harm, he will be a whistleblower.

However if he has suspicions that information given to the enforcement agency will be suppressed, he will go to the media to ensure the complaint will not be swept under the carpet.

"But we all know that the media is not completely independent – everybody has a vested interest in one media organisation or another," Saiful said.

The speakers unanimously agreed that the level of public trust in the enforcement agencies is rather shallow. This disenchantment is no surprise as according to the GTP Annual Report 2010, some of these agencies had the lowest perceived integrity scores among businesses and the public.

The GTP Annual Report 2013 revealed that the compliance units in some of these agencies require many more resources to improve their effectiveness.

"Questions have been raised about the integrity of some of the enforcement agencies and these valid issues need to be properly addressed. We need to improve the public trust level of the enforcement agencies as well as the government machinery," Saiful added.

Christopher Leong suggested that a whistleblower should be able to disclose information to other people and not lose the protection if:

1. **The information revealed to the enforcement agency and to the other person is substantially the same.**
2. **The identity of the whistleblower has not yet been made public.**
3. **The enforcement agency has either decided not to investigate, or did not complete its investigation within six months or such other reasonable time.**

He also proposed that:

1. **Section 4 of the Act, which empowers the minister to give directions to the enforcement agency about the investigation, should be abolished so that the enforcement agency can truly project itself as being independent.**
2. **Section 11 should be amended to provide for the whistleblower to still enjoy protection even if he is a participant in the improper conduct, so long as he is not the mastermind or the person most guilty.**
3. **Section 6(1) stating that the disclosure not be prohibited by any written law, should be removed.**

Meanwhile, Centre to Combat Corruption and Cronyism (C4) founder Cynthia Gabriel recommended that the WPA be given a relook with inputs from the Bar Council and civil society groups to ensure that public interest disclosure is protected at all times.

Panel members agreed that a whistleblowing policy would not work in a society that does not encourage or tolerate alternative viewpoints.

The key challenge for the WPA is how to foster organisational and societal cultures and values that make it socially acceptable and rewarding for people to expose corruption.

INTEGRITY OFFICERS TO EMBED ZERO TOLERANCE TO CORRUPTION IN PUBLIC AND PRIVATE SECTORS

The Certified Integrity Officer (CeIO) programme was developed in 2010 by the Corporate Integrity Development Centre of the Malaysia Anti Corruption Academy (MACA), in collaboration with the Malaysian Institute of Integrity (IIM).

It serves as a platform to inculcate a culture of integrity at all levels in both the public and private sectors, which in turn will embed zero tolerance to corruption. Participants who comprise officers from both government and private sector agencies undergo a stringent vetting process before they can be admitted into the six-month programme.

The training modules explain what integrity and good governance are, how to formulate an integrity plan for the organisation, implement laws and monitor their compliance.

By the end of their training the officers will be able to plan, make effective decision on matters concerning integrity, apply the integrity concepts in the organisation's daily operations, and identify suitable response to boost ethics and integrity.

Upon graduation, they return to their respective organisations and carry out their roles as change agents. To promote ethics and integrity in the organisation, they will formulate check and balance, and monitoring mechanisms to ensure compliance with existing laws and regulations, and foster zero tolerance towards corruption.

The first batch of 22 CeIOs, mostly from the MACC, received their certificates from Prime Minister Datuk Seri Najib Tun Razak at the inaugural graduation ceremony held at the Putrajaya International Convention Centre on February 27, 2012.

This pioneer group were then sent to various government agencies to help set up integrity units there. In addition, they will scrutinise the weaknesses and recommendations raised in the Auditor-General's Report and take effective measures to prevent a recurrence.

As a mark of their independence, if they find anything amiss, the CeIOs can either report the matter directly to the Minister in the Prime Minister's Department, Datuk Paul Low himself, or to the MACC. To date, MACA has produced 154 CeIOs comprising MACC and other government officers as well as those from the private sector. This number is still far short of the 500 CeIOs needed to monitor the procurement process in all government agencies and departments.

The private sector is also encouraged to have integrity units of their own to monitor that all business transactions comply with integrity and ethical principles.

The CeIO programme has attracted the attention of various international anti-corruption agencies.

International bodies such as the International Association of Anti-Corruption Authority (IAACA), Interpol and other enforcement agencies around Southeast Asia, have expressed interest in participating in the programme.

Plans are afoot to extend the CeIO programme for international participation.

Chief Commissioner Tan Sri Abu Kassim chairing an MACC meeting. The commission closely monitors the newly formed Agency Integrity Management Division and provides customised guidance in the institutionalisation of Integrity Units established across the government ministries and agencies.