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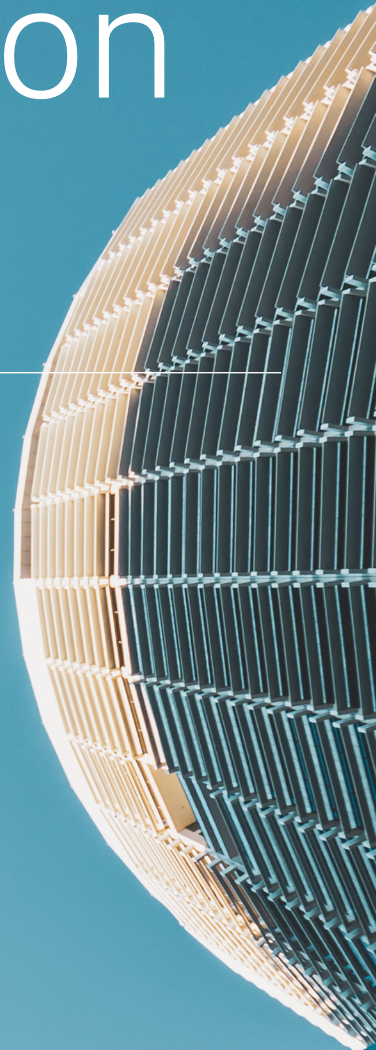

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Chambers

Global Practice Guides

Anti-Corruption

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Eric Bruce

Freshfields US LLP

2025

Chambers Global Practice Guides

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INTRODUCTION

Contributed by: Eric Bruce and Justin Simeone, **Freshfields US LLP**

Freshfields US LLP has a white-collar defence team that is highly skilled in advising cross-border businesses on anti-bribery and corruption risks arising anywhere in the world. The firm's US white-collar partners, most of whom are former federal prosecutors, lead a team with more than 200 US lawyers working in close co-ordination with Freshfields' offices in Europe, the Middle East and Asia. Freshfields helps clients respond to simultaneous inquiries from the US DOJ, the US SEC and CFTC, the UK Serious Fraud Office, and other global regulators and prosecutors, in connection with allegations of bribery and corruption. Freshfields' lawyers develop multi-pronged defence strategies to navigate the varied expectations of regulators and prosecutors around the globe. The firm regularly conducts international anti-bribery compliance programme reviews and provides due diligence and transactional advice for some of the world's leading investors, banks and multi-nationals. Recent anti-corruption work has included securing the first declination with disgorgement under the DOJ's Corporate Enforcement Policy.

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INTRODUCTION

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FRESHFIELDS

Anti-Corruption: The Global Picture

We are proud to introduce the eighth edition of the Chambers Global Anti-Corruption Guide. The purpose of this Guide is to provide an overview of current anti-bribery and corruption laws in a wide range of countries, including insights into key legal standards, enforcement policies, and emerging trends, from the perspective of leading practitioners in their respective jurisdictions.

Global focus on combatting corruption

Amid geopolitical turbulence in recent years, leaders from around the world have emphasised that anti-bribery and corruption efforts remain a top priority. In May 2023, following European Commission President Ursula von de Leyen's promise to "eradicate corruption at home", the Commission announced a significant package of reforms designed to strengthen prevention efforts, expand the definition of criminal corruption, and increase criminal penalties and sanctions.

Since that time, leaders around the world have echoed a similar emphasis on anti-bribery and corruption efforts. In September 2023, soon after becoming the Director of the UK Serious Fraud Office (SFO), Nick Ephgrave underscored the SFO's commitment to fight corruption: "Fraud wrecks lives and undermines the economy. I am committed to building the strong, dynamic and pragmatic authority the UK needs to fight today's most heinous economic crimes". In April 2024, he declared the SFO's intention to become "the pre-eminent specialist, innovative and collaborative agency which leads the fight against serious and complex fraud, bribery and corruption". Indeed, over the past year, the SFO has executed a number of dawn raids and new investigations in this area.

Beyond Europe, the United States continues to be a driving force on anti-bribery and corruption efforts. At the outset of his term in office, US President Joseph Biden declared corruption a matter of "national security". In December 2023, he reinforced the message that "[c]orruption poses an existential threat to prosperity, security, and democracy – for Americans and for people around the world". In 2024, after a brief downturn in Foreign Corrupt Practices Act (FCPA)-related penalties during the pandemic years, US authorities imposed more than USD1 billion in FCPA-related penalties.

