

**DENTONS**

# **Corrupt practices legislation**

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# Corrupt practices legislation

It is an offence under the Australian Criminal Code Act to bribe or give a 'corrupting benefit' to a Commonwealth public official. The Act also prohibits Australian citizens, residents and corporations anywhere in the world from bribing a public official in a foreign country.

Australia's anti-bribery laws operate in a similar manner to the United States Foreign Corrupt Practices Act of 1977 and the United Kingdom Anti-Bribery Law 2010.

The foreign bribery law gives effect to Australia's obligations under the United Nations Convention Against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

## 1. Penalties

Corporations found guilty of bribing either a Commonwealth or foreign public official are liable to substantial pecuniary penalties. If the value of the benefits directly or indirectly obtained from the bribery can be determined, a company may be subject to a maximum penalty of the greater of A\$22.2 million or three times the value of that benefit.

If a court cannot ascertain the value of the benefits obtained, the applicable penalty is 10% of the annual turnover of the corporation during the previous 12 months.

Individual penalties also exist to a maximum of 10 years imprisonment and/or a fine of A\$2.2 million.

Companies may also be at risk of prosecution for money laundering offences under the Criminal Code Act, where foreign bribery involves the commission of money laundering offences.

## 2. Compliance

Corporations should take care to implement anti-corruption compliance programs, particularly as they may be liable for the actions of their employees and agents under Australian law.

An effective program would typically include formal company policies and guidelines, education programs to build awareness at all levels of the organisation and monitoring and enforcement processes.

Corporations should also ensure that any facilitation payments made are only for non-discretionary actions by an official, and are accurately documented in the corporation's records as facilitation payments.

## 3. Modern Slavery practices

In Australia, activities relating to "modern slavery" are governed by both commonwealth and state based legislation. The *Modern Slavery Act 2018* (Cth) (**Commonwealth Act**) was brought into force on 1 January 2019.

The Commonwealth Act defines modern slavery as including eight types of serious exploitation of people: trafficking in persons; slavery; servitude; forced marriage; forced labour; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour.

The Commonwealth Act sets out Australia's national Modern Slavery Reporting Requirements which create reporting obligations for entities that have:

- consolidated revenue of at least A\$100 million for the relevant reporting period (a financial year); and which
- are Australian entities; or
- undertake business in Australia in that financial year.



## 4. What are the modern slavery reporting requirements in Australia?

The Commonwealth Act requires reporting entities to submit annual modern slavery statements describing the risks of modern slavery in the operations and supply chains of the reporting entity and any entities owned or controlled by those entities. The statements must also include information about actions taken to address those risks.

In making a modern slavery statement there are seven mandatory criteria which must be addressed which are as follows:

- Identify the reporting entity
- Describe the reporting entity's structure, operations and supply chains
- Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls
- Describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes
- Describe how the reporting entity assesses the effectiveness of these actions
- Describe the process of consultation with any entities the reporting entity owns or controls (a joint statement must also describe consultation with the entity giving the statement)
- Provide any other relevant information

## 5. Implications for directors arising from modern slavery legislation

Under the Commonwealth Act, the only express obligation on directors is that modern slavery statements must be approved by the Board and signed by a director. This means that directors and officers must understand modern slavery and the risks within the business, and the obligations under the Act, in order to avoid any allegation of breach of their statutory and common law duties as a director (for example, for making a misleading statement).

Whilst there are presently no penalties for non-compliance with the Commonwealth Act, the key driver for compliant disclosure is the public nature of the disclosure and potential reputational impacts. The Minister has the power to 'name and shame' a non-compliant reporting entity through the online register or by other means.

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