



Anti-Bribery & Corruption (ABC)

Due Diligence in 12 steps

Introduction

Bribery and corruption are serious risks for Australians doing business offshore. Years of poverty and social disruption in some countries have led to widespread corruption and bribery is often seen as an inevitable part of doing local business. Yet it is a serious crime under both Australian and foreign laws. Corruption corrodes offshore trade, damages investor confidence and adds to the bottom line.

According to a report by the World Economic Forum in association with the International Chamber of Commerce and the UN Global Compact and Transparency International, the cost of corruption is estimated to equal more than 5% of global GDP, adds up to 10% to the cost of doing business globally and up to 25% to the cost of procurement contracts in developing countries. According to the Financial Action Task Force, 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.”

In navigating the opportunities and risks of offshore trade, a proactive, comprehensive, robust and dynamic anti-bribery and corruption (**ABC**) program is essential.

This webpage provides practical guidance to Australians doing business offshore, who wish to build a culture of compliance within their organisation, by managing their risks through an ABC program. The 12 step program below 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:

- 1 **Commit 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 **Communicate and train**
- 9 **Incentivise**

10 Seek guidance, detect and report

11 Address violations

12 Review

Disclaimer

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

1 Commit from the top

Agree a short, authentic statement of intention in relation to ABC for the company

Get the Board or equivalent and Senior Management to meet and agree on the wording

Refer to your organisation's ethical values

Use strong language

Examples

Our fundamental values include

We are committed to the highest standards of

We do not tolerate

Just say 'no' to

Use Austrade's Template as a starting point

[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 [discourage/avoid/do not condone/so 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.

Use a style and brand in keeping with your other top level strategic communications

Say what you do and what you do not do

Make it clear

- Short sentences
- Simple and concise words
- Active voice

Be open and transparent about your statement of intention

Publish it internally

- staff manuals
- intranet
- posters in all premises or locations

Publish it to external stakeholders

- website
- stationary footers
- email signatures
- business development materials
- posters in all premises or locations

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
- If applicable, in any offshore offices or agencies

Have Senior Management make regular public statements about ABC

2 Design a program

Assess your business risk

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).

Consider your business

- Business location/s
- Business sector
- Business size
- Key and common transactions/arrangements
- Location of offshore operations and their rating for bribery perception
- Potential links to offshore Agents , who could be a foreign public official who may be more susceptible to influence

Involve key stakeholders in the risk assessment

- Management and staff
- Suppliers
- Customers

Collect information on your business' risks by various means

- Confidential staff surveys
- Desktop research
- Workshops
- Interviews with suppliers and customers
- SWOT analysis

Be aware of Australian and offshore law

34% of corporations with offshore operations have limited or no working knowledge of applicable domestic and/or foreign laws. (Deloitte Bribery and Corruption Survey 2015)

Australian law applies to Australian citizens, residents and corporations, even when they are offshore.

Australian Criminal Code

Under section 70.2(1) of the Criminal Code Act 1995 (Commonwealth) a person is guilty of an 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 ie \$1.8 million; and
- for a company, a fine is issued in penalty units or it can be a proportional penalty, calculated with regard to the value of Benefits obtained from Bribery or the annual turnover of the company.

There are two defences:

- the advantage was permitted or required by the written laws that govern the Foreign Public Official
- the Benefit provided constituted a 'Facilitation Payment'.

Australian Anti-Money Laundering Law

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)

- Australian's regime is in the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Commonwealth)
- Financial Transaction Reports Act 1988 (Commonwealth)

International Conventions

Australia is a party to:

- OECD's 1999 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- United Nation's 2003 Convention Against Corruption

Offshore laws

Bribery is not lawful in any country.

Consider if there is a connection that attracts other offshore laws, including UK and US (eg Agent, bank account, emails routed through US - based servers)

US prosecutors will pursue cases under their Foreign Corrupt Practices Act even when the nexus to the US is limited.