Key developments in legislation, guidance, and enforcement initiatives

The continued emphasis on combatting bribery and corruption is further evident from many

important legislative and policy reforms in recent years. As noted above, in May 2023, the European Commission proposed a broad directive aimed at combatting corruption, as part of a broader effort to harmonise procedures for fighting corruption across the EU member states.

Since that time, countries inside and outside the European Union have implemented legislation and policy guidance to further bolster anti-bribery and corruption enforcement at the domestic level. As the authors of this Guide explain in greater detail within their individual chapters, there have been noteworthy developments in many countries. We briefly highlight just a few.

Australia – Combatting Foreign Bribery Act

In February 2024, the Australian Parliament passed the Combatting Foreign Bribery Act, marking a pivotal moment in Australia's ongoing battle against global corruption. This legislation expands Australia's anti-bribery and corruption regime in several ways.

- First, the Act broadens the definition of "bribery" by revising definitions such as "advantage" and "associate". It also clarifies that the "intent" to influence does not need to be directed at a specific official or to obtain a specific business advantage.
- Second, the Act mandates that corporations take proactive steps to prevent bribery, and the failure to do so can result in conviction and significant penalties. More broadly, the Act increases penalties for corporations and individuals, including imprisonment of up to ten years for individuals and considerable fines for corporations.
- Finally, the Act mandates review of operations and requires publication of clear guidance to assist corporations in implementing measures that prevent bribery and corruption.

In August 2024, the Attorney General published "Guidance on adequate procedures to prevent the commission of foreign bribery". The Guide describes five main indicators of an effective anti-bribery compliance programme:

1. a culture of integrity within the corporation;
2. pro-compliance conduct by top-level management;
3. a strong anti-bribery compliance function;
4. effective risk assessment; and
5. careful and proper use of third parties.

United Kingdom – Economic Crime and Corporate Transparency Act

In October 2023, the United Kingdom implemented the Economic Crime and Corporate Transparency Act (ECCTA), which aims to reform enforcement of economic crime and corporate liability. Among other important features, the ECCTA expands key definitions that are relevant to enforcement actions.

- First, the Act broadens the scope of senior executives whose actions can be attributed to a company to establish criminal liability. Previously, only individuals representing the "direct mind and will" of a company could create liability; now, "senior managers" can also create liability. The Act broadly defines "senior managers" as employees who play a "significant role" in (i) making decisions about managing or organising the whole or a substantial part of a company; or (ii) actually managing or organising the whole or a substantial part of a company.
- Second, the Act adds a strict liability offence of "failure to prevent fraud", including fraud by "associated persons," who may include employees or agents who act on behalf of a company. The new offence only applies to large organisations, but it has broad extrater-

ritorial reach, which will likely be subject to further guidance and court interpretation in the future.

On the whole, the ECCTA has significant potential to bolster the SFO's stated objective to increase anti-bribery and corruption enforcement actions over the coming years.

France – Anti-Corruption Agency Guidelines on Sponsorships and Charitable Donations

In recent years, the French Anti-Corruption Agency (AFA) has published updated guidance on key anti-bribery and corruption topics, including a March 2023 Guide on "Internal Anti-Corruption Investigations," which provides an overview of best practices for companies.

In March 2024, the AFA published new Guidelines on "Managing Risk in Corporate Sponsorships and Patronage Activities," which is an area that can expose many companies to unexpected bribery risks. Among other guidance, it clarifies the definitions of these important terms:

- First, the Guidelines explain that sponsorship, which is not otherwise defined under French law, involves support to an event, entity, or individual of a philanthropic, educational, scientific, social, humanitarian, sporting, family, cultural, artistic, or environmental nature, with a view to gaining a direct benefit from the transaction.
- Second, the Guidelines explain that charitable donations, which is defined under French tax law, involve material or financial support given to a legal entity or charitable organisation to carry out activities that benefit the general interest, without any direct or indirect benefit in return.

The Guidelines discuss risks associated with these activities and provide recommendations on how to avoid such risks. It includes examples of potentially problematic situations and proposes specific prevention and detection measures that are in line with the AFA's general anti-corruption guidelines. It also recommends corporate compliance measures, such as policies, procedures, written agreements, training, and internal controls designed to prevent activities that may lead to criminal exposure.

