



Australian Government
Australian Trade Commission

Anti-Bribery & Corruption (ABC)

A guide for Australians doing business offshore

Who should use this guide?

This guide is designed to provide practical guidance to Australians doing business offshore to help build a culture of compliance within their organisation to manage the risks of bribery and corruption.

Why is it important for your business to have an effective ABC compliance program?

The Australian Government expects Australian companies to conduct business ethically and with integrity both in Australia and overseas. Whether working with the Government or in a private capacity, business must ensure it complies with the law; Australian law, the laws of the country in which they are trading and other foreign jurisdictions. The Australian Government will not work with (or may suspend the services to) companies that do not share its ethical standards.

Bribery and corruption are **serious risks** for Australians doing business offshore. Bribery of a foreign official is a **serious crime** under Australian law, punishable by fines and imprisonment. In addition, most, if not all, countries have laws that prohibit offering or giving a benefit to government officials to improperly influence their actions. Australians and Australian companies may be subject to prosecution under multiple foreign and domestic laws in multiple jurisdictions.

Bribery, like all forms of corruption, is highly corrosive. It has significant detrimental effects on international trade, damages investor confidence and unnecessarily adds to the cost of goods and services to the consumer. When this involves a foreign official, who carries responsibility on behalf of many, the detrimental effect is compounded. It should **not** be treated as a normal or inevitable part of doing local business in any country.

Did you know ...

According to the World Economic Forum, corruption is still among the most problematic factors for doing business (*Global Competitiveness Report 2016-2017*). The international Financial Action Task Force has also found that corruption 'has the potential to bring catastrophic harm to economic development, the fight against organised crime and the respect for the law and effective governance' (*FATF Corruption Publications*).

To enable your organisation to take advantages of the opportunities and safely navigate the risks of offshore trade, it is essential that your business has a proactive, comprehensive, robust and dynamic Anti-Bribery and corruption (**ABC**) compliance program.

This guide outlines a 12 step ABC compliance program for Australian businesses operating offshore.

This broadly follows the 12 elements in the Anti-Corruption Ethics and Compliance Handbook for Business published by the Organisation for Economic Development (**OECD**) in 2013, a copy of which can be found [here](#).

The 12 steps to an effective ABC compliance program

- 1 • Commitment from the top
- 2 • Design a program
- 3 • Oversee the program
- 4 • Draft your ABC policy
- 5 • Develop detailed policies and processes
- 6 • Apply your program to business partners
- 7 • Have internal controls and keep records
- 8 • Communication and training
- 9 • Incentivise ethical behaviour
- 10 • Seek guidance, detect and report
- 11 • Address violations
- 12 • Review

Disclaimer

This guide and the information in it (or referred to in it) is for information and general guidance only. As the laws vary in each country, you should make your own enquiries and seek independent legal advice, to ensure your business complies with all applicable laws.

This guide does not constitute rules or regulations. It does not create any rights, substantive or procedural, that may be relied upon in any criminal, civil or administrative matter. It does not replace independent legal advice. Austrade will not be liable for any loss associated with use of or reliance on this guide and the information in (or referred to in it).

1. Commitment from the top

A successful ABC program requires **strong, explicit, visible** and **active support** and **commitment** from senior management in your organisation. Compliance begins with senior management setting the proper tone for the rest of your organisation, as your employees take their cues from the organisation's corporate leaders.

Senior management should play a role in launching your organisation's ABC program, and demonstrate visible and active ownership of and commitment to the implementation of your organisation's ABC program.

Below are Austrade's suggestions for ensuring commitment to an ABC program at senior management level.

Senior management to issue a short, authentic **statement of intention**

- The Board and Chariman or CEO and Senior Management must be responsible for the approval and adoption of the *statement of intention or position statement on corruption*
- Use the Austrade example below as a starting point
- Refer to your organisation's ethical values
- Use clear and strong language (e.g. '*Our fundamental values include ... 'We are strongly committed to the highest standards of ethical business practice' 'We do not tolerate bribery in any form'*)
- Use short sentences, simple and concise words, and the active voice.
- Use a style and brand, in-keeping with your other top-level strategic communications
- State what you do and what you do not do, so employees are in no doubt of their obligations

Be open and transparent about your statement of intention

Publish it internally - Consider publishing your statement in staff manuals, on the intranet, and/or on posters in all premises or locations.

Publish it to external stakeholders - Consider publishing your statement on your website, on stationary footers, in email signatures, in business development materials and/or on posters in all premises or locations.

A template statement of intention is provided below. An example can also be found in the BHP Billiton '*Integrity Resilience Growth Sustainability Report 2016*' (pp. 26-27) available [here](#).

Demonstrate that you take ABC seriously

- Allocate a Senior Manager to be responsible for Anti-Bribery management

- Have Senior Management launch your ABC statement internally, externally and, if applicable, in any offshore offices or agencies
- Have Senior Management make regular public statements about ABC. There must be a demonstrated commitment to those values.

Example – Austrade’s template statement

[Company/Organisation] says ‘no’ to all forms of bribery/does not condone/ bribery in any form/ does not tolerate bribery or corruption/’s position on bribery is ‘zero tolerance’/obeys the law/ does not condone bribery or corruption in any form.

At [Company/Organisation] we:

- conduct all business in an honest and ethical manner;
- are committed to acting professionally, fairly and with integrity in all business dealings and relationships;
- do not permit the making of any inappropriate promises, gifts or excessive hospitality to Foreign Public Officials in order to achieve unfair advantage or benefit; and
- resist any efforts made by others (including suppliers, customers or clients) to unfairly affect any official decision making process in order to achieve unfair advantage or benefit.

[Company/Organisation]’s employees and Agents must :

- conduct all business in an honest and ethical manner.
- be committed to acting professionally, fairly and with integrity in all business dealings and relationships;
- not permit the making of any inappropriate promises, gifts or excessive hospitality to Foreign Public Officials in order to achieve unfair advantage or benefit; and
- resist any efforts made by others (including existing or potential suppliers, customers or clients) to unfairly affect any official decision making process in order to achieve unfair advantage or benefit.

We encourage [charitable donations/sponsorships] only when they are ethical and legal under local laws and practices. We do not encourage contributions to political parties.

We encourage [charitable donations/sponsorships] only when they are ethical and legal under local laws and practices. We do not encourage contributions to political parties.

We [discourage/avoid/do not condone/do everything to resist] facilitation payments as a means of doing business. We expect our business partners and Agents to implement and enforce effective systems to counter bribery.

We will always report and document any breach of the law that is brought to our attention through the reporting mechanism provided by Australian authorities.

2. Design your ABC program

What should your ABC program include?

Your organisation should develop and implement a program suited to your particular business, its culture and the way it does business internationally; and that is designed to reduce the risk of staff within your organisation intentionally or inadvertently being confronted by bribery and corruption.

Your ABC program should:

- reflect your organisation's size, business sector, potential risks and locations of operation;
- clearly and in reasonable detail, articulate your organisation's values and ethics, policies and procedures, training, guidance and the oversight that is in place to prevent Bribery from occurring in all activities under your organisation's effective control;
- be consistent with all laws relevant to countering Bribery in all jurisdictions in which your organisation operates;
- apply to all of your organisation's controlled subsidiaries, both foreign and domestic;
- apply to all of your organisation's supply chains, especially agents; and
- make it clear that compliance with your organisation's ABC program and its associated policies and procedures is the responsibility of all individuals at all levels within your organisation.

Undertake a corruption risk assessment

Did you know ...

Of organisations with offshore operations, 23% are not concerned with risks arising from non-compliance with applicable legislation, yet 77% have never conducted a Bribery and corruption risk assessment ... An honest, detailed and regular assessment of the risks inherent in a business is critical to an organisation's ability to develop a program that is fit for purpose.

- *Deloitte, Bribery and Corruption Survey 2015 Australia & New Zealand*

In order for your organisation to develop a successful ABC program, your company must understand its corruption risk exposure so that it can make informed risk management decisions. To better understand your business risks, your company should conduct a corruption risk assessment.

This risk assessment should form the basis of your organisation's ABC program.

As a first step in your risk assessment, identify your organisation's exposure to ABC risks by asking questions such as:

- what level of corruption is perceived to exist in the countries we do business – this might differ for different countries and may also differ from personal assessments of corruption when conducting business in-country;
- what level of corruption is perceived to exist in the sectors we do business – this might differ for different sectors;

- do our transactions involve dealings with Foreign Public Officials as part of tenders or in seeking necessary approvals or state government contracts;
- is our business dealing with foreign governments through local agents or suppliers;
- do we know how well we account for **all payments** made in relation to **all aspects** of our transactions;
- how are face to face meetings conducted, are we requested to or expected to meet with Foreign Public Officials or their agents in expensive hotels, restaurants and the like;
- if facilitation payments are made (which is discouraged by Austrade), what are the circumstances and do we know what the laws in Australia and in that country allow about facilitation payments; and/or
- what corporate social responsibility programs do we have in place in foreign countries and how do we ensure these are not used as vehicles for bribery via a third party (person or project).