Seek independent legal advice on all applicable offshore law

Austrade is not in a position to provide you with independent legal advice regarding the applicable offshore law

Be aware of common red flags for bribery

As a small to medium business, consider if any of the following indicators are part of your business model. More red flags may mean your business is exposed to more risk of bribery and corruption. The bigger the risk, the more you need rigorous internal controls.

- Location -perceived to have high levels of local corruption.
- Sector - mining, defence, currency, security, aerospace

- Involvement of foreign public officials (including close relations or associates)
- Large contracts in state run economies
- Businesses unexpectedly winning tenders
- Incomplete documentation or phoney invoices
- Meetings in luxury holiday locations
- Political donations
- Requests for secrecy/lack of media
- Agents and business partners
 - vaguely described services and deliverables
 - lack of experience / in a different line of business
 - merely a shell company
 - part of the transaction at the request of the foreign public official
 - large commissions
 - high expenses
 - upfront fees
 - urgent payments
 - cash payments
 - payments in multiple smaller amounts
 - payments to personal accounts
 - payments to offshore accounts
 - payments to trusts

Rate your risks

Likelihood or frequency of the risks occurring

- frequent, occasional or infrequent
- very high, high medium or low or remote

Impact of the risks on your business

- Catastrophic / high impact/ low impact /no impact

Document your risk assessment

- Registers
- Risk matrix or heat map of likelihood and frequency

Where the risk is too high, avoid doing business

Where you do business, consider proportionate internal controls

The level of control when you go to market and the systems that you put in place will depend upon your risk assessment.

There is no one size fits all ABC program. Your program will depend on your business risk.

3 Oversee the program

The authorities evaluate what constitutes an adequate compliance program on a case-by-case basis.

The approach is based on common sense, pragmatic considerations.

To assess a compliance program there are three basic questions:

Is the company's compliance program well designed? Is it being applied in good faith? Does it work?

(Morley "Comprehensive FCPA Guidance Provides a Roadmap for Companies to Reevaluate and Revise Their Compliance Policies," The FCPA Report, Vol. 1, No. 13 (Nov. 28, 2012).

Allocate staff to implement and oversee your ABC program

Accounts staff

- Implement financial controls
- Record keeping

HR staff

- Embed your statement of intention into HR policies

Senior Management

- Regularly review reports from Accounts and HR for anomalies

Whistleblowing

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

Rotate the staff appointments

Regularly report to the Board or equivalent

For expenditures, have Accounts staff prepare regular reports

- amounts
- frequency
- timing relative to opportunities/proposals/tenders
- staff involved in requests and approval
- anomalies

For training, have HR staff prepare regular reports

- depth of training delivered
- frequency of training offered
- seniority of staff who participate in training
- level of engagement at training sessions
- anomalies

For compliance have Management staff prepare regular reports

- program design, launch and rollout

4 Draft your ABC Policy

Make it clear

- Short sentences
- Simple and concise words
- Active voice

Use the language in our glossary [Insert link to resources page]

- Agent
- Benefit
- Beneficial Owner
- Bribery
- Facilitation Payment
- Foreign Public Official

Express that compliance with Australian and offshore laws is compulsory

Require your business to have controls so you know your Agents

Offshore Agents may not be subject to Australian law but they are subject to local laws. They do not insulate you from bribery or illegal payment made on your behalf.

Conduct due diligence on Agents

Background checks are not due diligence.

Do not rely on the due diligence of anyone else (including Austrade).

Start with independent and publically available sources of information.

Due diligence involves a process of research, meetings/interviews.

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. You are responsible to conduct due diligence and monitor their actions.

Know how you know them - Who referred/introduced? When? Where? Why? What is their skill set?

Know their Beneficial Owner/s.

Carefully procure Agents

Interview them.

Meet them in person.

Have a committee interview them.

Consider a tender process.

