

FACT SHEET 6

Frequently Asked Questions

When does the foreign bribery offence apply?

The offence applies to conduct in Australia, or on board an Australian aircraft or an Australian ship. The offence also applies to conduct outside Australia in three situations. This is where, at the time of the alleged offence, the person who is alleged to have committed it is:

1. an Australian citizen
2. a resident of Australia, or
3. a body corporate incorporated by, or under a law of, the Commonwealth or of a State or Territory.

See Fact Sheet 2 – The Offence, for further details on when the offence applies.

Can a company be held criminally responsible for the conduct of a corporate agent?

Yes, companies can be found guilty of the foreign bribery offence and can be held criminally responsible for the actions of their agents. In certain circumstances, a company must be held responsible for the illegal acts of employees and agents.

Companies should be aware that they will be liable for foreign bribery offences where:

- the company's board of directors, or a high managerial agent of the company, intentionally, knowingly or recklessly committed the foreign bribery offence
- the company's board of directors, or a high managerial agent of the company, expressly, tacitly or impliedly authorised, or permitted the commission of, the foreign bribery offence by an agent of the company
- an agent of the company offered a bribe and it is shown that a corporate culture existed within the company that directed, encouraged, tolerated or led to the commission of the foreign bribery offence, or
- an agent of the company offered a bribe and it is shown that the company failed to create and maintain a corporate culture that required compliance with the laws against bribing foreign public officials.

Companies must create and maintain a corporate culture that requires compliance with the law or they may face increased liability for the corrupt activities of company officers and agents. Companies must take reasonable steps to ensure that their employees do not commit foreign bribery offences.

Companies should also ensure that they have appropriate channels for reporting suspected breaches of the law and that people who do report breaches are protected from persecution within the company.

Corporate criminal liability is detailed in Division 12 of the *Criminal Code Act 1995* (Cth).

See Fact Sheet 2 – The Offence, for further details on corporate liability for foreign bribery.

Are bribes tax deductible under Australian law?

Bribes are illegal under Australian law and are not tax deductible.

Who can report allegations of foreign bribery?

Any person, organisation or government department may refer an allegation of foreign bribery to the Australian Federal Police (AFP). This includes the media or a foreign government.

See Fact Sheet 3 – How to Report Suspected Foreign Bribery, for details on referring a matter to the AFP.

Who investigates allegations of foreign bribery?

The AFP has primary law enforcement responsibility for investigating criminal offences against Commonwealth laws, which includes the foreign bribery offence.

All allegations of foreign bribery are treated as a high priority by the AFP.

Who do I contact if I suspect that someone is bribing a foreign public official?

If you suspect that an individual or company has bribed, or attempted to bribe, a foreign public official, please report the matter online at <www.afp.gov.au> or to the AFP Operations Monitoring Centre (OMC) in Canberra on (02) 6126 7777 or from outside Australia on +61 2 6126 7777. The OMC in Canberra can also provide address details for written referrals. See Fact Sheet 3 – How to report suspected foreign bribery, for details on reporting a matter to the AFP.