To further help you identify any corruption risks:

Consider your business - Consider your business location/s, business sector, business size, your key and common transactions/arrangements, the location of offshore operations and their rating for Bribery perception and any potential links to offshore Agents, particularly if they could be a foreign public official or seek to unfairly influence foreign public officials as decision makers

Involve key stakeholders in the risk assessment - Involve management and staff, suppliers and customers.

Collect information on your business' risks by various means - Various means includes confidential staff surveys, desktop research, workshops, interviews with suppliers and customers, and 'SWOT' analysis (an analysis of your organisation's strengths, weaknesses, external opportunities and threats).

Be aware of common red flags for Bribery - Common red flags for Bribery for small to medium businesses include:

- you operate in locations perceived to have high levels of local corruption;
- you operate in a sector with a high risk of corruption, for example mining, defence, currency, security or aerospace;
- your business requires you to deal with Foreign Public Officials (including close relations or associates);
- you have or seek to win large contracts in state-run economies;
- sectors where tenders are won unexpectedly by little-known suppliers;
- documentation of payments made is often incomplete or inaccurate;
- meetings with Foreign Public Officials or their agents are held in luxury restaurants or holiday locations;
- extravagant travel, entertainment and incidental benefits appear to be an incentive to a decision maker;
- you make or are requested to make political donations or donations to particular charities or social programs; and/or

- you are told to keep your dealings secret and out of the media or not recorded as official.

Consider the risks arising from use of third parties - Third parties, including Agents and business partners, can be used to conceal the payment of bribes to Foreign Officials in international business transactions. Common red flags when using Agents or business partners include:

- vaguely described services and deliverables;
- lack of experience in your sector, or you are in a different line of business;
- transacting with or through a shell company;
- part of the transaction is at the request of the Foreign Public Official;
- large commissions (that may be used as 'slush funds' to bribe officials);
- high expenses;
- upfront fees;
- urgent payments;
- cash payments;
- payments in multiple smaller amounts;
- payments to personal accounts;
- payments to offshore accounts; and/or
- payments to trusts.

More red flags may mean your business is exposed to a greater risk of Bribery and corruption. The greater the risk, the more you need rigorous internal controls.

Rate your risks

In order to allocate your organisation's resources efficiently and effectively to your identified corruption risks, it is good practice to rate both the likelihood that each corruption risk might occur and the corresponding potential impact of that occurrence. You should undertake this task for different countries or regions and for different sectors that your business operates in as the inherent corruption risks will differ across countries and sectors.

This will assist your organisation to prioritise its response to corruption risks across the regions and sectors your business operates in so that your resources and responses are targeted to the risks that are most likely to occur and/or that will have the greatest impact on your business.

Likelihood or frequency of the risk occurring - Consider how likely it is that the corruption risk you have identified will occur in your business transactions. Is it rare, possible, probable or certain?

Impact of the risk on your business - Consider what the impact would be if the corruption risk did occur. Would it have a minor, moderate, significant or major impact on your business?

Inherent corruption risk - Combining the likelihood and potential impact assessments for each corruption risk produces an assessment of the level of inherent corruption risk. The inherent risk

represents the overall risk level without consideration of existing controls. It is these areas that your business should prioritise when putting in place mitigating controls.

Document your risk assessment

Create a risk register - Anti-corruption risk assessments are often documented using detailed spread sheets or database templates such as a risk register. This register can be used to document the ratings for each risk as well as for the programs and controls that your business has or will put in place to mitigate each risk.

Create a risk matrix or 'heat map' of likelihood and frequency - A corruption heat map shows risks identified by your business, placed according to their likelihood and potential impact, on a background of multiple colours with each colour representing a different overall level of risk. An example of a heat map is the Transparency International Corruption Perception Index (see below). An example risk matrix is also provided below.

Transparency International Corruption Perception Index

CORRUPTION PERCEPTIONS INDEX 2016



Visit www.transparency.org/cpi2016 for more information

Source: Transparency International 'Corruption Perception Index 2016'

Example of a risk matrix

		LIKELIHOOD			
		RARE	POSSIBLE	PROBABLE	CERTAIN
CONSEQUENCES	MAJOR	Medium risk	High risk	High risk	High risk
	SIGNIFICANT	Medium risk	Medium risk	High risk	High risk
	MODERATE	Low risk	Medium risk	Medium risk	High risk
	MINOR	Low risk	Low risk	Low risk	Medium to high risk

Designing your ABC program

There is no one size fits all ABC program. Your program will depend on your business risk and the variables of type of business, location, personnel and how you go about winning business. The systems that you put in place will depend on the outcome of your risk assessment. Following an assessment of your risks and the controls in place, action where the **risk is high**:

- avoid doing business in the relevant location/area; and/or
- put in place effective internal controls that are **proportionate** to the risk.

Mitigation strategies that may be relevant to your business risk are identified throughout **Steps 3 to 12**.

Your ABC program should include an ABC policy that can be issued to internal and external stakeholders. This is discussed in more detail in **Step 4**.

Be aware of Australian and offshore law

Your organisation's ABC program should be consistent with all laws relevant to countering corruption and Bribery in all the jurisdictions in which you operate.

This means that you need to take steps to identify the Australian and foreign laws that apply to your business. You should be aware that Australian Anti-Bribery laws apply to Australian citizens, residents and corporations, even when they are offshore. Information about these laws is provided below.

Did you know ...

34% of corporations with offshore operations have limited or no working knowledge of applicable domestic and/or foreign bribery laws.

- [Deloitte Bribery and Corruption Survey 2015](#).

Foreign Bribery offence under the Australian Criminal Code

Bribery of a foreign official is illegal under Australian law. The offence is set out in section 70.2(1) of the *Criminal Code Act 1995* (Commonwealth). A person is guilty of this offence if:

- the person provides a benefit to another person; and
- the benefit is not legitimately due to the other person; and
- the first person does so with the intention of influencing a Foreign Public Official (who may be the other person) in the exercise of the official's duties as a Foreign Public Official in order to:
 - obtain or retain business; or
 - obtain or retain a business advantage.

The maximum penalties are:

- for an individual, 10 years imprisonment and/or a fine of 10,000 penalty units (currently \$1.8 million); and
- for a company, the greater amount of 100,000 penalty units or a proportional penalty, which is calculated with regard to the value of benefits obtained from Bribery or with regard to the annual turnover of the company.

There are two defences under sections 70.3 and 70.4 of the *Criminal Code Act 1995* (Commonwealth):

- the advantage was permitted or required by the written laws that govern the Foreign Public Official (this is rare); or
- the Benefit provided constituted a 'Facilitation Payment', being the payment of a Benefit of a minor value for the sole or dominant purpose of expediting or securing the performance of a Routine Government Action of a minor nature.

You should note that Facilitation Payments are **illegal** in all but 4 countries – Australia, South Korea, New Zealand and the United States – meaning such payments are *illegal* in all other jurisdictions. Accordingly, notwithstanding the defence under Australian law, **Austrade strongly discourages the use of Facilitation Payments.**

Potential changes to anti-foreign bribery laws in Australia

Australian companies operating offshore should be aware that the Australian Government is currently considering strengthening its anti-foreign bribery laws.

In April 2017 the Attorney-General's Department published a Public Consultation Paper on proposed amendments to the foreign Bribery offence under the *Criminal Code Act 1995* (Commonwealth). Significantly, the Public Consultation Paper proposes to introduce a new corporate offence of **failing to prevent** foreign Bribery.

Under this proposed law, a company would be automatically liable for Bribery by its employees, contractors and Agents (including those operating overseas), except where the company can show it had a proper system of internal controls and compliance in place to prevent Bribery from occurring. While this offence is not yet part of the law, its proposed introduction provides an even greater incentive for Australian companies to get on the 'front foot' in relation to ABC compliance and have an effective system integrated into the business.

Australian Anti-Money Laundering Law

Money laundering is illegal under Australian law. Australian's anti-money laundering regime is in the following legislation:

- *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Commonwealth);
- *Anti-Money Laundering and Counter Terrorism Financing Rules 2007* (Commonwealth);
- *Financial Transaction Reports Act 1988* (Commonwealth); and
- *Financial Transaction Reports Regulations 1990* (Commonwealth).

Did you know ...

Corruption and money laundering are closely linked. Illicit gains from Bribery are useless unless they are placed, layered and integrated into the global financial network in a manner that does not raise suspicion of the authorities. Offenders use the same methodologies in foreign Bribery as they do when laundering. Often funds are transferred through shell companies in tax havens purportedly for goods and services, which are never delivered.

- Australian Federal Policy Factsheet

Offshore laws

Bribery is not lawful in any country. Payment of a bribe by a person within your organisation may result in that person and/or your organisation being liable to prosecution under a foreign law.

In designing your ABC program, you should consider whether any part of your organisation's operations may attract offshore laws, including those in the UK and USA. For example, your business may be subject to offshore laws where your business uses an Agent located in another country, holds an offshore bank account, or your emails are routed through servers based in another country.

Did you know ...