Do not use an Agent with known legal, payment or performance issues.

Have clear arrangements with Agents

Agree on your arrangements

Issues to be addressed include:

- Assist in your due diligence
- Work scope
- Accounting
- Payment
- Expenses
- Training
- Record keeping
- Termination
- Indemnity
- Your right to random audit

Seek independent legal advice to document your arrangements.

Carefully consider all payments to Agents

Understand the link between commissions and the business transaction/venture

Document the calculation or basis of all proposed commissions.

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.

Be aware of changes to payee/recipient.

Require two approvers of variation claims.

Monitor your Agent's behaviour during the life of the agency.

Be alert to Agent red flags [Link to page 7]

Have controls so corporate social responsibility (CSR) programs are not used for corrupt purposes

Consider the circumstances in which your business will have these

What types of CSR programs are allowed? Are any types not allowed?

- sponsorships
- charitable donations
- political donations

Is there a limit on their value?

Take into account local gift-giving practices

Who will decide? Consider dual approval.

Conduct due diligence to know the beneficiaries

Background checks are not due diligence

Do not rely on the due diligence of anyone else (including Austrade).

Start with independent and publically available sources of information

Due diligence involves a process of research, meetings/interviews

How was the program/sponsorship/donation solicited or offered?

Is the recipient approved as a charity under its local laws? What is its history? Who are the board members?

Is the recipient transparent about the use of its budget?

Check that the beneficiaries are not a foreign public official

- Includes their relatives and associates

Ensure that these are not used as a subterfuge for Bribery

Consider who benefits

- A community water purification plant or school Benefits many
- A private gym or pool Benefits only one family
- VISA assistance or education of a relative Benefits only one person or their family

Clarify how the money will be used

Review the amount and timing of any political donations

Ensure that any political donations comply with local laws on public disclosure

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 support/sponsorship/program

Ensure 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.

Request the recipient to keep records and provide periodic written reports on the use of the proceeds

Have processes that encourage whistle-blowers

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

Promote positive conversations about ethics and whistleblowing within your organisation

Make it safe to talk about ethics, how things are done, what can improve

Communicate to all staff that whistleblowing is not “dobbing in a mate” but “doing the right thing

Facilitate easy whistleblowing through multiple reporting channels

Internal

- Toll-free (International and local) phone 24/7 hotline
- Email eg [anti-bribery@\[company\].com.au](mailto:anti-bribery@[company].com.au)
- Contact details for direct access to a member of the Board

External

- Contact details for local police
- Contact details for Australian Federal Police

Protect whistle blowers with anonymity and confidentiality, as far as possible

Tell them to phone/email anonymously

Tell them not to conduct their own investigations nor contact the target of the complaint

Tell them that their contact details will not be made available to any accused

Be aware of local data, privacy and employment laws

Have external, independent and trained consultants to receive the calls/emails and report to Board

Offer incentives to whistle blowers

Consider incentives for staff who are whistle blowers - Refer to step 9

Make your ABC policy and processes accessible and visible

Distribute widely

- Intranet
- Staff manual
- Handouts at training sessions
- Posters in all premises or locations

Have translations

Offer staff regular refresher training

5 Develop detailed policies and processes

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 colloquially as “speed money”, “grease payments” or “oiling the wheels”.

Examples

- 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
- Planning permissions

Recognise that 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.
- such payments are questionable from the point of view of business ethics. They are banned in most OECD countries.

Avoid Facilitation Payments

Austrade's policy position is that facilitation payments represent a significant risk at a number of levels. So avoid them.

Keep contemporary documentary proof

As with all project costs, keep records – Refer to step 4

Develop a process for expenses, travel, gifts and hospitality

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.

