



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

1 May 2017

Public consultation: Foreign bribery amendments
Criminal Law Policy Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: foreign.bribery@ag.gov.au

To whom it may concern,

Submission on Exposure Draft of Proposed Reforms to Foreign Bribery Offence

Thank you for the opportunity to comment on the proposed reforms to the foreign bribery offence in the *Criminal Code Act 1995* (the ED). We are largely supportive of the amendments proposed in the ED. However, we strongly urge the Government to reconsider their decision to leave the existing facilitation payments defence unchanged, resulting in such payments remaining legal and tax deductible in Australia.

The narrow scope of the current facilitation payment defence in the *Criminal Code Act 1995* (the Act) makes such payments difficult to distinguish from a prohibited bribe. The line of difference between a facilitation payment and a bribe is regarded by many as unclear, and exactly what constitutes a "small payment" remains undefined. Also, the difference between a bribe and a facilitation payment has not yet been tested in Australian court, further exacerbating the lack of clarity in this regard.

Failure to remove the facilitation payment defence within the Act leaves Australian legislation out of line with countries considered to have gold-standard anti-corruption legislation, most notably the United Kingdom (*Bribery Act 2010*). We note that Canada has also removed their facilitation payment defence. The Organization for Economic Co-operation and Development (the OECD) in their 2009 *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, commented on the often illegal nature of facilitation payments and their corrosive effect on economies. Similarly, the United Nations Convention against Corruption draws no distinction between facilitation payments and illegal bribes.

Some may view the use of facilitation payments as an expedient means of conducting business. However, it is increasingly recognised within the international community that doing so holds a substantial legal risk, and also risks setting a permissive tone for wider unethical and corrupt behaviour by individuals and businesses.

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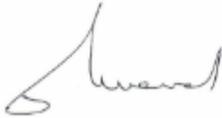
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We therefore strongly recommend that the Government take this opportunity to remove the facilitation payments defence from the Act. In addition to aligning Australia with the international best practice in this regard, such a move would also send a clear message to all regarding the Australian government's zero tolerance for foreign bribery.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Ward', is centered below the text 'Yours sincerely,'.

Rob Ward FCA AM

Head of Leadership and Advocacy

Appendix: About us

Chartered Accountants Australia and New Zealand is a professional body comprised of over 115,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international capital markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

If you have any questions regarding this submission, please contact Karen McWilliams (Ethics and sustainability leader) via email; karen.mcwilliams@charteredaccountantsanz.com.