The United States has legislation called the *Foreign Corrupt Practices Act* of 1977. The anti-Bribery provisions of this Act apply to foreign firms and persons who cause, directly or through Agents, an act in furtherance of a corrupt payment to take place within the territory of the US. In the past, US prosecutors have pursued cases under this Act even when there is not a strong link to the US.

Austrade cannot provide you with legal advice regarding how the applicable offshore laws may apply to your business. Austrade encourages all organisations to seek independent legal advice on all applicable offshore laws that may affect them.

3. Oversee your ABC program

Did you know ...

In the United States, authorities employ 'a common-sense and pragmatic approach to evaluating compliance programs, making inquiries related to three basic questions: Is the company's compliance program well designed? Is it being applied in good faith? Does it work?'

- US Department of Justice and US Securities and Exchange Commission, *FCPA: A Resource Guide to the US Foreign Corrupt Practices Act* (14 November 2012), p. 56, available [here](#).

Your organisation's senior management should be satisfied that an effective ABC program has been developed and implemented, is regularly reviewed for effectiveness and that appropriate corrective action is taken when shortcomings are identified. Senior management need to state a clear commitment to integrity in everything that your organisation does.

Allocate staff to implement and oversee your ABC program

Senior management should be responsible for seeing that the program is implemented effectively, with clear lines of authority. Your organisation should allocate a senior staff member to the role of managing the day to day operation of the ABC program and managing breaches of ABC values and ethics.

Accounts staff - Accounts staff should be responsible for implementing financial controls and record keeping.

Human Resources staff - Embed your statement of intention into human resources (HR) policies.

Senior Management - Regularly review reports from Accounts and HR to check for anomalies.

Whistle-blowing - Have at least two channels for internal reporting/receiving information from whistle-blowers.

Regularly report to the Board or equivalent

Expenditures: Accounts staff - Have Accounts staff prepare regular reports to record the amounts paid, the frequency of payments, the timing of payment relative to opportunities/proposals/tenders, the staff involved in requests for and approval of payments and any anomalies.

Training: HR staff - Have HR staff prepare regular reports to record the depth of training delivered, the frequency of training offered, the seniority of staff who participate in training, the level of engagement at training sessions and any anomalies.

Compliance: Management staff - Have Management staff prepare regular reports to record your ABC program's design, launch and rollout.

Regularly review your ABC program

Risk assessment is an ongoing dynamic process. Your ABC program should ensure that your organisation's corruption risk assessment is reviewed:

- periodically, for example on an annual basis; and

- in light of triggering events – for example, entry into new markets, significant reorganisations, mergers and acquisitions.

Example – Oversight

In 2008 the NSW Independent Commission Against Corruption investigated allegations of fraud, Bribery, improper allocation of contracts, unauthorised secondary employment, failures to declare conflicts of interest, falsification of time sheets and the cover-up of a safety breach in the state's rail infrastructure corporation.

When asked about the features of the organisation's culture that enabled employees to engage in corruption, the CEO gave evidence that a key defect was an "inability and unwillingness of supervisory management to exercise what I would regard as normal management controls".

Examples were managers not adequately monitoring their staff, overlooking poor record-keeping, and ignoring a culture of not "dobbing". Non-reporting of misconduct was well-known to management and was a behavioural norm.

The ICAC's recommendations to address the situation included enhancing the knowledge and skills of managers as well as their corruption risk management capabilities.

- Independent Commission Against Corruption NSW, *Foundations for corruption prevention: Organisational culture*, **Case Study 2**.

4. Draft your ABC Policy

Your organisation should have a **clear, visible** and **accessible ABC policy** that prohibits corruption and Bribery in any form. This policy should provide your executives and staff with a clear understanding of the Bribery and corruption risks that your organisation faces, as well as the systems, procedures and controls your business has put in place to minimise or mitigate those risks.

What should your ABC Policy say?

At a minimum, Austrade recommends that you:

- Express that compliance with Australian and offshore laws is **compulsory**, and that compliance is an internal (not only external) requirement;
- Use the language set out in the Glossary at the end of this document (see 'ABC Resources');
- Provide clear guidance for conducting due diligence on Agents;
- Provide clear guidance on conducting due diligence on your organisation's corporate social responsibility (**CSR**) programs;
- Outline the processes that your business has in place to encourage and protect whistle-blowers; and
- Have clear policies on hospitality, gift giving, sponsored travel and entertainment.

Further suggestions about the type of information you may want to include about Agents, corporate social responsibility programs and whistle-blowers is provided below.

Make your ABC policy accessible and visible

You should distribute your policy widely – consider distributing it on the intranet, in a staff manual, on handouts at training sessions and/or on posters in all premises or locations. You should also have your policy translated into relevant languages for your organisation and offer staff regular refresher training.

Relationships with Agents

Your policy should provide for your organisation to undertake properly documented, reasonable and proportionate ABC due diligence prior to entering into a relationship with an Agent.

Due diligence is a comprehensive appraisal of an Agent and involves a process of research of independent and publicly available sources of information followed by meetings and interviews. Your policy could include the following questions to guide staff when undertaking this assessment:

- **How you know the Agent** – who referred or introduced them? When, where and why did this occur?
- **What is the Agent's skill set?**
- **Who are the Agent's Beneficial Owner/s?**
- **Is the Agent a Foreign Public Official (i.e. are they part of the security arrangements in-country)?**

Austrade referral policy requires that it refer a company to at least three Agents without issues regarding their integrity so that the company can select, train and integrate the Agent into the company's culture of compliance.

Your ABC policy should state that it is not sufficient to merely conduct a background check or to rely on the due diligence undertaken by anyone else (including Austrade).

Did you know...

Austrade's role is to provide practical guidance on how to conduct business and facilitate trade in a country. That can include recommending a range of local Agents. However, you are responsible to conduct due diligence and monitor their actions.

Include a process to procure Agents carefully - Your ABC policy should provide guidance on the process of procuring Agents and should recommend that your organisation procures its Agents carefully. This could be achieved by, for example, meeting the Agent in person and interviewing them, having a committee interview the Agent, or conducting a tender process to procure an Agent.

Your ABC policy should express that an Agent with known legal, payment or performance issues should **not** be used. Whilst it is hard to be certain of an Agent's background, reasonable steps should be taken to ascertain relevant information.

Require clear arrangements with Agents – Your ABC policy should require staff to develop clear, written arrangements with Agents. Issues to be addressed in all agreements include:

- having them acknowledge your ABC statement of intent and policies and agree to operate consistently with them;
- how they can and will assist in your due diligence;
- work scope;
- accounting;
- payment and expenses;
- training;
- record keeping;
- your right to termination;
- your indemnity; and
- your right to randomly audit.

Staff should be advised to seek independent legal advice where necessary and to fully document these arrangements.

Require staff to carefully consider all payments to Agents – Before making a payment to an Agent, staff should take steps to:

- understand the link between commissions and the business transaction/venture;
- document the calculation or basis of all proposed commissions to ensure they are reasonable and in-keeping with local practice;

- ensure that all expenses are explainable and relate legitimately to the services provided;
- ensure that all expenses are properly claimed, recorded and paid (refer to **Step 5**); and
- be aware of changes to the payee/recipient.

Require ongoing monitoring of the Agent's behaviour – Your ABC policy should emphasise that due diligence requires them to continue monitoring the agent's actions and behaviour and to be alert for red flags, throughout the life of the agency arrangement.

Common red flags for Bribery, including those regarding the use of Agents, are described in **Step 2**.

Corporate social responsibility programs

Your ABC policy should refer to any controls you have put in place to ensure that corporate social responsibility (**CSR**) programs are not used for corrupt purposes. Your organisation should be aware that social or charitable works done to build goodwill with a government or community may also be perceived as an attempt to enhance the personal interests of a Foreign Public Official and may be considered a form of Bribery.

Your ABC policy should also provide clear guidance on conducting due diligence on your organisation's CSR programs.

Consider the circumstances in which your business will have CSR programs

- Consider what types of CSR programs are allowed, and whether any types are not allowed, for example, sponsorships, charitable donations and political donations;
- consider whether there is a limit on their value;
- take into account local gift-giving practices; and
- consider who will make decisions to approve CSR programs and whether your organisation should require dual approval.

Include a process to conduct due diligence to know the beneficiaries - Your policy should express that your organisation will undertake properly documented, reasonable and proportionate Anti-Bribery due diligence prior to entering into a relationship with a beneficiary of a CSR program.

Due diligence is a comprehensive appraisal of a beneficiary and involves a process of research of independent and publicly available sources of information, meetings and interviews. Your policy could include the following questions to guide staff when undertaking this assessment:

- how was the program/sponsorship/donation solicited or offered?
- is the beneficiary approved as a charity under its local laws?
- what is the beneficiary's history?
- who are the beneficiary's board members? and
- is the beneficiary transparent about the use of its budget?

Your policy should express that the beneficiary, its relatives and associates must not be Foreign Public Officials.

Your policy should also express that it is not sufficient to merely conduct a background check or to rely on the due diligence undertaken by anyone else (including Austrade).