Detail the expenditure categories in your business

- Travel
- Transport
- Accommodation
- Food and drink

- Alcohol
- Gifts of nominal value to promote or demonstrate eg small items with company logos or free snacks at a trade show
- Gifts of more than nominal value- eg tokens of esteem or gratitude
- Entertainment or hospitality eg sporting tickets

Set monetary limits for each a category

Have the Board decide the business's reasonable daily amounts for each category of expenditure and gifts.

Apply monetary limits consistently to all staff.

Set a list of approved payees

If a foreign public official is involved, 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 if you need approval from the foreign public official's agency

Consider what is appropriate and what is excessive

- Pair 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.
- Consider if the hospitality is disproportionate
- Consider the reasonableness of costs associated with training
- Consider the reasonableness of costs of a trip for senior officials to inspect facilities or review execution and performance of a contract
- Consider the bona fide of all promotional expenditure
- Consider relationship building alternatives eg dinner at your house, attending a community festival together

Do not simply give tickets to entertainment events.

The tickets are not a gift but an opportunity to build relationships and so the host needs to be at the events

Set a cash limit and do not pay cash over that limit

Prohibit their use for Bribery or anything that would be a violation of Australian or local law

Keep proper records of costs, payments and approvals

- Require proper accounting records including
 - Dates
 - Amounts
 - Locations
 - Full legal name and address of payees

Consult with a local lawyer to understand local record keeping requirements

Ensure that the date in any web based electronic approval form is automatic - rather than the requester dating (or backdating) the claims and payments

Prohibit off-the-book or secret accounts

Require approval of expenditure over the limit before expenditure

Appoint someone to review and approve

Implement a web based electronic approval form for consistent and central record of the claim/claimant/approval/payment

Require two management signatures on claims and payments over a certain amount –at least one of whom is not local

Regularly rotate approvers

Change the sequence of approvers periodically but make an individual requester unable to vary it

Invest in an external agency to manage travel bookings and approvals

Maintain a central register of approver signatures

Personal rather than shared PINs for bank reimbursements

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

Make the more senior decision maker appropriate for the value of the approval/payment/perceived risk

Have a separate person maintain records from the person who approves payments

Carefully consider the timing of expenses

Avoid coincidence with tender processes or other outcomes associates with decisions by a Foreign Public Official

Carefully examine gifts of more than nominal value

- Only give them where appropriate and proportionate under local custom occasion (eg religious or other festival)
- Limit gifts to what is reasonable.
- Ensure these are a genuine expression of good will, not an aim to influence.

Carefully examine side-trips and anything business or first class

- If a trip does not appear to be designed for any legitimate business purpose, is extravagant eg first class airfares for officials and their spouses, including an “all expenses” paid trip to a destination where the company has no facilities
- Expenses for the officials’ spouses 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.

[] 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

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

Define a conflict of interest for an individual within the context of your business

Consider the private interests of an individual (including but not limited to FOREIGN PUBLIC OFFICEs) and their close relatives, friends and associates

Consider the interest of the enterprise to which the individual belongs

Include not only actual but potential conflicts of interest

Require your current and proposed employees to disclose all conflicts of interest to the Board or equivalent

Ensure a reasonable lapse of time between public tenure and employment with your business

Establish processes to monitor declared conflicts of interest.

Annually request all staff to renew/update their declarations

Have staff declare when they are asked to pass on gifts on behalf of another

6. Apply your program to business partners

Know your business partners

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.

Conduct due diligence

Background checks are not due diligence

Start with independent and publically available sources of information.

Due diligence involves a process of research, meetings/interviews

Do not rely on the due diligence of anyone else (including Austrade).

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.

Interview them in person

Have a committee interview them

Know how you know them:

- Who referred/introduced?
- When?
- Where?
- Why?
- What is their skill set?

Know the Beneficial Owner/s of business partners.