United States – International Corporate Anti-Bribery Initiative

Amid these legislative and policy developments, the United States remains a leader in anti-bribery and corruption efforts worldwide. To that end, in November 2023, the DOJ announced the creation of the International Corporate Anti-Bribery Initiative (ICAB), which aims to strengthen global efforts in combatting corruption through shared data and enhanced cross-border co-operation.

The ICAB intends to strengthen the United States' ability to identify, investigate, and eventually prosecute foreign bribery offences by working with law enforcement partners in other countries, and international data experts. Acting Assistant Attorney General Nicole Argentieri has explained: "The Justice Department cannot succeed in combating corruption on our own. Criminals involved in bribery move across international borders, as do the illicit proceeds of their crimes. To effectively fight these offenses, strong partnerships and cooperation with our international counterparts is mission critical".

Indeed, during 2024, the DOJ announced several significant FCPA resolutions that involved joint co-operation between the DOJ and foreign authorities, including Colombian, Ecuadorian, Indian, Indonesian, Panamanian, Portuguese,

Singaporean, South African, and Swiss authorities.

Expanding policy initiatives to expand whistle-blower protections

Against the backdrop of these legislative and policy developments, there has been a notable push to strengthen whistle-blower incentives and protections in Europe and the United States.

In 2019, the EU Whistle-Blowing Directive established new protections for whistle-blowers who report breaches of EU law. In July 2024, the European Commission announced that all member states had transposed the Directive's main provisions in their domestic law. Despite some delays in transposition, the Directive has generated significant domestic legal reforms. For example, in 2023, Austria, Germany, Italy, and Spain all enacted domestic laws that secure protection of whistle-blowers. As required by the Directive, common features of these laws include:

- clearly established reporting channels for internal, external, and public reporting;
- heightened whistle-blower protections that prevent retaliation and ensure confidentiality; and
- increased sanctions for employers that harm whistle-blowing by obstructing communication, failing to maintain confidentiality, allowing retaliation, and similar actions.

Beyond the EU region, authorities in the United States have since taken significant steps that are designed to further incentivise whistle-blowers in the anti-bribery and corruption space.

Since 2011, the Securities and Exchange Commission (SEC) has operated a whistle-blower programme that entitles qualifying individuals to a portion of the penalties collected in a resulting enforcement action, leading the SEC to pay nearly USD600 million in awards and receive 18,000 whistle-blower tips in fiscal year 2023 alone. In April 2024, the DOJ announced a similar Corporate Whistleblower Awards Pilot Program, which will entitle non-culpable individuals to receive a portion of assets that result from successful prosecutions involving criminal or civil forfeitures. It also announced a Pilot Program on Voluntary Self-Disclosure for Individuals, which offers culpable individuals who co-operate with DOJ investigations discretionary grants of immunity, and entry into non-prosecution agreements. Since that time, several US Attorney's Offices – including those in the Southern District of New York and the Northern District of California – have implemented similar programmes that allow whistle-blowers to receive non-prosecution agreements, even if those whistle-blowers were involved in the underlying misconduct.

Importantly, the new US whistle-blower programmes complement other recent DOJ policies that offer significant penalty reductions for companies that disclose new information that DOJ authorities have not already received from others. By design, these dual policies set up a potential race to disclose between companies and individual whistle-blowers. As Lisa Monaco, DOJ Deputy Attorney General, summarised in her March 2024 remarks: "[O]ur message to whistle-blowers is clear: the Department of Justice wants to hear from you. And to those considering a voluntary self-disclosure, our message is equally clear: knock on our door before we knock on yours."

Conclusion

As these highlights illustrate, anti-bribery and corruption efforts remain at the top of the agenda for government enforcement agencies

around the world. It is more important than ever for practitioners to remain familiar with the legal standards, enforcement policies, and emerging trends in this area.

The following chapters provide valuable insights from expert practitioners who closely follow these developments within their respective jurisdictions. We sincerely thank the authors for their excellent contributions. We hope that practitioners will continue to find this Guide to be a valuable resource for understanding and navigating anti-bribery and corruption laws around the world.