Ensure that CSR programs are not used as a subterfuge for Bribery - Your ABC policy should outline a process for ensuring that CSR programs are not used as a subterfuge for Bribery. Your policy could include the following processes:

- consideration of who, and how many people, the program benefits;
- clarification of how the money will be used;
- reviewing the amount and timing of any political donations; and
- ensuring that any political donations comply with local laws on public disclosure.

Your ABC policy may also include processes that require staff to:

- request the recipient to sign documentation confirming that it is not violating anti-corruption laws and will only use the money for the specified purpose;
- monitor the beneficiaries' behaviour during the life of the CSR program; and
- ensure that all payments are transparent.

Your policy could include the following processes to ensure that all payments are transparent:

- require two management signatures on claims and payments;
- set a cash limit and do not pay cash over that limit;
- pay all expenses directly to providers or reimburse them after verifiable invoices and other documentation; and
- request the recipient to keep records and provide periodic written reports on the use of the proceeds.

Whistle-blower protections and processes

Did you know...

One of the best sources of Bribery detection is individuals who are prepared to 'blow the whistle'.

Your ABC policy should outline the processes and protections that your business has in place for staff to identify and report corrupt practices.

Promote positive conversations about ethics and whistle-blowing within your organisation – Your ABC policy should make it clear to staff that it is safe to talk about ethics, how things are done, and what can be improved. Communicate to all staff that whistleblowing is not 'dobbing in a mate' but 'doing the right thing' and will be supported by senior management.

Facilitate easy whistle-blowing practices through multiple reporting channels – Your ABC policy should contain contact details for staff wishing to raise an issue internally. Contact detail could include:

- A 24/7 toll-free (International and local) telephone hotline;
- Email address e.g. anti-bribery@[company].com.au;
- Contact details for direct access to a member of the Board (or equivalent).

Your ABC policy should also contain contact details for staff wishing to raise an issue externally. This could include contact details for local police or the Australian Federal Police.

Protect whistle-blowers with anonymity and confidentiality, as far as possible – Your ABC policy should tell staff:

- they can make reports anonymously;
- not to conduct their own investigations nor contact the target of the complaint
- there will be no reprisal for reporting wrongdoing; and
- their identity and contact details will not be made available to any accused.

Be aware of local data, privacy and employment laws. Austrade recommends that you have external, independent and trained consultants to receive the calls/emails and report them to your Board (or equivalent).

There are multiple measures organisations can take to encourage the detection and disclosure of wrongdoing... Providing explicit protection through the clear delineation of protection coverage enables those working for an organisation, irrespective of their role, to recognise their positioning concerning whistle-blower protection...

... The overarching mechanism that is in place by most whistle-blower protections systems is confidentiality... Maintaining confidentiality is the first element of a whistle-blower protection system, when this fails, reprisals may ensue.

- *Committing to Effective Whistle-blower Protection: Highlights* (2016), © OECD, available [here](#).

5. Develop detailed policies and processes

In addition to the ABC policy, your business should develop detailed policies for particular risk areas including:

- Facilitation Payments;
- special types of expenditures, including for example gifts, hospitality, travel and entertainment, political contributions and charitable contributions and sponsorships;
- conflicts of interest; and
- solicitation and extortion.

Develop a policy and process on Facilitation Payments

Review your business to identify any Facilitation Payments - These are customary, unofficial minor payments to secure or speed a Routine Government Action. They are known colloquially as 'speed money', 'grease payments' or 'oiling the wheels'.

Examples of Facilitation Payments are included in the Glossary of the [ABC Resources](#) page at the end of this document.

Facilitation Payments are difficult to distinguish from bribes - Even if a Benefit constitutes a legitimate Facilitation Payment defence under Australian law:

- people making such payments may be liable for Bribery under the local laws that govern the Foreign Public Official; and
- such payments are questionable from the point of view of business ethics, and are banned in most other OECD countries.

Avoid Facilitation Payments - Austrade's policy position is that Facilitation Payments represent a significant risk at a number of levels, and it is best to avoid them.

Keep contemporary documentary proof - As with all project costs, keep records (refer to [Step 4](#)).

Develop a process for recording and monitoring travel, gifts and hospitality

Did you know ...

In countries where personal relationships are highly valued, it can be difficult to know where relationship building ends and Bribery begins. Many legitimate categories of expense are used to hide Bribery payments. What appear to be expenses can actually be Benefits under the Bribery legislation, especially if they are lavish and disproportionate to any return expected from the payee.

Your organisation should develop a policy and procedures to ensure that all gifts, hospitality and expenses are bona fide. Your policy should prohibit the offer, giving or receipt of gifts, hospitality or expenses whenever they could influence, or reasonably be perceived to influence, the outcome of business transactions involving public officials. Your policy should, at a minimum, do the following:

Detail the expenditure categories in your business

- Examples of expenditure may include travel, transport, accommodation, food and drink including alcohol, gifts of nominal value to promote or demonstrate a business (such as small items with company logos or free snacks at a trade show), gifts of more than nominal value (such as tokens of esteem or gratitude) and entertainment or hospitality (such as sporting tickets).

Keep proper records of costs, payments and approvals

- Require proper accounting records including dates, amounts, locations and full legal names and addresses of payees. Consult with a local lawyer if necessary to understand local record keeping requirements.

Austrade also recommends that you ensure that the date in any web based electronic approval form is automatic, to prevent the possibility of backdating any claims and payments.

Consider what is appropriate and what is excessive

- Your policy should recommend that your organisation pair all entertainment and travel with some identifiable business promotion, such as a presentation on the host's capabilities or products. For most travel, the business activities should substantially outweigh the entertainment activities. To determine what is appropriate and what is excessive, consider the following:

- is the hospitality disproportionate to the business activity?
- are costs associated with training reasonable?
- are the costs of a trip for senior officials to inspect facilities or review execution and performance of a contract reasonable?
- is all promotional expenditure bona fide?
- are there alternative activities for relationship building with lower costs, for example dinner at your house or attending a community festival together?

Set monetary limits for each category - To set a monetary limit, Austrade recommends that your Board (or equivalent) decide your business's reasonable daily amounts for each category of expenditure and gifts. Your policy should then ensure that such monetary limits are applied consistently to all staff.

If a Foreign Public Official is involved, ensure that all arrangements are legal - Ensure that all arrangements are legal under both the local law of the Foreign Public Official and the law of the country where the hospitality will occur.

Consider whether you need approval from the Foreign Public Official's agency, and whether you need to obtain independent legal advice about the application of relevant local laws.

Appoint someone to review and approve travel expenditure

- Austrade recommends that you implement a web-based electronic approval form for a consistent and central record of the claim/claimer/approval/payment, and that you invest in an external agency to manage travel bookings and approvals.

Austrade recommends that your policy for gifts, hospitality and expenses:

- requires two management signatures on claims and payments over a certain amount, at least one of whom is not local;
- allows payment approvers to be rotated regularly;
- allows for the sequence of approvers to be changed periodically, but prevents an individual requester from varying the sequence;
- ensures that a central register of approver signatures is maintained; and
- allows for personal rather than shared Personal Identification Numbers (**PINs**) for bank reimbursements to be allocated.

Consider imposing stricter controls on expenditure

- This could include setting a list of approved payees; setting a cash limit and prohibiting cash payments over that limit; requiring approval of expenditure over the limit before expenditure; prohibiting off-the-book or secret accounts.

Prohibit the use of Bribery

- Your policy should clearly state that your business prohibits any action constituting Bribery or that would otherwise be a violation of Australian or local law.

Do not simply give tickets to entertainment events

- Your policy should express that gifts should be given for an identifiable business promotion or relationship building activity. For example, do not simply give a ticket to an entertainment event as a gift; it should be given as an opportunity to build relationships, and so the host needs to be at the event.

Carefully consider the timing of expenses

- Your policy should express that the timing of expenses needs to be considered carefully. For example, Austrade recommends that your organisation avoids coincidental timing of its gifts, hospitality and expenses with tender processes or other outcomes associated with decisions by a Foreign Public Official.

Have an escalation process for reviewers to seek management involvement in uncertain approval

- Your policy should outline an escalation process whereby more senior decision-makers are involved for higher value approvals or payments, or where the perceived risk is high. Austrade also recommends that the responsibility for approving payments and for maintaining records is kept separate and these roles are allocated to different staff members.

Carefully examine gifts of more than nominal value

- Your policy should outline a process to ensure that gifts are given appropriately. For example, your policy should express the following:

- only give gifts where appropriate and proportionate under local custom or occasion (for example a religious or other festival);
- limit the value of gifts to what is reasonable; and
- ensure gifts are a genuine expression of good will, and not an aim to influence.

Carefully examine side-trips and anything business or first class.-.

Your policy should outline a process to carefully examine travel expenses to ensure that all travel is designed for a legitimate business purpose. A sample Travel Policy is provided in the next column.