Be careful if the business partner is an FOREIGN PUBLIC OFFICE or a former foreign public official

Consider a compulsory quarantine period

Conduct due diligence on the reason for their leaving their tenure, any continuing connection

Document your arrangements with business partners

- Assist in your due diligence
- Accounting, Payment, Expenses and reimbursement
- Training
- Record keeping
- Termination
- Indemnity
- Your right to random audit
- Common/central procurement and engagement of Agents

Require them to collaborate in your ABC program

Have their senior management acknowledge your ABC policy

If necessary provide a translation

Invite their staff to attend your training

Have each attendee sign an undertaking to comply with the policies.

Encourage them to actively develop their own policy and program

Refer them to the Austrade website

Encourage them to seek their own legal advice

Monitor their behaviour during the life of the relationship

Be alert to Agent red flags [Link to page 7]

Monitor compliance. Refer to Step 3.

Sanction any non-compliance

Before engaging with them, obtain a performance bond

Cease doing business with them if they do not comply

7. Have internal controls and keep records

Controls that prevent Bribery and corruption

Preventative internal controls would include:

- Train all staff – 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 a detailed policies and processes on expenses, travel, gifts and hospitality – see step 5
- Have a detailed policies and processes for whistle blowers– see step 5

Controls that detect Bribery and corruption

Detective internal controls would include:

- Facilitate Whistle blowers – see step 5
- Detection and reporting – see step 10
- Incentivise – see step 9

Controls that respond to Bribery and corruption

Responsive internal controls would include:

- Invoke termination clauses in agreements with Agents and business partners
- Discipline poor behaviour – Refer to Incentivise Step 9.

Maintain written procedures for controls

Circulate them to internal staff involved in implementing, monitoring or reviewing the control

Have translations

Keep fair and accurate books and financial records

Keep all records relating to payments

Characterisation of payment

- agent agreements, itemisation of commissions and fees
- reimbursement of expenses and gifts
- Facilitation Payments

Place of payment

Payee – full name and address

Approval – approver, time and place

If possible keep contemporaneous records

Follow Australian tax requirements

Follow local record keeping laws

Seek independent legal advice

Follow a document retention period

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

Consult with local lawyers

Issues that may differ under local law include:

- record keeping requirements
- tax regulations prohibiting the deduction of any form of bribe payment from taxable income
- ‘dawn raids’ by local authorities

Retain documents centrally

Prohibit destruction of documents earlier than required

8 Communicate and train

Make your ABC policy available to all

- Website
- Where applicable, standard terms and conditions

Make your detailed policies available to all staff

- staff handbook
- intranet
- training materials

Draft training materials

Use Austrade’s materials as a starting point

- [Include a link to Outreach PowerPoint here]
- [Include a link to Outreach handout ‘Common Red Flags for Bribery’ here]
- [Include a link to Outreach handout ‘Facilitation Payments-Just say No’ here]

Address the issues that your business needs to know

- What is Bribery? What is a Foreign Public Official? What is a Facilitation Payment? Refer to Glossary in Resources.
- What are the relevant laws and the consequences? Refer to Step 2 - Be aware of Australian and offshore law
- What are the risk factors? Include a link to ‘Common Red Flags for Bribery’.
- What are your people expected to do and not do? How do you say no ?
- How do people report Bribery? Refer to step 11

Tailor the training materials to your business

The detail will depend on your risk assessment

Include case studies and real life scenarios relevant to your business

Train to persuade

Make the training interactive

Involve staff in training

Include discussion to draw out personal stories

Address common ‘push back’ responses upfront

- “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.”
- “We know the market and how to do business.”

Address the negatives of not changing behaviour

Refer to Introduction.

For businesses, the costs increase:

- Adds costs of the bribes to your businesses
- May result in poor quality or inappropriate projects, products and services
- Distorts organisations
- Creates uneven markets where contracts are not awarded on merit
- Can lead to termination of contracts
- Disruption of supply
- Debarment from/not being allowed to compete for public contracts
- Damage to your reputation.

