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Australia: Trends and Developments

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Trends and Developments

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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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AUSTRALIA TRENDS AND DEVELOPMENTS

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We are witnessing the early implementation of the significant reforms recently made in Australia's anti-corruption and integrity landscape, with mixed assessments regarding their effectiveness.

The establishment of the National Anti-Corruption Commission (NACC), the creation of a new corporate offence for failure to prevent foreign bribery, and incremental reforms to whistle-blower protections signal a decisive step toward stronger accountability frameworks at the federal level.

While they represent a significant step forward and bring Australia closer to compliance with its international obligations, questions remain about their practical impact, enforcement consistency, and the adequacy of protections for those who expose wrongdoing.

Australia's International Obligations

Australia's international obligations arise from being party to numerous international anti-corruption conventions, including:

- 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 also has obligations by virtue of its membership in the Financial Action Task Force (FATF), an inter-governmental body that sets and monitors international standards on anti-money laundering, counter-terrorism financing, and countering proliferation financing, thereby facilitating the detection and confiscation of the proceeds of corruption and dismantling the tools that enable it to flourish.

Developments

National Anti-Corruption Commission (NACC)

The NACC has now been operational for over two years. Its establishment represented a significant development in Australia's federal anti-corruption framework, tasked as it is with investigating and reporting upon serious or systemic corrupt conduct within the federal public sector. With its broad remit

and strong coercive powers, its objectives are to increase accountability, transparency and public confidence in government institutions. Despite the high number of referrals to the Commission indicating a high level of public optimism about its mission, its effectiveness and efficiency is the subject of debate. Also subject to discussion is the extent to which the Commission has fulfilled its educative and preventative function, providing guidance to public officials and agencies on how to identify, mitigate and avoid corrupt conduct, with criticism being levelled at the NACC for its perceived lack of visibility and questionable decision-making. One of the most persistent criticisms is that the requirement for public hearings to occur only in exceptional circumstances sets the bar too high. In over two years of operations, the NACC has not held a single substantive public hearing.

The NACC has received thousands of referrals since the commencement of operations, indicating a strong level of optimism amongst the public in the work of the Commission. As of July 2025, the NACC reported it had received more than 5,400 referrals, completed assessments of over 4,500, and commenced more than 55 preliminary investigations and more than 40 full corruption investigations. The Commission's investigations also led to nine convictions, with a further five matters currently before the court.

While the focus of the NACC is the federal public sector, the Commission's work will inevitably impact on the private businesses and individuals that work with the government. The broad definition of a public official under the NACC Act includes the people who work for members and senators of the Australian Parliament, staff members of Commonwealth agencies, departments and companies, and contracted service providers (such as consultants, independent contractors and labour-hire contractors) under Commonwealth contracts administered by Commonwealth agencies. In addition, any person can be investigated for conduct that adversely affects a public official's honest or impartial exercise of their official duties.

While the NACC has strong investigatory powers, including the ability to compel documents, require witness attendance and use covert techniques, critics have questioned whether its operational model,

particularly the restrictions on public hearings, limits its visibility and deterrent effect. Questions regarding the Commission's leadership have also undermined public confidence in the NACC.

The NACC's handling of the Robodebt referral has emerged as its most publicly scrutinised action to date, drawing widespread criticism and testing its credibility in the early stages of operation. The Commission's initial decision not to investigate six individuals referred by the Robodebt Royal Commission was subject to significant public criticism and was reviewed by the NACC Inspector. The Inspector concluded that, by virtue of his declared conflict of interest, the Commissioner should have removed himself from the decision-making process and that the failure to do so amounted to maladministration.

Consequently, the NACC appointed former High Court Justice Geoffrey Nettle KC to conduct an independent review of the matter. In February 2024, he reversed the original decision and determined that the NACC would investigate the referrals. That investigation is now underway, led by Deputy Commissioner Kylie Kilgour, with Mr Nettle KC as Chief Adviser. The Commissioner and other Deputy Commissioners who were involved in the original decision not to investigate the referrals are not participating in the investigation. Whilst the independent scrutiny of the NACC's operation served to rebuild some public trust in the Commission, it continues to face criticism about the perceived slow progress and lack of transparency in relation to this high-profile investigation.

A key challenge for the Commission has been balancing the need for public hearings with fairness to the individuals under investigation. Arguably, the requirement under the NACC Act that hearings are private except where exceptional circumstances justify going public restricts unduly the Commissioner's discretion when deciding to hold public hearings. The absence of any public hearings to date has engendered sustained and significant criticism, undermining public confidence in the NACC.