Your policy should warn against the following travel expenses:

- trips that do not appear to be designed for any legitimate business purpose, for example trips that are extravagant (e.g. first class airfares for officials and their spouses), or “all expenses” paid trips to a destination where the company has no facilities; or
- expenses for the officials’ spouses that have the appearance of being designed to corruptly gain favour.

Sample Travel Policy

Book flights and hotels through [reputable travel agency].

Flights should be the least expensive available at the date of booking. [x] is the preferred airline. Other airlines must be counter-approved.

Bookings should be made as early as reasonably possible to minimise costs. Economy should be used in all flights under [x] hours.

Business class tickets must be counter-approved.

Staff may use their own frequent flyer points or money to upgrade.

Accommodation must not exceed [reasonable amount for business hotels in the locale] per day. Food and drink must not exceed [reasonable amount for business hotels in the locale] per day.

Case Study – Gifts, hospitality and facilitation payments

Company A is an Australian-based multinational company. In many countries where it operates, giving small gifts on particular occasions is regarded as an appropriate business practice. Company A's policies require that all gifts, hospitality and facilitation payments to public officials be approved at a reasonably senior level and that in-house counsel be consulted if any doubts arise regarding the legality of a gift, hospitality or facilitation payment. However, the ability to audit or investigate compliance with this requirement often depends on whether a local manager or counsel has retained documents showing such approval. Counsel and compliance staff thought that Company A was putting itself at unnecessary risk when making such payments.

To address this risk, Company A implemented an electronic approval form (e-form) for gifts, hospitality and facilitation payments, which had the advantages of ensuring that management was properly involved in approval of gifts, hospitality and facilitation payments and of providing an audit trail.

Because not all of Company A's field locations had access to a server-based e-form system, Company A's in-house software development staff created a web-based approval form. Once a simple form was created, along with necessary databases to support it, the form was beta-tested in one country where gift-giving, hospitality and facilitation payments were common. This process highlighted a number of required modifications to the prototype, and allowed the project managers to eliminate as many bugs as possible before extending it to the entire company.

The web-based form was gradually brought into use, country by country, and is now the accepted method to obtain approval for gifts, hospitality, and facilitation payments throughout Company A's operations. The technology has allowed Company A to audit procedures and payments quickly and accurately, and has eliminated dependence on the chance retention of e-mails.

- *Anti-Corruption Ethics and Compliance Handbook for Business* (2013), © OECD, pages 34-25, available [here](#).

Have a policy and process on conflicts of interest, solicitation and extortion

Your organisation should establish policy and procedures to identify, monitor and manage conflicts of interest which give rise to a risk of corruption or Bribery, whether those conflicts are actual, potential or perceived, including conflicts of your directors, officers, employees and contracted parties (such as Agents, lobbyists and other intermediaries).

Define a conflict of interest for an individual within the context of your business - Your policy should contain a definition of a conflict of interest for an individual within the context of your business. To do so, consider the following:

- the private interests of all individuals (including but not limited to Foreign Public Officials) and their close relatives, friends and associates; and
- the interests of the enterprise to which the individuals belong.

In doing so, consider actual, potential and perceived conflicts of interest.

Require your current and proposed employees to disclose all conflicts of interest - Your conflict of interest policy should require your current and proposed employees to disclose all conflicts of interest to your organisation's Board (or equivalent).

Ensure a reasonable lapse of time between public tenure and employment with your business - Your conflict of interest policy should establish a required amount of time before a former public official

can be hired or engaged in any capacity, if their contemplated activity or employment relates directly to the functions held or supervised.

Establish processes to monitor declared conflicts of interest - Your policy should outline a process to monitor declared conflicts of interest. Austrade recommends that the policy require all staff to renew or update their declarations on an annual basis.

Have staff declare when they are asked to pass on gifts on behalf of another - Your policy should also outline a process for staff to make declarations when they receive gifts, and when they are asked to pass on a gift on behalf of someone else.

Be clear what is a socially acceptable expression of good will in business and what may be considered buying influence - for example, your policy could limit all gifts given to under \$100 and all received to \$100 and require that all gifts be registered in a central gift register.

6. Apply your ABC program to business partners

Your organisation should implement its ABC program in all business entities over which it has effective control, and use its influence to encourage an equivalent program in business entities in which it has significant investment or with which it has significant business relationships.

Did you know ...

Business partners contribute to your reputation, so you need to understand their identity. They include local subsidiaries, local Agents and third parties and joint venture partners.

Know your business partners

Conduct due diligence – Your business should undertake properly documented, reasonable and proportionate Anti-Bribery due diligence of other business entities before entering into a relationship with them, including through mergers, acquisitions and significant investments.

Due diligence in this context involves a comprehensive appraisal of the relevant business entity, research of independent and publicly available sources of information, and meetings/interviews. To assist in undertaking this assessment, it may be helpful to ask yourself the following questions:

- How do you know them? Who referred or introduced them? When, where and why did this occur?
- What is their skill set?
- Who are their Beneficial Owner/s?
- Do they share your organisation's ethical position in business?

You may wish to interview them in person or have a committee interview them.

It is not sufficient to merely conduct a background check or to rely on the due diligence undertaken by anyone else (including Austrade).

Did you know ...

Austrade's role is to provide practical guidance on how to conduct business and facilitate trade in a country. That can include introductions. But you are responsible for conducting due diligence and monitoring their actions.

Be very careful if the business partner is a Foreign Public Official or a former Foreign Public Official - Consider a compulsory quarantine period. Conduct due diligence on the reason for their leaving their tenure and whether they have any continuing connection with their former agency.

Document your arrangements with business partners

Your organisation should document relevant aspects of the implementation of its ABC program (or equivalent) by business partners and controlled or associated business entities. Documentation of these aspects will assist your business to demonstrate the due diligence it has undertaken.

You should document the following aspects of your arrangements with business partners:

- accounting, payment, expenses and reimbursement;
- training;
- record keeping;
- your right to termination;
- indemnity;
- your right to random audit; and
- common/central procurement and engagement of Agents.

Require business partners to collaborate in your ABC program

Your business' reputation and business practices can be protected by extending your ABC program to your business partners. You should consider:

Having their senior management acknowledge your ABC policy - If necessary provide a translation.

Inviting their staff to attend your training - Have each attendee sign an undertaking to comply with your ABC policies.

Encouraging business partners to actively develop their own policy and program

Encouraging business partners to seek their own legal advice

Referring them to the Austrade website.

Monitor their behaviour during the life of the relationship

Be alert to Agent red flags (see pages 6 to 7) and monitor their compliance (refer to **Step 3**).

Sanction any non-compliance

In the event that the policies and practices of associated business entities are in conflict with the principles of its ABC program, your organisation should take appropriate action. Action could include:

- Before engaging with them, obtaining a performance bond
- Cease doing business with them if they do not comply

Your organisation may also consider including a right to terminate any relevant contract in the event that associated business entities engage in Bribery or act in a manner inconsistent with your ABC program. This should be based on independent legal advice.

Case Study – Business partners

Company B is an international supplier of products and services related to the transportation industry, with subsidiaries and operations throughout the world. Company B regularly undertakes negotiations with a third-party company to participate and obtain a contract to supply transport services to an Indian governmental agency. The third party was to enter into the bidding process with the government on behalf of the company. Then, after obtaining the public contract, the third party was to hire the company as subcontractor to perform all work related to the bidding.

In the course of the negotiations with the third party, Company B found that the third party was indirectly owned by former and current politicians. Company B also learned that, in order to obtain the contract, the third party intended to use its connections with governmental authorities and to request “contributions” from the company for undisclosed purposes. This created a risk that bribes might be paid to Indian government officials to obtain the contract and that Company B could face a risk of sanctions under the Australian Criminal Code, Indian Criminal Law and potentially other laws, including the *US Foreign Corrupt Practices Act*.

After learning this information, Company B immediately terminated all negotiations on the project and hired a firm to do an anti-Bribery and corruption compliance analysis. In addition, Company B began implementing a strict procedure for identifying and researching their contracting parties, potential business partners, employees, and officers, in order to learn of and avoid any possible act of corruption or Bribery in which Company B’s potential commercial partners could be involved.

- *Anti-Corruption Ethics and Compliance Handbook for Business* (2013), © OECD, pages 29-30, [available here](#).

7. Have internal controls and keep records

Your organisation should establish and maintain an effective system of internal controls to counter Bribery, comprising financial and organisation checks and balances over your accounting and record-keeping practices and other business processes related to your ABC program.

Controls that prevent Bribery and corruption	Controls that detect Bribery and corruption	Controls that respond to Bribery and corruption
<p>Austrade recommends implementing the following examples of preventative internal controls:</p> <ul style="list-style-type: none">▪ train all staff on policies and procedures relevant to the ABC program (see Step 8);▪ communicate the policies and promote ethical behaviour in team meetings (see Step 8);▪ have employees periodically sign a declaration that they have complied with your policies;▪ have detailed policies and processes on expenses, travel, gifts and hospitality (see Step 5); and▪ have detailed policies and processes for whistle-blowers (see Step 5).	<p>Austrade recommends implementing the following examples of detective internal controls:</p> <ul style="list-style-type: none">▪ facilitate whistle-blowers (see Step 5);▪ detection and reporting (see Step 10); and▪ incentivising ethical behaviour (see Step 9).	<p>Austrade recommends implementing the following examples of internal controls:</p> <ul style="list-style-type: none">▪ invoke termination clauses in agreements with Agents and business partners; and▪ discipline poor behaviour (refer to Step 9).