In 2014 we dropped from 10th to 11th ranking in the International Corruption's Perception Index of least corrupt public sectors. "This drop is a wake-up call". (Deloitte Bribery and Corruption Survey 2015 at 41)

- If caught there are significant consequences in penalties. The maximum penalties are:
 - Individual: imprisonment for up to 10 years or a fine of 10,000 penalty units (\$1.8m)
 - Corporation: fines for the greater of 3x Benefit, 10% annual turnover or 100,000 penalty units (\$18m)
- If caught there are also significant consequences in professional costs for lawyers, accounts and others.

Reframe to the positives of changed behaviour

Good ABC is part of building and keeping a good reputation.

Good ABC is part of ethical and socially responsible investment

Good ABC goes with the badge of government. As Australians our badge is one of only doing good business and winning trade legally.

Good ABC can be a competitive advantage

Acknowledge the difficulty in changing behaviour

Train on what to do

Say no, it's 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 law and can be prosecuted for soliciting or attempting to solicit a bribe.

Tell Austrade. Austrade will report your reasonable suspicions to Australian Federal Police. .

The issues may be raised Government-to-Government.

Seek advice from a lawyer.

If necessary cease to do business.

Train all staff and key external stakeholders.

Inform staff that the training is compulsory

Offer training on different times and days to enable part time and casual staff to attend

Offer training in different formats for different staff

- PowerPoint discussion

- Team meeting
- Written handouts to take home

Measure and report on training participation.

Track training via online learning modules

Obtain regular (eg annual) certification of understanding from all stakeholders

Refresh train regularly

Annually

Before new ventures/projects/investment territories

With any change in the law and after any incident or report

9 Incentivise

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

Have management lead conversations on ethics and compliance

Formal meetings

Informal discussions

In human resource policies, promote ethical behaviour/citizenship

Make it clear that no staff will suffer for refusing to pay a bribe

Make it clear that no staff will suffer for whistleblowing to the Board or equivalent

Have ethical ‘good citizenship’ objectives that are relevant to different seniority levels

- Positive engagement and contribution in training sessions
- Transfer of values/skills/processes to juniors
- Actively overseeing and chasing team members to comply
- Contribution of methods/process improvements

Avoid a box checking culture on ethical performance assessment

360 degree reviews and assessments

Make compliance with your ABC policy and program mandatory for staff

Incorporate citizenship and compliance into human performance reviews of staff

Include performance objectives that are quantitative

- Training attendance

Include performance objectives that are qualitative

- Good citizenship

Reward good behaviour

Individuals

- Link performance reviews to remuneration/salaries
- Bonus payments
- Discretionary rewards for outstanding ethical leadership

Teams

- Team celebration lunch

Provide periodic amnesties

Provide opportunities for staff to declare their non-compliance – “bring out your dead”