There are calls for Parliament to review and amend this high threshold to be more in line with state corruption commissions, such as New South Wales' Independent

Commission Against Corruption (ICAC), which routinely uses public hearings and live-streams as part of its model of public exposure and deterrence. ICAC sees public hearings as an important tool in exposing corruption and maintaining public confidence.

Nevertheless, positive developments in the work of the Commission can be seen in the published investigation reports on its website. These include the following.

- Operation Kingscliff – this investigation concerned a Senior Executive Service Officer in the Department of Home Affairs and her role in transferring her sister's fiancé to the Department under Section 26 of the Public Service Act 1999. The Commission found she had engaged in corrupt conduct by abusing her office to provide an improper benefit to her sister and her sister's fiancé and by misusing official information.
- Operation Elektra – this was a joint investigation by the former Australian Commission for Law Enforcement Integrity (ACLEI), the Department of Home Affairs, and the Australian Federal Police into Serco officers who allegedly provided telephone services and official information to detainees in immigration detention centres. On 1 July 2023, ACLEI was subsumed into the NACC. The Commissioner made two findings of corrupt conduct and the matter resulted in two charges and one conviction.
- Operation Wilson – this joint investigation with the Department of Home Affairs, the AFP and Victoria Police examined an Australian Border Force officer's involvement in the importation of illicit tobacco. The matter transitioned to the NACC on 1 July 2023. Under the transitional arrangements, the Commissioner reviewed the evidence and completed the investigation report. The investigation resulted in two charges and a guilty plea.

The work of the Commission will continue to be watched closely by supporters and critics alike, with the Robodebt investigation likely to be a real litmus test for its perceived effectiveness and legitimacy.

Failure to prevent foreign bribery

After six years of trying unsuccessfully, Australia finally introduced its new corporate offence, "failure to pre-

vent foreign bribery” in 2024. As of October 2025, there has been no publicly confirmed enforcement action.

The relevant legislation, the Crimes Legislation Amendment (Combating Foreign Bribery) Act 2023 (Cth), came into effect on 8 September 2024, enshrining the offence in Australian Commonwealth criminal legislation. The offence was introduced, in part, in response to concern from the Organisation for Economic Co-operation and Development Working Group on Bribery regarding Australia’s low level of enforcement given the high-risk regions and sectors in which Australian companies operate. It is hoped that the new legislation will address that deficiency and bring Australia in line with the United Kingdom’s legislation, which has been in place since 2011.

Along with the introduction of the new corporate offence of failure to prevent foreign bribery the Act also expanded the existing foreign bribery offences to capture a greater range of corporate conduct and increased the penalties for corporations found guilty of an offence.

The reach of the legislation is wide. The new offence makes companies liable for failing to prevent foreign bribery by an “associate”, which is broadly defined as including 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 a 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 its [“Guidance on adequate procedures to prevent the commission of](#)

[foreign bribery”](#), which provides companies with guidance on this issue.

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.

Since the legislation came into effect one year ago, there has been no publicly announced enforcement action, and it remains to be seen how this new tool will be utilised. This is perhaps unsurprising given the complexity and logistical challenges posed by these kinds of investigations. Nevertheless, the new offence has compelled an important shift in corporate culture from reactive compliance to proactive prevention.

The extent to which global political developments may also impact upon Australia’s appetite and ability to enforce Australian legislation in foreign jurisdictions is unclear. The US, previously a leader in the area, has radically changed its own position this year. In June 2025, the Department of Justice (DOJ) released guidelines limiting enforcement action under the Foreign Corrupt Practices Act to ensure American companies are not unduly burdened. Instead, the focus is on “conduct that directly undermines US national interests”.

Whistle-blower protections

Whistle-blower protections can be a critical tool in the fight against corruption. However, Australia’s whistle-blower protection regime is currently spread across several pieces of legislation at both the Commonwealth and state levels, with commentators, such as the Australian Law Council, describing it as a “complex web of overlapping and often inconsistent federal and state/territory legislation that has developed disharmoniously”.

This is despite recent reforms to the regime including the Treasury Laws Amendment (Enhancing Whistle-blower Protections) Act 2019 (Cth) and the Public Interest Disclosure Amendment (Review) Act 2023.

The former created a consolidated whistle-blower protection regime within the Corporations Act 2001 (Cth) and a parallel whistle-blower protection regime in the Taxation Administration Act 1953 (Cth). The key provisions include:

- whistle-blowers are not required to identify themselves when making a disclosure;
- persons who make a qualifying disclosure are protected from any civil, criminal, or administrative liability, and no contractual or other remedies may be exercised against the disclosing person based on the disclosure;
- persons who make a qualifying disclosure may seek a court order for reinstatement if they have been dismissed from their employment because they or another person made a protected disclosure; and
- if the disclosure qualifies for protection, the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

The Act also created a civil penalty provision to address the victimisation of whistle-blowers and facilitate the criminal prosecution of victimisers. The Public Interest Disclosure Amendment (Review) Act 2022 provided increased protections for public sector whistle-blowers and witnesses, including by expanding reprisal protections to capture indirect threats.