Maintain written procedures for controls

Your organisation should develop and maintain written procedures for your internal controls. In addition, written procedures should outline how internal control systems, in particular the accounting and record-keeping practices, are to be reviewed and audited regularly.

Austrade recommends that you circulate these written procedures to internal staff involved in implementing, monitoring or reviewing the control. Austrade also recommends that you have written procedures translated into all languages relevant to your organisation.

Keep fair and accurate books and financial records

Your organisation should maintain, and make available for inspection, accurate books and records that properly and fairly document all financial transactions. You should not maintain off-the-books accounts.

Ensure that your records clearly identify the following:

- the character of all payments including:
 - Agent agreements and itemisation of commissions and fees;
 - reimbursements of expenses and gifts; and
 - Facilitation Payments;
- the place of payment;
- the payee's full name and address; and
- the approval process, including the name of the approver and the time and place of the approval.

Your business should also:

- Retain documents centrally;
- If possible, keep contemporaneous records;
- Follow Australian tax requirements;
- Follow local record keeping laws;
- Seek independent legal advice where necessary.

Follow a document retention period

Consider and set your document retention period for all books and financial records.

Consult with local lawyers if necessary.

Prohibit destruction of documents earlier than required

Your written procedure for internal controls should clearly prohibit the intentional destruction of bookkeeping documents earlier than foreseen by the law.

Austrade recommends that you seek independent legal advice in relation to your record-keeping requirements, including the retention of documents. Issues that may differ under local law include:

- record-keeping requirements;
- tax regulations prohibiting the deduction or any form of bribe payment from taxable income; and
- 'dawn raids' by local authorities.

8 Communication and training

Your organisation should establish effective internal and external communication of your ABC program. You should publicly disclose your program for countering Bribery. You should also aim to create and maintain a trust-based and inclusive internal culture in which Bribery is not tolerated.

Managers, employees, Agents (and, where appropriate, contractors and suppliers), particularly those most exposed to corruption risks, must be trained on what to do if they encounter problems or have any concerns. Implementing specific training on the ABC program, tailored to the relevant needs and circumstances of staff, will also help to create and maintain a culture in which Bribery is not tolerated.

Make your ABC policy available to all

Austrade recommends that you make your ABC policy available to the public by publishing it on your website. Where applicable, you may consider publishing standard terms and conditions in relation to your ABC policy.

Make your detailed policies available to all staff

Your organisation should make your detailed policies (outlined in step 5) available to all staff. Consider communicating these policies via the following:

- a staff handbook or guidelines that further elicit the behaviour required and further deter the behaviour prohibited by your organisation's ABC program and associated policies;
- the intranet; and/or
- training materials.

Draft training materials

Use Austrade's materials as a starting point

Training materials are available at <https://www.austrade.gov.au/Australian/Export/Guide-to-exporting/Legal-issues/Bribery-of-foreign-public-officials>.

Address the issues that your business needs to know

Your training should address the following:

- key terms including Bribery, Foreign Public Officials, and Facilitation Payment;
- relevant laws and their consequences;
- common risk factors;
- what your employees are expected to do and not do, and how to refuse a bribe; and
- reporting Bribery.

Tailor the training materials to your business

Your organisation's directors, managers, employees, Agents and, where appropriate, contractors and suppliers should receive training on your ABC program. The detail you include in your training programs will depend on your risk assessment, which will identify the activities of your organisation that bear the highest risks and those individuals involved in 'high risk' activities. Austrade recommends that training includes case studies and real life scenarios relevant to your business.

Train to persuade

Make the training interactive

Involve your employees in training and include a discussion to draw out personal stories.

Address common ‘push back’ responses upfront

Be wary of the following responses:

- ‘This is how business is done’;
- ‘Everybody is doing it. Our competitors do it’;
- It is not us – the Agent insulates us’;
- ‘There is no other way to do business’;
- ‘The local government condones it’; or
- ‘We know the market and how to do business’.

Austrade does not condone the attitudes expressed in such responses and recommends that your organisation directly addresses these attitudes upfront.

Address the negatives of not changing behaviour

Your training program should make it clear that, for businesses, the risk of not changing your organisation’s behaviour is that it increases the risk of Bribery. Bribery ultimately increases your organisation’s costs due to the following:

- a higher risk of Bribery will add the cost of the bribes to your businesses;
- poor quality or inappropriate projects, products and services;
- distorted organisation;
- uneven market where contracts are not awarded on merit;
- can lead to termination of contracts;
- disruption of supply;
- debarment from being allowed to compete for public contracts; and
- damage to your reputation.

Did you know ...

According to Transparency International’s Corruption Perceptions Index 2016, Australia has dropped from a score of 85 out of 100 in 2012 to 79 in 2016.

- Transparency International, *Corruption Perceptions Index 2016*, available [here](#).

Your training program should make it clear that if your organisation is caught for engaging in Bribery of a foreign official, there are significant consequences in penalties under the *Criminal Code Act 1995* (Cth):

- For an individual: imprisonment for up to ten years or a fine of 10,000 penalty units (\$1.8 million); and
- For a corporation: a fine of the greater amount of three times the Benefit received, 10% of the corporation's annual turnover, or 100,000 penalty units (\$18 million).

There are also significant consequences for your reputation, and in professional costs for lawyers, accounts and others.

Emphasise the positives of changed behaviour

Austrade recommends that your training reinforce the positive aspects of having a successful ABC program and of changing behaviour and attitudes in compliance with the program. For example, changed behaviour can lead to:

- building and keeping a good reputation;
- engaging in ethical and socially responsible investment;
- compliance with the badge of government - as Australians our badge is one of only doing good business and winning trade legally; and
- competitive advantage.

It is worthwhile acknowledging the difficulty in changing behaviour.

Train on what to do

Austrade encourages a training program that directly trains staff on what to do or how to act. Austrade recommends that staff are trained to take the following approach if they are subject to an act of Bribery, witness an act of Bribery, or if they reasonably suspect that an act of Bribery has occurred or is occurring:

- say no and state that Bribery is illegal in Australia and locally;
- clearly endorse your organisation's ABC policy and that of Austrade;
- remind staff that Foreign Public Officials are subject to local laws and can be prosecuted for soliciting or attempting to solicit a bribe;
- report to Austrade – Austrade will report your reasonable suspicions to the AFP, and the issues may be raised Government-to-Government;
- seek advice from a lawyer; and/or
- if necessary, cease to do business.

Train all staff and key external stakeholders

Your organisation can take the following measures to ensure that all staff and key external stakeholders receive relevant training:

- inform staff that the training is compulsory to attend;
- offer training on different times and days to enable part time and casual staff to attend;
- offer training in different formats for different staff;
- consider creating a PowerPoint for prompting discussion, which can be disseminated prior to the training session to assist trainees to prepare;

- conduct a team meeting to discuss the purpose of training and its availability, and to ensure that all staff have attended; and
- consider creating written handouts for training sessions.

Measure and report on training participation

Austrade recommends that your organisation measures and reports on its participation in training. This can be achieved, for example, through tracking your staff's participation via online learning modules, and obtaining regular certification of understanding from all key stakeholders.

Refresh training regularly

Your organisation's training activities should be assessed periodically for their effectiveness.

Austrade recommends that your training is reviewed and refreshed on at least an annual basis, but should also be refreshed before your organisation commences new ventures/projects/investment territories, after any change in the law occurs and/or after any incident or report.

9 Incentivise ethical behaviour

“You tend to attract integrity and honour if that is how you regard those with whom you work.”

– Nelson Mandela.

A strong ethical culture directly supports a strong compliance program. Your organisation should promote a strong ethical culture and enforce your ABC program by incentivising ethical behaviour and compliance.

Have management-led conversations on ethics and compliance

Your organisation should consider introducing appropriate measures to encourage and provide positive support for the observance of ethics and compliance programs or measures against foreign Bribery, at all levels of the company.

Austrade recommends that senior management of your organisation leads conversations on ethics and compliance to promote observance. This can be achieved through formal meetings or informal discussions.

In human resource policies, promote ethical behaviour and citizenship

Your organisation’s policies should make it clear that compliance with your ABC program is mandatory and that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if it may result in your organisation losing business.

- **Make it clear that no staff will suffer for refusing to pay a bribe**
- **Make it clear that no staff will suffer for whistle-blowing to the Board or equivalent**
- **Have ethical ‘good citizenship’ objectives that are relevant to different seniority levels**
- **Make compliance with your ABC policy and program mandatory for staff**

Austrade recommends that your organisation promotes ‘good citizenship’ objectives by engaging in the following:

- encourage positive engagement and contribution in ABC program training sessions;
- aim to transfer your ABC program’s values, skills and processes of senior staff to junior staff;
- actively oversee and chase team members to comply with your ABC program; and
- encourage contribution to making improvements in ABC program processes.

