



# TRANSPARENCY INTERNATIONAL AUSTRALIA

## BACKGROUND BRIEF

### ANTI-CORRUPTION LAWS – IMPLICATIONS FOR AUSTRALIAN BUSINESS

#### The Emerging Lessons from the Oil-for Food Scandal

The AWB Royal Commission headlines deliver a clear message for Australian business.

Allegations of improper conduct in international business can be extremely harmful to a corporate reputation. Media attention will magnify the impact: investors, customers and analysts will react adversely.

Hence it is imperative for all such companies doing business in the region to promptly review again their potential exposure.

For them, carrying on business as usual will not be an option. The Board and senior management must guard the company from risk. This will require adequate scrutiny and training of sales staff and managers and sanctions for breaches of internal controls. The process must be driven from the top.

The challenge to prevent, detect and penalise evidence of any underhand and corrupting practices is a tough and ongoing governance issue for leaders.

#### Australian Criminal Code implements OECD Convention --Bribery of foreign officials outlawed

Since 1999 it has been a criminal offence under Australian law for an Australian company, resident or citizen to bribe or provide benefits to foreign government officials or to permit bribes to be paid. The federal *Criminal Code* implements the OECD Convention on outlawing bribery of foreign officials.

Ratified by 35 countries, including Australia and all other OECD countries, accounting for over 90% of world trade, this is an important treaty aimed at stemming the flow of corrupt payments to officials of less developed countries, by penalising the 'supply side'. It is designed to provide a level playing field by removing bribery and corruption as a business tool.

The enforcement of the Australian law is being monitored by Transparency International and by a Working Group of OECD which recently reported on Australia.

Stemming from that report one can anticipate that the AFP and other federal agencies will actively investigate allegations of unlawful bribery and that may lead to prosecutions as recommended by the report. Also the ATO may audit tax returns of companies doing business abroad where it suspects dealings requiring official approval.

### **To what does the federal law apply?**

Payments or benefits provided, not just for winning or retaining business but for preferential treatment in taxation, customs or court proceedings or for obtaining official permits abroad, are all caught.

Commissions paid to intermediaries at an inflated rate will attract attention as will associations with influential officials.

A policy of doing what is required abroad commercially, especially a 'no questions asked' practice can lead to trouble.

The law places the onus on the company to show that it has kept a compliance culture alive. Otherwise evidence about that may be lead by the prosecution. Several key requirements must be satisfied as the papers referred to below indicate.

While the scope of the law has not yet been tested it is clearly broader than is commonly understood.

### **Corporate Culture**

Some questions board members and senior management should raise:

- Has the issue of and commitment to compliance been regularly raised?
- Has the CEO disseminated a clear Code of Conduct to all staff?
- Is it clear how the compliance policy (in accordance with AS 8001-2003) is being adequately carried out?
- Does the responsibility to implement clearly extend to operation managers as well?
- Are training programs, manuals and other resources adequate and reaching all employees?
- Are they all obliged to report failure to comply and any gaps and do they understand that responsibility?
- Does the company have a hot-line facility and is the Audit and Risk Committee of the board satisfied with the integrity of its operation?

### **Transparency International Australia**

Transparency International is headquartered in Berlin and has Chapters in some 90 countries. It is regarded as the leading anti-corruption non-government body in the world. The Australian Chapter monitors the benchmarks of compliance with the OECD Convention and Australian law as one of our priorities. We liaise with government and work in coalition with civil society and are dedicated to combat bribery and corruption in all its forms wherever it may arise.

Directors: Frank Costigan QC (Chairman), Michael Ahrens (Executive), Grahame Leonard, Peter Willis, Greg Thompson, Graham Tupper, David Mattiske.

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For **further information** consult:

- \* [OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and associated information](#)
- \* [Phase 2 Reports](#) on the Implementation of the OECD Anti-Bribery Convention and the 1997 Revised Recommendation
- \* [Australia: Phase 2 Report](#) on the Implementation of the OECD Anti-Bribery Convention
- \* [Information about complying with Australian laws prohibiting anti-bribery](#)
- \* [Oil-For-Food Royal Commission website](#)

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