Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

AUSTRALIA

(Information as of 9 June 2011)

Date of deposit of instrument of ratification/acceptance or date of accession

Australia ratified the Convention on 18 October 1999.

Implementing legislation

Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Cth) (Division 70 Criminal Code (Cth))

Date of entry into force: 17 December 1999.

Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations

- Auditor-General Act 1997 (Cth)
- Criminal Code Act 1995 (Cth) Chapter 4 and Division 400
- Commonwealth Authorities and Companies Act 1997 (Cth)
- Corporations Act 2001 (Cth)
- Extradition Act 1988 (Cth)
- Financial Management and Accountability Act 1997 (Cth)
- Income Tax Assessment Act 1997 (Cth)
- Mutual Assistance in Business Regulation Act 1996 (Cth)
- Mutual Assistance in Criminal Matters Act 1987 (Cth)
- Proceeds of Crime Act 2002 (Cth)
- Financial Transaction Reports Act 1988 (Cth)
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006
- International Trade Integrity Act 2007 (Cth)

Recent developments to Australia’s anti-bribery framework

On 4 February 2010, the Australian Parliament passed the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010, which increased the financial penalties for bribery offences. For each bribery offence, the new penalty for an individual is imprisonment for up to 10 years and/or a fine of up to 10 000 penalty units (AUD 1.1 million). The new penalty for a body corporate is a fine of up to 100 000 penalty units (AUD 11 million) or three times the value of benefits obtained by the act of bribery, whichever is greater. If the value of benefits obtained from bribery cannot be ascertained, the penalty is a fine of up to 10 000 penalty units or 10% of the annual turnover of the company, whichever is greater. This formula is based on existing penalties for restrictive trade practices and cartel behaviour but allows a higher monetary fine due to the serious criminal nature of bribery and the serious detrimental effects of bribery.
The Australian Transaction Reports and Analysis Centre (AUSTRAC) has updated Information Circular No. 42: Bribery of Foreign Public Officials to refer to links between the foreign bribery offence and money laundering offences. The Information Circular now states that bribery may also trigger charges of money laundering under Division 400 of the Criminal Code Act 1995. The Information Circular is publicly available and used in training by AUSTRAC. It can be accessed at \(<http://www.austrac.gov.au/files/aic42_bribery_foreign_public_officials.pdf>\).

The Australian Trade Commission (Austrade) has updated its website to ensure information about the offence of foreign bribery is included in the Legal Issues section, in addition to the Risk Management section, of the website. The Austrade website also provides advice on specific export markets and has confirmed that information about the foreign bribery offence is included in country-specific guide to doing business.

The Australian Taxation Office has amended its website to ensure advice regarding facilitation payments refers to payments of minor value.

On 24 September 2007, Australia passed the International Trade Integrity Act 2007. The Act principally was to implement recommendations from the Cole Inquiry into certain Australian companies in relation to the Iraq Oil-for-Food Programme but also implemented three recommendations from the Working Group. The Act amended the offence of foreign bribery so that a defence is available only if a benefit offered or paid is permitted or required by the written law governing a foreign public official. The Act also clarified that any other perception that a benefit was required or permitted must be disregarded and that a charge of foreign bribery can be satisfied regardless of the results of an alleged bribe.

**International engagement and cooperation on foreign bribery**

Australia actively supports the OECD’s work in the G20 Anti-Corruption Working Group, including:

- completing the OECD survey of domestic measures in place to combat foreign bribery
- participation in the OECD-KPK international conference Shaping a New World: Combating Foreign Bribery in International Business Transactions, held in May 2011 in Bali, Indonesia, and
- taking practical steps to implement the multilateral cooperation objectives of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In partnership with China and Indonesia, Australia will oversee the production of a G20 guide to mutual legal assistance, and is leading a survey of G20 priorities to strengthen mutual legal assistance and extradition.

Australia led the development of the APEC Code of Conduct for Business. The Code outlines policy and procedures that should be used to prevent bribery and corruption and is particularly well suited to the needs of small and medium enterprises. The Code has been implemented in Vietnam, Thailand and Chile, and the Philippines in now implementing the Code. The United States is also using the Code as a basis for outreach to specific industry sectors, including pharmaceuticals.

Australia is also working with the Philippines, Thailand, Indonesia and Malaysia to improve the production and dissemination of financial intelligence relevant to the fight against corruption through the Combating Corruption and Anti-Money Laundering Program. The program aims to establish stronger domestic and regional cooperation among financial intelligence units, regulators and anti-corruption agencies.
Countries' international commitments arising from other international instruments.

Australia signed the UN Convention against Corruption on 9 December 2003. Australia considers that it complies with all of the Convention’s mandatory requirements. In accordance with Australia’s domestic process for treaty ratification, the Convention was tabled before Parliament on 7 December 2004. The Joint Standing Committee on Treaties conducted a hearing into the ratification of the Convention on 7 March 2005 and issued a report in August 2005. Australia ratified the Convention on 7 December 2005.

Australia is a founding member of the Financial Action Task Force on Anti-Money Laundering and Counter Terrorist Financing (FATF). In December 2003 the Australian Government endorsed the FATF Forty Recommendations on Anti-Money Laundering and the Eight Special Recommendations on Counter-Terrorism Financing.

Australia ratified the UN Convention against Transnational Organized Crime on 27 May 2004.

Australia is an active participant in the Asia Development Bank OECD Anti-Corruption Initiative for Asia and the Pacific and endorsed the Initiative’s Action plan in October 2003.

In November 2004 Australia endorsed APEC’s Santiago Commitment to Fight Corruption and Ensure Transparency and Course of Action on Fighting Corruption and Ensuring Transparency.

Other information

Relevant authorities

Enforcement:

Information about foreign bribery offences should be reported to the Australian Federal Police:

Postal address: GPO Box 401
CANBERRA ACT 2601
AUSTRALIA
Website: www.afp.gov.au

Policy:

Attorney-General’ Department

Postal address: Robert Garran Offices
National Circuit
BARTON ACT 2600
AUSTRALIA
Website: www.ag.gov.au/foreignbribery

Relevant Internet links to national implementing legislation

www.comlaw.gov.au

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (December 1999)