Avoid a box-checking culture on ethical performance assessment

A successful ethical performance assessment requires a 360 degree review and assessment.

Incorporate citizenship and compliance into human performance reviews of staff

Include performance objectives that are:

- quantitative, for example, attendance at training.
- qualitative, for example, good citizenship.

Reward good behaviour

For individuals - Consider linking individual performance reviews to remuneration/salaries, bonus payments and/or discretionary rewards for outstanding ethical leadership.

Teams - Consider rewarding your organisation's teams for good citizenship or ethical leadership, for example with a team celebration lunch.

Offer incentives to whistle-blowers - Consider detailing any incentives for staff who are whistle-blowers (refer to [Step 9](#)). For example, consider personnel evaluations and promotions, rewards for improving a developing your company's compliance program, or rewards for ethics and compliance leadership.

Provide an opportunity for amnesty

After developing and implementing your ABC policy, provide an opportunity for your staff to declare past or current non-compliance so that it can be addressed and resolved early and a line in the sand can be drawn.

Create peer pressure

Regularly measure team performance - Team performance can be measured regularly, for example by:

- monitoring your organisation's teams' attendance at training to ensure that a high percentage of your teams attend; and
- monitor your organisation's teams' records for a period/venture/project to ensure that full payment records have been kept.

Case study – Organisational culture

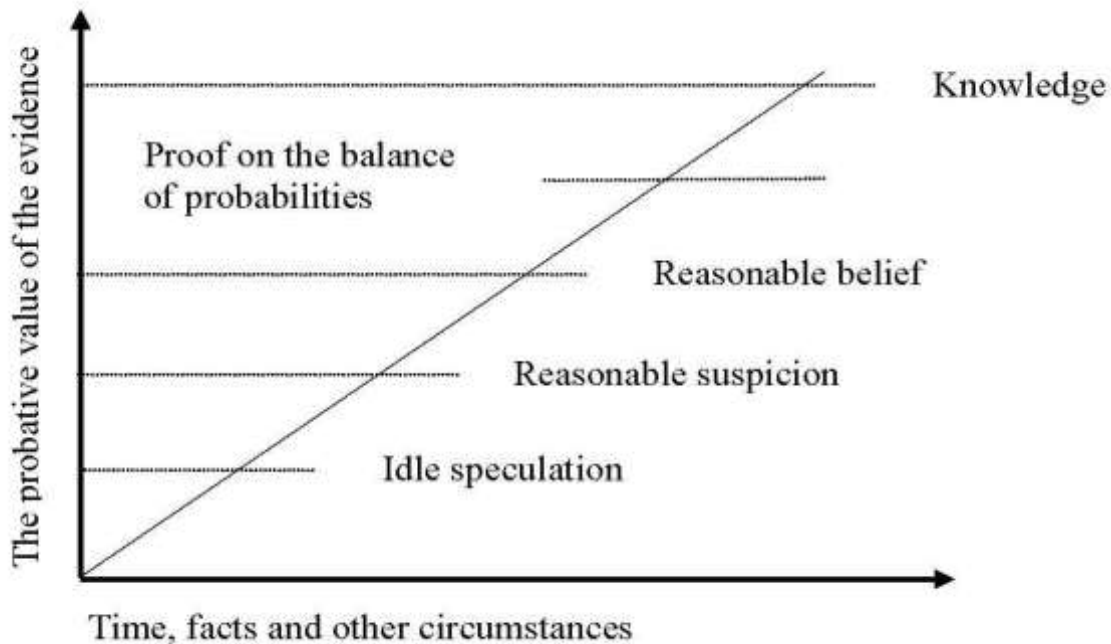
In 2003 NSW ICAC reported that senior managers of the NSW Grains Board had engaged in a cover-up of losses that included the falsification of financial reports and misleading the directors of the Board in order to ensure that the Board's bankers would continue to extend it a line-of-credit.

The ICAC found that the conduct was related to the organisational culture that had developed among senior ranks of the Board as a result of the actions and behaviour of the Managing Director, the Chief Financial Officer and inaction by the board of directors. The ICAC described the Board as an organisation whose culture valued commercial imperatives over public duty interests, outcomes over process, expediency over accountability and autocratic direction over participatory decision-making.

The impact of the culture was also evident in the treatment of some senior managers who were stopped by the Managing Director from making legitimate inquiries into suspected misconduct.

- Independent Commission Against Corruption NSW, *Foundations for corruption prevention: Organisational culture*, [Case Study 1](#).

10 Seek guidance, detect and report



Your organisation's ABC program should encourage employees and others to raise concerns and report suspicious circumstances to responsible officials in your organisation as early as possible.

To do so, your organisation should provide secure and accessible channels through which employees and others can raise concerns and report suspicious circumstances in confidence and without risk of reprisal. These channels should also be available for employees and others to seek advice or suggest improvements to your ABC program. These channels could also be used for your organisation to provide guidance to employees and others on applying the rules and requirements of your ABC program to individual cases.

Investigate swiftly to avoid alerting wrongdoers

Your organisation should comply with relevant policies to swiftly investigate and remediate any misconduct in an activity under your organisation's control.

However, Austrade recommends that your organisation does not conduct a long internal self-investigation, which can give the impression of a cover-up.

Seek independent legal advice

- Consider all relevant laws and authorities, including the Australian Stock Exchange's Listing Rules
- Listed companies may need to disclose allegations to their shareholders
- An investigation can trigger your organisation's continuous disclosure obligations

Understand that Austrade officers are to report suspected Bribery

Austrade is obliged to report to the AFP and any other relevant law enforcement authorities any of the following:

- reasonable suspicion of Bribery from a credible source;

- report/admissions of Bribery by an Austrade client concerning itself;
- reports by Austrade clients concerning the actions of competitors/others;
- reports against an Austrade client;
- reports against a Foreign Public Official;
- any report against Austrade staff; and
- any report about market access or trade issues.

Report to the Australian Federal Police

Your organisation should cooperate appropriately with relevant authorities in connection with Bribery and corruption investigations and prosecutions.

In Australia, the AFP is responsible for the investigation of foreign Bribery offences. You should report any suspected or actual Bribery or corruption to the AFP – refer to the AFP's [website](#) for further information.

Various factors will be considered by the authorities

Whether and how the **AFP** will investigate and determine whether to charge may include:

- the nature and seriousness of the offense, including the risk of harm to the public;
- the pervasiveness of wrongdoing, including the complicity in, or the condoning of, the wrongdoing by management;
- the history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it;
- whether disclosure of the wrongdoing was timely and voluntary, and the willingness of involved parties to cooperate in the investigation;
- the existence and effectiveness of a pre-existing compliance program;
- remedial actions, including any efforts to implement an effective corporate compliance program or improve an existing one, replace responsible management, discipline or terminate wrongdoers, pay restitution, and cooperate with the relevant government agencies;
- collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution;
- the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and
- the adequacy of remedies such as civil or regulatory enforcement actions.

The **Commonwealth Director of Public Prosecutions** determines whether to undertake prosecutions.

The **Australian Securities and Exchange Commission (ASIC)** is involved where contravention of requirements under the *Corporations Act 2001* (Commonwealth) may also be involved. Whether and how ASIC will investigate and determine any enforcement action may include consideration of:

- similar factors as those for the AFP above;
- whether any Statutes or Rules have potentially been violated;

- the egregiousness of the potential violation;
- the potential magnitude of the violation;
- whether the potentially harmed group is particularly vulnerable or at risk;
- whether the conduct is ongoing;
- whether the conduct can be investigated efficiently and within the relevant statute of limitations period;
- whether other authorities, including federal or state agencies or regulators, might be better suited to investigate the conduct; and
- whether the case involves a possibly widespread industry practice that should be addressed, a recidivist, an opportunity for ASIC to be visible in a community that might not otherwise be familiar with ASIC or the protections afforded by the securities laws.

Cooperate with the authorities in their investigations

Suspend relevant staff during investigations - If an investigation involves consideration of the suspected behaviour of your organisation's staff, it may be appropriate to suspend them pending the outcome of the investigation.

Keep records of your ABC program - If a prosecution is commenced for breach of anti-Bribery laws, you may be required to produce documents to the Prosecutor or Court, such as your ABC policy and program. These may assist in defending the relevant charges against your organisation.

11 Address violations

Your organisation should make it clear that compliance with your ABC program is **mandatory**. Violations of your ABC program should be addressed internally and externally with relevant authorities.

Report suspected or actual Bribery or corruption

Allocate personnel to report externally

Austrade recommends that your organisation allocate personnel to be responsible for reporting suspected or actual Bribery or corruption externally. Austrade recommends that a Board member or equivalent is allocated to this role.

Report quickly

Your organisation should comply with relevant policies to report suspected or actual Bribery or corruption externally as quickly as possible in accordance with **Step 10**.

Austrade recommends that you do not delay reporting by conducting lengthy internal investigations. If, after conducting a brief internal investigation, your organisation receives confirmation or if there is any doubt remaining, report the matter externally as soon as possible.