Trends and Developments

Contributed by:
Dennis Miralis, Kartia Zappavigna and Darren Pham
Nyman Gibson Miralis

Nyman Gibson Miralis is an international, award-winning criminal defence law firm based in Sydney, Australia. For nearly 60 years, it has been leading the market in all aspects of general, complex and international crime, and is widely recognised for its involvement in some of Australia's most significant criminal cases. Its international law practice focuses on white-collar and corporate crime, transnational financial crime, bribery and corruption, international ML, cybercrime, international asset freezing or forfeiture, extradition and mutual assistance law. Nyman Gibson Miralis strategically advises and appears in matters where transnational cross-border investigations and prosecutions are being conducted in parallel jurisdictions, involving some of the largest law enforcement agencies and financial regulators worldwide. Working with international partners, it has advised and acted in investigations involving the British Virgin Islands, Cambodia, Canada, China, the EU, Hong Kong, Macao, Mexico, New Zealand, Russia, Singapore, South Africa, South Korea, Taiwan, the UK, the USA and Vietnam.

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Contributed by: Dennis Miralis, Kartia Zappavigna and Darren Pham, **Nyman Gibson Miralis**

In the past two to three years, the Australian federal government has introduced a series of new laws to bring Australia closer to compliance with its international obligations.

These obligations stem from Australia being party to numerous international anti-corruption conventions, including the:

- UN Convention against Corruption 2003 (UNCAC);
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997, also known as the Anti-Foreign Bribery Convention; and
- UN Convention Against Transnational Organised Crime 2000 (UNTOC).

Australia is also a member of the Financial Action Task Force (FATF), an inter-governmental body that sets international standards on anti-money laundering, counter-terrorism financing and countering proliferation financing.

In line with Australia's obligations to these conventions and FATF, the government has passed a series of legislation and plans to pass more, to bring the anti-corruption laws and regulations up to international standards.

The main changes brought in since late 2022, include:

- amendment to Australia's foreign bribery laws, and the creation of a new offence;
- establishment of the National Anti-Corruption Commission (NACC); and
- reforms to Australia's Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) Regime.

These changes bring Australia into closer compliance with its international obligations and internal standards, however corporations, at the front line of the government's attempts to tackle corruption issues, will be required to respond to the changes in shift in the regulatory environment. Companies must be prepared and proactive in responding to these changes.

Developments in Australia's Anti-corruption and Bribery Regime

Amendment to foreign bribery laws

On 29 February 2024, the federal parliament passed the Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023.

The bill was brought, in part in response to concern from the OECD Working Group on Bribery about Australia's low level of enforcement given the high-risk regions and sectors in which Australian companies operate.

The passing of this Bill brought to an end a six-year attempt by the federal government to pass these laws. First in 2017, and then again in 2019, but those bills were allowed to lapse. Now, the federal government has successfully passed a leaner, and stricter version of the Bill.

There are three key changes.

- A new corporate offence of failure to prevent foreign bribery.
- The existing offences capture a greater range of corporate conduct.
- Increased penalties for corporations found guilty of an offence.

The new corporate offence of failure to prevent the bribery of a foreign public official carries a maximum penalty of AUD27.5 million or higher.

The new-look foreign bribery offence significantly broadens the scope of conduct that could be caught by the Criminal Code and increases the potential punishment – increasing the risk to any company with operations outside of Australia. This offence does two things:

- it makes companies liable for failing to prevent foreign bribery by an "associate"; and
- it gives companies a defence for failure to prevent foreign bribery by an associate if they can show they had adequate procedures in place to prevent the commission of the offence.

"Associate" is broadly defined and includes an employee, contractor, agent, subsidiary or controlled entity of the corporation, or a person that otherwise performs services on behalf of the corporation.

The last category captures individuals and entities that are not directly engaged or paid by a corporation. For example, indirect suppliers such as customs agents who are engaged by a supplier in another market may fall within this definition.

This is also an absolute liability offence, meaning there is no requirement for the prosecution to show that the company was otherwise involved, authorised or permitted the offence.

As a result, unless the company can demonstrate that it has "adequate procedures" in place to prevent bribery, it could be held criminally responsible for the actions of third parties.

On 28 August 2024, the Attorney-General's Department published the "Guidance on adequate procedures to prevent the commission of foreign bribery" that was required within six months of the Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024 passing.

