



Practice Area Anti-Bribery and Anti-Corruption — Australia

Australia's Criminal Code Act 1995 (Commonwealth Criminal Code), Anti-money Laundering and Counter-Terrorism Financing Act 2006 and Public Service Act 1999 criminalise bribery, public and private sector corruption and attempted corruption, extortion, abuse of public office and money laundering.

Australia's multi-agency approach to fighting corruption includes –

- Australian Federal Police (AFP): The AFP has primary law enforcement responsibilities for investigating bribery and corruption involving foreign or domestic public officials
- Australian Crime Commission (ACC): The ACC is a national criminal agency with investigative powers and responsibilities relating to corruption in the context of organised crime
- State Commissions: Individual Australian states have established commissions to investigate allegations of corruption within each state's public sector

Foreign Public Officials

Section 70.2 of the Criminal Code Act criminalises bribing a foreign public official. The elements of the offence are set out in three 'steps' required to find a person guilty of bribery:

- Step One: The person provides a benefit to another person, offers or promises to provide a benefit to another person, or causes a benefit to be provided, offered or promised to another person
- Step Two: The benefit is not legitimately due to the other person
- Step Three: The person performed Step One with the intent to influence a foreign public official (who may or may not be the 'other person') in the exercise of the official's duties as a foreign public official, to obtain or retain business or obtain or retain a business advantage which is not legitimately due

The offence is committed regardless of whether the bribe was successful or considered customary, necessary or required.



Domestic Public Officials

Section 141.1 of the Criminal Code Act prohibits bribery of a Commonwealth public official. The elements of the offence are set out in two 'steps'. Thus, a person is guilty of bribery if —

- Step One: The person provides a benefit to another person, offers or promises to provide a benefit to another person, or causes a benefit to be provided, offered or promised to another person
- Step Two: The person performed Step One with the intent to influence a Commonwealth public official (who may or may not be the 'other person') in the exercise of the official's duties as a Commonwealth public official

It is also an offence for a Commonwealth public official to receive a bribe.

Private Commercial Bribery

Each Australian state and territory separately criminalises private commercial bribery and prohibits the giving, receipt or solicitation of a benefit as an inducement or reward for an act or omission in relation to a business.

Facilitation Payments

The Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 established a 'facilitation payment' defence to a charge of bribery of a foreign official. This defence is only available where the payment offered was 'of a minor value' and was offered 'for the sole or dominant purpose of expediting or securing performance of a routine government action of a minor nature'. Importantly, decisions to award or continue business relationships are not considered routine governmental actions.

The firm must record the amount, nature and the details of the facilitation payment.

Agents and Contractors

A firm can be held responsible for the bribery offences of its employees and agents. A spouse or other relative can also be liable for bribery if he or she induces a person to do something that results in another person obtaining a benefit.

The pending Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017, if passed, will add the offence of failure to prevent bribery.



Penalties

Federal and state law provides for substantial criminal penalties for bribery. For example, an individual violator can be punished with –

- a prison sentence of up to 10 years
- fines of up to 10,000 penalty units (approximately AUD 2.1 million for any offense committed on or after July 1, 2017)

A firm can be punished with a fine amounting to the greater of any of the following:

- 100,000 penalty units (approximately AUD 21 million for any offense committed on or after July 1 2017)
- Three times the benefit the firm obtained
- 10% of the firm's turnover for the 12 months before the offenceⁱ

ⁱ Updated January 13, 2020.