Nevertheless, many in Australia still say further action is needed, particularly considering high-profile whistle-blower prosecutions that have taken place over the last two years.

- In 2025, Richard Boyle was sentenced to a year-long good behaviour bond for taking and sharing with the media copies of documents and records of conversations from the Australian Taxation Office (ATO), exposing its aggressive and unethical debt collection practices. While some of the

material informed in part a Royal Commission into certain ATO practices, Boyle was ultimately denied immunity from prosecution under the Public Interest Disclosure Act 2013 (Cth).

- In 2024, David McBride, a former military lawyer, was jailed for five-and-a-half years for stealing and sharing classified military material with journalists. The information he shared shed light on allegations of war crimes by Australian soldiers in Afghanistan and resulted in both a defence inquiry and the establishment of a new government body responsible for the investigation into war crimes in Afghanistan.

While in both cases the information leaked led to high-profile enquiries into state misconduct, the individuals who leaked the material were forced to face years of criminal investigations, proceedings and ultimately convictions.

Further reforms to the Australian regime could greatly improve its clarity, increase protection to individuals, and grant greater transparency to Australia's government institutions. Such reforms could include the harmonisation of whistle-blower protection laws between the private and public entities through the establishment of a single act and a whistle-blower protection agency.

Recently, a Whistleblower Protection Authority Bill 2025 was introduced by an Independent Senator, which sought to establish a new statutory authority, advisory council, and whistleblower protection commissioner. The bill was unsuccessful, with the government advising that the more appropriate path would be to continue with stage two reforms being considered. While reform is still on cards, whether or not this piecemeal approach will be effective in addressing the evident issues within the current regime is an open question.

Recent cases

Despite the continuing concerns regarding the effectiveness of Australia's tools for addressing corruption, recent prosecutions demonstrate that Australia remains committed to investigating and prosecuting corruption and bribery. The cases from 2024–2025 highlight the multi-agency approach to addressing

corruption across the public sector, including law enforcement, border security and taxation.

Prosecution of Australian Federal Police (AFP) officer – Operation Mint

This case concerns an AFP officer charged with corruption, theft and money laundering offences allegedly committed between January and April 2019. The investigation began as a joint operation by the former Australian Commission for Law Enforcement Integrity (ACLEI), the AFP, Victoria Police, and the Australian Transaction Reports and Analysis Centre (AUSTRAC). The NACC took responsibility for the investigation on 1 July 2023.

The officer is alleged to have stolen 47 bitcoins, valued at over AUD100,000 at the time. The individual was suspended without pay. Following a contested committal hearing in February 2024, the accused was committed to stand trial in the Melbourne County Court on charges under Section 142.2 (1) and Section 400.4 (1) of the Criminal Code (Cth) and Section 74 of the Crimes Act 1958 (Vic). In August 2024, the individual was charged on indictment with offences under Section 142.2 (1) of the Criminal Code (Cth) and Section 74 of the Crimes Act 1958 (Vic). The case is ongoing.

Prosecution of Australian Border Force (ABF) officer – Operation Wilson

This joint investigation with the Department of Home Affairs, the AFP and Victoria Police examined an ABF officer's involvement in the importation of illicit tobacco. The matter transitioned to the NACC on 1 July 2023. The investigation was publicly reported on 12 February 2025, leading to two charges being laid against the officer, who then pleaded guilty.

Prosecution of Australian Taxation Office (ATO) officer – Operation Barker

This investigation related to the payment of a bribe to a former ATO official in exchange for potentially reducing various personal and business tax debts by millions of dollars and for disclosing restricted information to two different individuals on over 1,000 occasions. In March 2024, the former ATO official was convicted and sentenced to five years of imprisonment. An appeal against the sentence by the former ATO official was dismissed by the NSW Court of Criminal Appeal on 24 September 2025.

Notwithstanding the ongoing concerns about the NACC, these cases demonstrate its capacity to coordinate multi-agency investigations, pursue high-profile cases and secure accountability. They send a strong deterrent message: misconduct by public officials carries serious consequences.

Conclusion

While Australia has laid the groundwork for a robust anti-corruption framework, its success will depend on sustained political will, institutional transparency, a focus on protecting rather than punishing those who speak out, and a commitment by both the corporate and public sectors to proactive prevention rather than reactive compliance.

Building on the early implementation efforts and recognising the challenges arising, the coming years will be critical in determining whether these reforms deliver lasting integrity or remain aspirational.

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