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

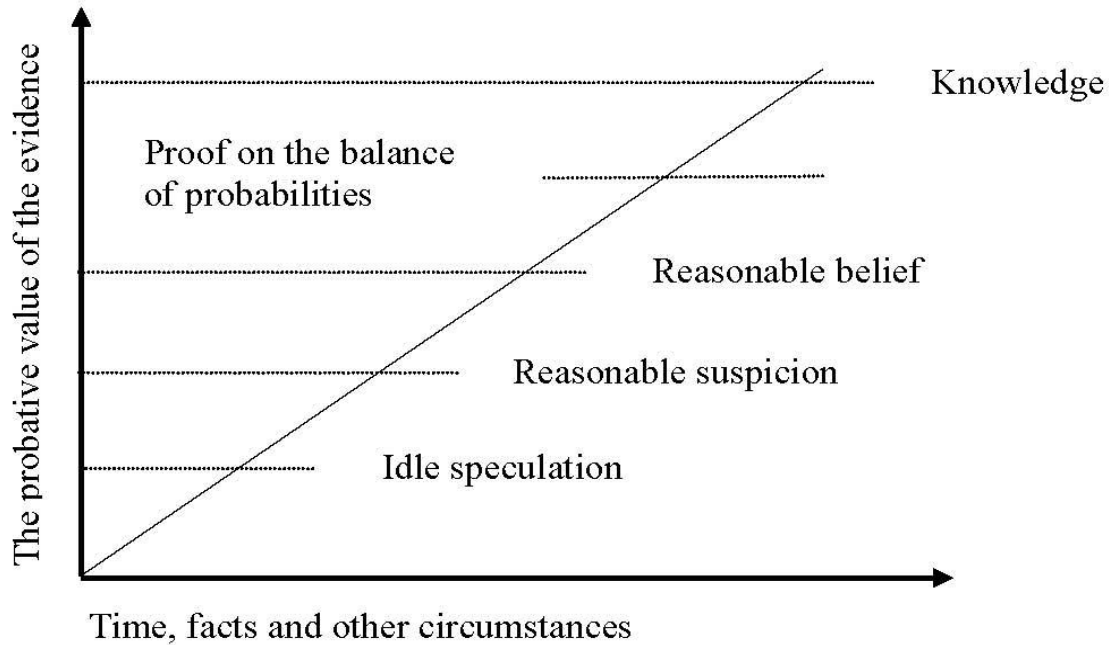
Financial penalties for teams

Create peer pressure

Regularly measure team performance

- High percentage of the team attends training
- Full payment records for a period/venture/project

10 Seek guidance, detect and report



Investigate swiftly to avoid alerting wrongdoers

Be careful of conducting a long internal self-investigation, which can give the impression of cover-up.

Seek independent legal advice

Consider all relevant laws and authorities

Listed companies may need to disclose allegations to shareholders

An investigation can trigger continuous disclosure obligations

Be aware of listing rules

Understand that Austrade officers are to report suspected Bribery

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

- reasonable suspicion from a credible source
- report/admission by an Austrade client concerning itself
- report by an Austrade client concerning competitors/others
- report against an Austrade client
- report against a foreign public official
- any report against Austrade staff
- any report about market access or trade issues

11 Address violations

Report suspected or actual Bribery or corruption

Allocate personnel to report externally

This will usually be the a Board member or equivalent

Report quickly

Do not delay with lengthy internal investigations

If there is confirmation from a brief internal investigation or any doubt remaining, report externally

Report to the Australian Federal Police

Refer to the Australian Federal Police website

Various factors will be considered by the authorities

The Australian Federal Police (AFP) is responsible for the investigation of foreign bribery offences.

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

- nature and seriousness of the offense, including the risk of harm to the public
- pervasiveness of wrongdoing, including the complicity in, or the condoning of, the wrongdoing by management
- history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it
- timely and voluntary disclosure of wrongdoing and willingness to cooperate in the investigation of its Agents
- 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
- adequacy of the prosecution of individuals responsible for the corporation's malfeasance
- adequacy of remedies such as civil or regulatory enforcement actions.

The Commonwealth Department for Public Prosecutions determines whether to undertake prosecutions.

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

- similar factors as those for Australian Federal Police above
- statutes or rules potentially violated
- egregiousness of the potential violation
- 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 statute of limitations period
- whether other authorities, including federal or state agencies or regulators, might be better suited to investigate the conduct

- 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

Keep records of your ABC program

If a prosecution is commenced for breach of 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.

Give serious consideration to terminating staff who breach your policy

12 Review

Periodically re-asses your ABC program

- After any incident
- With each significant business opportunity or venture

Audit all aspects of the ABC program

Audit governance

Staff interviews on the tone from the top

Leadership and approval appointments

Channels for whistle blowing

Audit training

Interview a random selection of staff for their understanding

Select from all seniority levels within the organisation

Audit whistle blowing instances

Were they fully investigated?

Audit performance reviews

Was ethical behaviour considered and rewarded?