The new foreign bribery offence signals the government's intent to target corporate conduct. This intent was clear to see at Attorney-General Mark Dreyfus's second-reading speech for the bill, on 22 June 2023, when he stated that the bill does not contain a deferred prosecution agreement scheme (DPAs), as:

"When ordinary Australians commit crimes, they feel the full force of the law. However, under the deferred prosecution agreement scheme proposed by the former government, companies that engaged in serious corporate crime, including foreign bribery, would have been able to negotiate a fine, agree to a set of conditions and have their cases put on indefinite hold."

Reforms to the AML/CTF regime

On 11 September 2024, the federal government introduced the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 to Parliament (the "2024 AML/CFT Bill").

Australia's current AML/CTF regime was introduced in 2006, and in 2007, Parliament commenced the consultation processes for a second tranche of reforms to properly bring Australia in line with international standards set by FATF.

Despite this initial flurry, the second tranche of reforms was never introduced and FATF found in 2015 and again in 2018 that there were key areas that remain unaddressed.

However, in April 2023, the current Attorney-General announced public consultations on reforming Australia's AML/CTF regime and bringing it in line with standards recommended by the FATF.

Part One of the consultation addressed the need to simplify and streamline AML/CTF obligations, as recommended by a 2016 Statutory Review of the AML/CTF Act 2006. The review found that the regime was too complex, which made it difficult for regulated entities to comply with their obligations.

Part Two sought feedback on the tranche two reforms, which would extend the AML/CTF regime to "high-risk professions" or the "gatekeeper professions", including lawyers, accountants, trust and company service providers, real estate agents, and dealers in precious metals and stones ("Tranche two entities").

The result of the consultation process is the 2024 AML/CFT Bill, which will simplify, clarify and streamline the AML/CTF regime, while also extending it to the Tranche two entities.

If the 2024 AML/CFT Bill is passed, not only will currently regulated entities need to adapt to significant reforms, but the number of entities covered by the regime is set to increase from 17,000 to 100,000.

It will also impact companies that rely on the services of the Tranche two entities, as they too will in turn be required to comply with the standards of the AML/CTF regime

NACC established and running

On 30 November 2022, Parliament passed legislation establishing the NACC.

This is an independent Commission that detects, investigates and reports on serious or systemic corrupt conduct in the federal public sector. It can also refer matters to the CDPP for criminal prosecution.

The creation of the NACC has assisted Australia in meeting the recommendations from the UNCAC Implementation Review Mechanism, pursuant to Chapter III (Criminalisation and law enforcement) of the UNCAC. Specifically with the recommendation that Australia continue the development of a comprehensive national anti-corruption action plan, which will include an examination of how to make anti-corruption systems more effective.

Corruption is defined very broadly in the National Anti-Corruption Commission Act 2022 and includes any of the following by a public official:

- breach of trust;
- misuse of information;
- abuse of office; or
- something that adversely affects a public official's honest or impartial exercise of powers or duties.

The NACC has already received thousands of referrals since it officially commenced operations on 1 July 2023. As of February 2024, it:

- has 331 referrals under assessment including 11 under preliminary investigation;
- is conducting 13 corruption investigations; and
- is overseeing or monitoring 31 investigations by other agencies.

While the focus of the NACC is the public sector, this new Commission will ultimately have an impact on the businesses that work with the government.

This can include companies working with or for Parliamentarians and their staff, federal agencies' staff, or contract service providers to the Australian government. Private entities and

their employees can be investigated by NACC for conduct that adversely affected a public official's honest or impartial exercise of their official duties.

If NACC investigates a private entity, it will have the power to:

- compel the production of documents;
- compel officers or employees to attend a hearing to give evidence;
- search the company's premises;
- use covert investigative powers, including intercepting telecommunications; and
- use surveillance devices and authorise covert law enforcement operations.

Challenges, Lessons and Considerations for Private Entities

With the shift in the regulatory environment, companies must be prepared and proactive in responding to these changes.

Companies must be proactive by responding to two key requirements.

- First, having "adequate procedures" in place, which includes improving their anti-bribery and corruption programme (ABC programme).
- Second, having a "compliant corporate culture".

Adequate procedures

In light of the new foreign bribery law, it is crucial for companies to ensure that they have "adequate procedures" in place. This will involve developing, implementing, reviewing and updating existing ABC programmes.

The Attorney-General has now published guidance to assist corporations in this task. The guidance was written with the intention that it would be read as an industry and size-agnostic guide. This is explained and demonstrated with examples in the six broad principles of the guide, which are as listed:

- fostering a control environment to prevent foreign bribery;
- responsibilities of top-level management;
- risk assessment;
- communication and training;
- reporting foreign bribery; and
- monitoring and review.