Discipline poor behaviour

- Demote staff who do not comply;
- Terminate staff who breach the policy;
- Discipline teams who fail to comply with the process for expenditure approval;
- Consider implementing financial penalties for teams who fail to comply with the process for expenditure approval; and
- Consider publicising disciplinary actions internally, where appropriate under local law, to demonstrate that unethical and unlawful actions have swift and sure consequences.

Give serious consideration to terminating staff who breach your policy

If an AFP investigation, or Court process, concludes that your staff have breached your ABC policy, it may be appropriate to terminate their employment in your organisation. However, Austrade recommends that you obtain independent legal advice before acting to terminate an employee in these circumstances.

12 Review your ABC program

Your organisation should have a robust framework for regularly monitoring the effectiveness of your ABC program to assess whether it is adequate and proportionate – that is, whether the program has been designed in a way that is fit for purpose and has been implemented and is operating effectively.

Periodically re-assess your ABC program

Austrade recommends that your ABC program is reviewed and re-assessed periodically, for example on an annual basis. However, it should also be reviewed and re-assessed after any incident and/or with each new significant business opportunity or venture.

Audit all aspects of the ABC program

- Audit governance of the ABC program by conducting staff interviews on the ‘tone from the top’, review leadership and approval appointments and review available channels for whistle-blowing.
- Audit ABC program training by interviewing a random selection of staff for their understanding of training content. Select staff from all seniority levels within the organisation.
- Audit whistle-blowing reports by considering whether they were fully investigated according to policy.
- Audit performance reviews by considering whether ethical behaviour was considered and rewarded.
- Share best practices within your organisation.
- Identify areas needing further resourcing/support.

Regularly audit compliance

Austrade recommends that your organisation’s compliance with its ABC program is audited on an annual basis. Your organisation can also consider developing and implementing a policy that outlines the process for conducting audits on compliance.

- Have an internal audit /compliance officer randomly review records and interview teams.
- Audit due diligence of Agents.

Austrade recommends that the due diligence conducted on Agents is audited. This can be done, for example, by reviewing contemporaneous documentation of the due diligence and focusing on Agents associated with large payments or expense claims.

Audit payment approvals - Austrade recommends that payment approvals are also audited. This can be done by engaging in the following steps:

- check whether payees are from the pre-approved list of payees;
- check that payments to Agents correlate with engagement documents;
- focus on generic descriptions e.g. ‘contract expense’, ‘settlement cost’, and consider high risk expenditures such as gifts and commissions;
- seek further documentation of suspicious or irregular payments e.g. those just below a threshold; and
- seek to understand the ultimate recipient of funds.

Invest in an external auditor

Your organisation should consider engaging an independent external auditor to conduct compliance audit. External auditors can provide independent assurance and are experienced in conducting audits.

Make it compulsory to cooperate with the auditor

Your organisation should make it compulsory to cooperate appropriately with an auditor. To assist, your organisation may consider implementing measures to incentivise cooperation (see [Step 9](#)).

Also considering providing the auditor report to the Board or equivalent.

Consider external accreditation

Your organisation may consider obtaining external accreditation in anti-corruption and anti-Bribery. However, Austrade recommends that this is done only to supplement your own ABC program. To successfully implement change within your organisation, your program should be tailored to reflect your organisation's size, business sector, potential risks and locations of operation, and should not be a 'check-a-box' certification.

Keep abreast of developments, case studies and information

Austrade recommends that your organisation keep abreast of developments, case studies and current information on anti-Bribery and anti-corruption best practice. This can be done, for example, by engaging with reputable Industry Organisations including Austrade, and with reputable consultants including lawyers.

Continually improve your ABC program

The purpose of monitoring and assessing your ABC program and conducting compliance audits on a regular basis is to identify areas that may be unsuitable to your organisation, or are inadequate and ineffective at achieving the desired outcome.

The outputs of your assessment or audit of your ABC program need to be provided back to senior management and a commitment must be made for tracking and implementing continual improvement to address any compliance gaps identified.

ABC Resources

Glossary

Agent

Any third party who may do business on behalf of or for another person and includes clients, contractors, subcontractors, suppliers, consultants, lawyers, accountants, lobbyists, sales agents, brokers, and franchisees.

Beneficial Owner

The natural person who controls an organisation.

Benefit

Any advantage, which is not limited to property, including:

- financial or non-financial, for example employment, scholarships or favours; and
- intangibles, for example business advantages, new business, and retention of business.

The advantage can be offered by anyone, either directly or indirectly through another person such as an Agent. The recipient of the advantage could be a relative or associate of a Foreign Public Official.

Bribery

A crime under Division 70 of the *Criminal Code Act 1995* (Commonwealth). Section 70.2 of the *Criminal Code Act 1995* provides that a person commits an offence of Bribery of a Foreign Public Official if:

- the person provides or offers to another person (either directly or indirectly);
- a Benefit that is not legitimately due to the other person;
- with the intention of influencing a Foreign Public Official in the exercise of their duties;
- in order to obtain a Benefit.

Foreign Public Official

Defined in section 70.1 of the *Criminal Code Act 1995* (Commonwealth) and includes:

- employees, contractors or officials of a foreign government department, agency, state owned or controlled entity;
- employees, contractors or officials of a public international organisation;
- members of a foreign military or police; and
- members of the executive military or court system of a foreign country.

Australia's anti money laundering laws and AUSTRAC use the Financial Action Task Force's concept of 'politically exposed persons' (**PEPs**).

Authorities such as the AFP use an analysis of ‘ownership, control, status, and function’ to determine whether a particular entity is an agency or instrumentality of a foreign government. No single factor is determinative.

Facilitation Payment

One of the two defences to Bribery in Division 70 of the *Criminal Code Act 1995* (Commonwealth). Defined under section 70.4 of the *Criminal Code Act 1995* as:

- a Benefit of a minor nature;
- provided or offered to another person (directly or indirectly);
- for the sole or dominant purpose of expediting or securing the performance of a Routine Government Action of a minor nature.

Examples of Facilitation Payments include:

- passport clearance at frontiers;
- access to the ‘fast lane’;
- help speed up issue of documents;
- port entry for vehicles;
- release of goods from customs;
- loading and unloading cargo;
- obtaining services such as telephone, power, water, mail collection;
- processing work permits; and
- planning permissions.

Section 70.4(1) of the *Criminal Code Act 1995* (Cth) requires the person who provided or offered the Facilitation Payment to make a record of the transaction as soon as practicable after the Facilitation Payment was provided or offered. Section 70.4(3) provides that records must include all the following:

- the value of the Benefit concerned;
- the date on which the conduct occurred;
- the identity of the Foreign Public Official in relation to whom the conduct occurred;
- if that Foreign Public Official is not the other person, the identity of that other person;
- particulars of the Routine Government Action that was sought to be expedited or secured by the conduct; and
- the person’s signature or some other means of verifying the person’s identity.

Routine Government Action

Defined in section 70.4(2) of the *Criminal Code Act 1995* (Cth) as an action of a Foreign Public Official that:

(a) is ordinarily and commonly performed by the official; and

(b) is covered by any of the following:

- granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
- processing government papers such as a visa or work permit;
- providing police protection or mail collection or delivery;
- scheduling inspections associated with contract performance or related to the transit of goods;
- providing telecommunications services, power or water;
- loading and unloading cargo;
- protecting perishable products, or commodities, from deterioration;
- any other action of a similar nature; and

(c) does not involve a decision or encouraging a decision about whether to award new business, whether to continue existing business with a particular person or the terms of new business or existing business.

Law

- [United Nations Convention Against Corruption](#)
- [OECD Anti Bribery Convention](#)
- [Anti-corruption legislation in UN countries](#)
- US Department of Justice and US Securities and Exchange Commission, [FCPA: A Resource Guide to the US Foreign Corrupt Practices Act](#) (14 November 2012)

Risk

- Transparency International – [Corruption Perceptions Index 2016](#)
- Deloitte – [Deloitte Bribery and Corruption Survey 2015 Australia & New Zealand: Separate the wheat from the chaff](#)

Government resources

- Australian Transaction Reports and Analysis Centre – [Corruption and bribery](#)
- Attorney General's Department – [Crime Prevention](#)

Standards and Programs

- [Anti-Corruption Ethics and Compliance Handbook for Business \(2013\)](#), © OECD
- ISO Standard – [Anti-bribery management systems](#)

Free Training Courses

Disclaimer

This links below are publicly available and free training courses. Austrade does not specifically

endorse or recommend them. As the laws vary in each country, Austrade recommends that you develop your own materials, make your own enquiries and seek legal advice, to ensure your business complies with all applicable laws.

- Transparency International – [Doing Business Without Bribery](#) (online training module)

Compliance Checklist

- See pages 120 to 122 of OECD's [Anti-Corruption Ethics and Compliance Handbook for Business](#)

Case studies

- See the 22 case studies in OECD's [Anti-Corruption Ethics and Compliance Handbook for Business](#)