Regularly audit compliance

- Annually

Have an internal audit /compliance officer randomly review records and interview teams

Audit due diligence of Agents

Request contemporaneous documentation of the due diligence

Focus on those associated with large payments or expense claims

Audit payment approvals

Is the payee from the pre-approved list of payees?

Check that payments to Agents correlate with engagement documents

Focus on those generic descriptions eg contract expense, settlement cost

Focus on high risk expenditures such as gifts and commissions

Seek further documentation of suspicious or irregular payments eg those just below a threshold

Seek to understand the ultimate recipient of funds

Invest in an external auditor

- independent assurance
- experienced

Make it compulsory to cooperate with the auditor

Refer to Incentives

Identify areas needing further resourcing/support

Share best practices within your organisation

Provide the auditor report to the Board or equivalent

Consider external accreditation

Only do this to supplement your own ABC program

Avoid check a box certification

Keep abreast of developments, case studies and information

Engage with reputable Industry Organisations eg Austrade

Engage with reputable consultants eg lawyers

Continually improve your ABC program

ABC Resources

Glossary

Agent

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

Beneficial Owner

The natural person who controls an organisation

Benefit

- Includes any advantage and is not limited to property
- financial or non-financial eg employment, scholarships or favours
- includes intangibles - business advantages, new business, retention of business
- can be offered by anyone, either directly or indirectly through another person such as an Agent
- the recipient could be a relative or associate of a Foreign Public Official

Bribery

Crime under Division 70 Criminal Code 1995 (Commonwealth) involving

- providing or offering to someone (directly or indirectly)
- a Benefit not legitimately due
- with the intention of influencing/motivating a person in the exercise of their duties
- in order to obtain a Benefit

Foreign Public Official

Defined in Division 70 Criminal Code and includes

- employees, contractors or officials of a foreign government department, agency, state owned or controlled entity
- officials of a public international organisation
- members of a foreign military or police
- 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 Australian Federal Police 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

Customary and unofficial minor payments to secure or speed a Routine Government Action

Not made to win business

Examples

- 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
- Planning permissions

[Insert link to Outreach Handout Facilitation Payments - Just Say No]

Records are required and 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
- the person’s signature or some other means of verifying the person’s identity

Routine Government Action

Refer to Division 70 of the Criminal Code

(a) is ordinarily and commonly performed by the official

(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

(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 - <https://www.unodc.org/unodc/en/treaties/CAC/>

OECD Anti Bribery Convention - <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

Anti-corruption legislation in UN countries - <http://www.business-anti-corruption.com/about/about-corruption/united-nations-convention-against-corruption.aspx> Data

Risk

Transparency International Corruption Perceptions Index 2014 - <https://www.transparency.org/cpi2014/results>

Deloitte Bribery & Corruption Survey 2015 Australia & NZ- <http://www2.deloitte.com/au/en/pages/risk/articles/bribery-corruption-2015-survey.html>

Government

AUSTRAC <http://www.austrac.gov.au/businesses/important-information-industry/corruption-and-bribery>

Attorney General's Department Crime Prevention

www.crimeprevention.gov.au/Financialcrime/Pages/Briberyofforeignpublicofficials.aspx

Standards and Programs

OECD Anti- Corruption Ethics and Compliance Handbook for Business

https://www.unodc.org/documents/corruption/.../13-84498_Ebook.pdf

ISO Standard - http://www.iso.org/iso/home/news_index/news_archive/news.htm?refid=Ref1967

Free Training Courses

Disclaimer

This links below are publically 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.

- **Doing Business Without Bribery** online training module www.inmarkets.com/e-shop.html

Compliance Checklist

Page 120-122 OECD Anti- Corruption Ethics and Compliance Handbook for Business

https://www.unodc.org/documents/corruption/.../13-84498_Ebook.pdf

Case studies

22 case studies in the OECD Handbook https://www.unodc.org/documents/corruption/.../13-84498_Ebook.pdf