Developing a compliant corporate culture

Under the Criminal Code Act 1995, a company may be liable for an offence if it has a corporate culture that is directing, encouraging, tolerating or leading to the commission of bribery or corruption or may lead to an offence.

However, a company may have a defence if it can demonstrate that its corporate culture requires its officers, agents and associated individuals to comply with Australian anti-bribery and anti-corruption laws through adequate procedures, which ought to have been reasonably developed and implemented following the principles of the guide.

A compliant corporate culture is more important than ever in Australia, as regulators such as ASIC and the ACCC are increasingly focussed on supervising and assessing culture, as they consider poor culture to be a cause of misconduct and risk management failure, and good culture to be an important factor in discouraging such outcomes. Its importance has increased with the implementation of the foreign bribery amendments and introduction of the AML/CTF reforms, etc.

While the Australian regulatory bodies and agencies have been reluctant to identify hard and fast rules for corporate governance, standards can be gleaned through guidance and schemes.

For example, APRA's recently introduced Financial Accountability Regime requires regulated entities to have:

- governance and leadership;
- compliance and accountability frameworks;
- risk assessments and risk management;
- incident response;
- remuneration management; and
- avenues for internal and external reporting, including whistle-blowing.

How companies can meet both requirements

For both "adequate procedures" and "compliant corporate culture", regulators have identified overlapping principles such as good governance, frameworks, risk assessment, etc.

The bare minimum is having an appropriate ABC programme.

- Ensure there is a clear ABC programme, that is embedded in all governance and other frameworks. This may require updating the current programme, or a complete overhaul of the programme; frequent audits and risk assessments help determine the health of the ABC programme.
- Have stringent procedures that give effect to the programme, so it does not only exist on paper. Procedures can include financial reporting or pre-bidding frameworks, and internal auditing processes.

After this, good governance can be met by practising the following policies and procedures through a top-down approach.

- Ensure senior leaders are demonstrating active compliance with the ABC programme by ensuring the company's strategy and initiatives are compliant.
- This includes undergoing frequent training, and being actively involved in updating and reviewing the effectiveness of the ABC programme and whether risk management has been properly considered.

The top-down approach must capture the entire company structure.

- Provide training programmes for all employees, ensuring they understand the company's core values and the importance of having the ABC programme that forms part of the company's compliant culture.
- Provide practical training to help them understand how bribery and corruption can arise and to identify situations when they and the business may be at risk; training should be tailored for different jobs within the company.

With the new foreign bribery laws, the ABC programme must also address individuals adjacent to the company structure. Therefore, companies must:

- distribute clear and consistent ABC messaging, policies and procedures to all third parties including contractors; and
- ensure that risk-based compliance due diligence checks are carried out on third parties that the organisation plans to employ with focus on high-risk jurisdictions and industries. Formal contracts with these third parties should require them to behave in an ethical way and comply with all relevant legislation, including ABC legislation.

For the ABC programme to be effective, employees and contracts will need adequate avenues to report misconduct, or whistle-blow.

- They must provide whistle-blowers with facilities to report suspicious or corrupt behaviour confidentially and/or anonymously.
- For multinational companies, the facility must be available to individuals in appropriate languages and time zones.
- Frequent audits, whether internally or externally, on the effectiveness of the reporting mechanisms to ensure that ABC controls have been properly implemented.

To keep the ABC programme relevant and responsive, companies must conduct reviews.

- Mandate frequent risk assessment reviews of the ABC programme and procedures.
- Have independent experts conduct thorough assessments of the ABC programme, with focus on the effectiveness of procedures and whether the corporate culture is compliance focused.
  (a) External review or input can add a degree of impartiality, fresh thinking and peer benchmarking.
  (b) This will require reviewing not just the paper but the practice, through interviews with board members, senior management and employees, as well as data regarding incidents and procurement, etc.

Conclusion

The legal framework in this area has undergone significant development in the past two years, and in light of its international obligations, Australia will no doubt continue to develop and amend this framework in order to comprehensively respond to corruption and bribery issues.

With private entities at the forefront of these changes, those operating either wholly or partly in the jurisdiction will need to stay abreast of the relevant frameworks, reviewing and updating their internal procedures and policies.

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