



# Foreign bribery

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## Agency roles and responsibilities

The Australian Government takes a whole-of-government approach to combating the bribery of foreign public officials (foreign bribery). This document outlines the roles and responsibilities of key agencies.

### *Attorney-General's Department (AGD)*

AGD has whole-of-government policy responsibility for foreign bribery. Key aspects of this role include maintaining an effective legal and policy regime, undertaking outreach to raise businesses' awareness of the foreign bribery laws, and leading Australia's engagement with the OECD Working Group on Bribery on our compliance with the Anti-Bribery Convention.

AGD is the central authority responsible for extradition, international transfer of prisoners and mutual assistance casework and related advice.

AGD also leads Australia's engagement in a range of regional and international forums and initiatives focussed on combatting corruption, including the G20 Anti-Corruption Working Group, the United Nations Convention against Corruption, and the Asia-Pacific Economic Cooperation Anti-Corruption and Transparency Experts Task Force.

### *Australian Federal Police (AFP)*

The AFP is responsible for investigating offences against Commonwealth law, including the offence of bribing a foreign public official in Division 70.2 of the Criminal Code.

The AFP works closely with other Australian and international law enforcement bodies to enhance safety and security in Australia and to provide a secure regional and global environment. Corruption, including bribery of a foreign public official, is an area of high priority for the AFP.

In 2014, the AFP established the Fraud and Anti-Corruption Centre. The Centre enhances the AFP response to foreign bribery and other forms of corruption, and brings together 12 other Commonwealth agencies, including the Australian Crime Commission, Australian Securities and Investments Commission and the Australian Taxation Office.

The AFP has established an internal Foreign Bribery Panel of Experts. This Panel is made up of senior investigators with experience in significant foreign bribery investigations. It provides expert advice on foreign bribery referrals and investigations, and conducts foreign bribery specific training modules and awareness-raising activities.

## *Australian Securities and Investments Commission (ASIC)*

ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in financial products and advice, superannuation, insurance, deposit-taking and credit.

As the corporate regulator, ASIC ensures that companies, schemes and related entities meet their obligations under the Corporations Act. ASIC registers and regulates companies at every point from their incorporation through to their winding up, and is responsible for ensuring that company officers comply with their responsibilities to shareholders, creditors and third parties. It also registers and, where necessary, takes disciplinary action against company auditors and liquidators. ASIC monitors public companies' financial reporting and disclosure and fundraising activities

ASIC is responsible for investigating fraudulent, misleading and deceptive conduct in relation to financial services, including some conduct outside Australia. ASIC and the AFP work closely together in the investigation of instances of suspected foreign bribery (noting AFP has primary responsibility for this crime type).

ASIC conducts prosecutions for some summary offences which it has investigated. Indictable offences and other summary offences are referred to the CDPP. There are guidelines between ASIC and the CDPP that deal with the referral of cases for prosecution and arrangements for the conduct of prosecutions.

## *Australian Taxation Office (ATO)*

The ATO is the Commonwealth Government's principal revenue collection agency. The ATO is a participating agency on the AFP FAC Centre. This allows the ATO to be aware of, and involved as appropriate, in the matters referred to the AFP in relation to serious and complex fraud and corruption matters. This includes foreign bribery.

The ATO's international relationships including Australia's participation with working parties to the OECD, particularly in relation to Automatic Exchange of Information and other transparency measures, allow information and experience to be shared.

The ATO has published [guidelines](#) which provide information for understanding and dealing with the bribery of Australian and foreign public officials. These provide tax officers with practical ways to identify how a taxpayer may be concealing bribe transactions to an Australian or foreign public official.

## *Australian Trade and Investment Commission (Austrade)*

Austrade advances Australia's international trade, investment, education and tourism interests by providing information, advice and services. Austrade can assist Australian companies by:

- providing practical guidance on conducting trade in foreign countries
- identifying or recommending a range of local agents
- helping to resolve an issue if a client company reaches an impasse because it refuses to pay a briber or make a facilitation payment
- providing information on practices that may breach Australian law
- leveraging the 'badge-of-government' to assist Australian exporters in situations where bribery or other illegal payments or inducements impede their operation, and
- raising issues of market access on a government-to-government level where there is evidence of systemic bribery.

The Austrade website provides an anti-bribery training and generic anti-bribery governance materials as well as information on how to access Austrade's services.

## *Australian Transaction Reports and Analysis Centre (AUSTRAC)*

AUSTRAC is Australia's anti-money laundering regulator and specialist Financial Intelligence Unit and is responsible for ensuring the collection, analysis and dissemination of financial intelligence to its designated law enforcement, national security, revenue collection and social welfare partner agencies.

As part of this role, AUSTRAC allows domestic partner agencies (for example the ATO, ASIC, the ACC and the AFP) on-line access to the AUSTRAC database of financial transaction reports information. AUSTRAC also provides on-site training and analytical assistance to those agencies to assist their efforts in combating crime, revenue evasion, the funding of terrorism and major fraud.

## *Commonwealth Director of Public Prosecutions*

The primary role of the CDPP is to prosecute offences against Commonwealth law, including the Criminal Code and Corporations Act.

All decisions in the prosecution process are made in accordance with the *Prosecution Policy of the Commonwealth*. The Policy provides that a prosecution should not proceed unless there are reasonable prospects of conviction and the prosecutor is satisfied that the public interest would be served by a prosecution. The Policy sets out a range of factors to be taken into account when giving consideration to whether a prosecution is in the public interest.

## *Department of Foreign Affairs and Trade (DFAT)*

DFAT's role is to advance the interests of Australia and Australians internationally. In relation to foreign bribery, DFAT undertakes outreach to ensure that Australian businesses are aware of their obligations under Australian anti-bribery laws.

Any Australian or Australian company operating overseas that encounters corruption is encouraged to contact the relevant Australian diplomatic mission for advice and assistance. The DFAT website provides information about foreign bribery and anti-corruption policy generally, as well as information about facilitation payments.

DFAT's aid program works to support international efforts to tackle corruption and improve transparency and accountability. The aid program does this in three ways: through bilateral programs, supporting international institutions and through control over program funds.

DFAT refers all information concerning allegations of foreign bribery offences committed by Australians and Australian companies to the AFP for evaluation of any potential breach of Australian laws.

## *Export Finance and Insurance Corporation (Efic)*

Efic is Australia's export credit agency (ECA). Its role is to ensure that Australian businesses with viable export and international business opportunities have the finance to succeed in international markets.

Efic has developed Transactional Anti-Bribery Procedures, which apply to all transactions and potential transactions being considered by Efic, including SMEs, mid-market and project finance transactions.

Standard provisions in Efic's template transaction documents help address foreign bribery risks. These provisions include initial and repeating representations and warranties from contractual counterparties, which confirm the absence of bribery and corruption. These representations generally constitute a pre-requisite of Efic providing its support.

Efic has an Anti-Corruption Policy which outlines the obligations of its staff in deterring and preventing bribery and corruption. All Efic staff are required to undertake annual anti-corruption compliance training.