August 2026

Statutory Review of the *Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024*

Section 4 of the *Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024* (the Act) requires that the Attorney-General initiate a review of the amendments made by the Act 18 months after they commenced.

The review will be undertaken by a review panel, consisting of Ms Sarah Chidgey PSM, Deputy Secretary of the Integrity and Security Group, Attorney-General's Department and Ms Hilda Sirec APM, Deputy Commissioner National Security Investigations, Australian Federal Police (AFP).

Terms of Reference

The review will, in accordance with section 4 of the Act, examine the operation of the amendments made by the Act.

In particular, the review will consider whether:

- the amendments have achieved their intended objectives, including in relation to deterrence, enforcement outcomes and corporate practices, and
- further amendments or other measures are necessary or desirable to improve the operation or enforcement of Australia's foreign bribery and related offences.

The review will undertake public consultation on these issues. An update on consultation outcomes in relation to the failure to prevent offence will be provided to the Attorney-General by 1 October 2026.

A written report of the review will be provided to the Attorney-General by 31 December 2026.

The review panel is seeking views from the public, industry and other stakeholders on the terms of reference, including the operation of the amendments made by the Act and whether further amendments or other measures are necessary or desirable to improve the operation or enforcement of Australia's foreign bribery and related offences.

The Combatting Foreign Bribery Act

The Act amended Division 70 of the Commonwealth *Criminal Code* and the *Income Tax Assessment Act 1997*. The Act sought to address key challenges with investigating and prosecuting cases of foreign bribery in Australia. The Act strengthened Australia's legal framework for preventing, detecting and prosecuting foreign bribery.

The Act strengthened Australia's existing foreign bribery offence by:

- extending the definition of foreign public official to include a candidate for office,
- extending the offence to include bribery intending to obtain or retain a personal advantage (the previous offence only covered bribery seeking to obtain or retain a business advantage),
- removing the requirement for the advantage to be 'not legitimately due'; instead the offence applies where the person intends to 'improperly influence' a foreign public official, and
- removing the requirement that the foreign public official be influenced 'in the exercise of their official duties'.

Further, the Act introduced a new corporate offence of failure to prevent foreign bribery. This offence does not apply if the body corporate can establish it had adequate procedures in place designed to prevent an associate from committing foreign bribery (subsection 70.5A(5) of the Criminal Code). The Act also introduced a requirement for the Attorney-General to publish guidance on the steps a body corporate can take to prevent an associate from bribing foreign public officials.

International obligations

As a party to the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention), Australia is required to ensure that our laws are effective in holding natural and legal persons to account for foreign bribery. Australia's implementation and enforcement of the Anti-Bribery Convention is subject to rigorous peer-review monitoring coordinated by the OECD Working Group on Bribery. The Act gives effect to recommendations from the OECD Working Group on Bribery through strengthening Australia's corporate liability framework and the scope of the foreign bribery offence. Australia's monitoring reports can be found here.

Have your say

We encourage you to provide your responses via the consultation platform. Submitting your response through the platform helps us analyse responses and publish them in a way that all users can access.

You do not need to answer every question. You may respond only to the questions that are relevant to you or your organisation.

If you are unable to use the consultation platform, you may provide a written submission responding to the questions in the discussion paper by email to the department at Foreignbribery.statreview@ag.gov.au.

Privacy

You may submit your response under your name or anonymously. Responses will be published at the end of the consultation period. Submissions will not be published without your consent, or if publication could raise legal concerns.

We may use an artificial intelligence (AI) tool for the purposes of analysing submissions and responses. Any AI tool used for this purpose will be securely hosted for departmental use within Australia and will comply with all departmental and government obligations on AI use. No information used within the AI tool will be shared outside of the department or be used for training any AI models.

Submissions may be subject to freedom of information requests, or requests from the parliament. Personal information shared through the consultation will be treated in accordance with the *Privacy Act 1988*. For more information on how the department collects, stores and uses personal information, please visit our Privacy Policy at https://www.ag.gov.au/about-us/accountability-and-reporting/privacy-policy.

For consideration

1. Section 70.2 – Bribing a foreign public official

The Act introduced amendments to the offence of bribing a foreign public official under section 70.2 of the Criminal Code to ensure the provisions of the offence appropriately criminalised typical cases of foreign bribery being encountered by law enforcement agencies. The Act expanded the definition of foreign public official to include candidates for office, extended the offence to circumstances where a personal advantage is sought or obtained, clarified that the offence is about 'improperly influencing' a foreign public official and removed the requirement for a bribe to be provided, promised or offered so as to influence a foreign public official in the exercise of their official duties.

Article 1 of the Anti-Bribery Convention requires Parties, including Australia, to criminalise the offence of bribing a foreign public official and specifies the conduct that the offence should relate to. At the time of Australia's phase 4 review by the OECD Working Group on Bribery, an iteration of the Bill which later became the Act, and which included the amendments to section 70.2, was before Parliament. In Australia's phase 4 report, the Working Group on Bribery welcomed Australia's approach to the legislative amendments.

Questions

1. How effective are the amendments made to section 70.2? You may wish to consider effectiveness from the perspective of both deterrence and enforcement.
2. Are there any issues with the operation of section 70.2 as amended by the Act?
3. Are there any additional measures that are necessary or desirable to improve the operation or enforcement of section 70.2?

2. Section 70.5A - Corporate offence: failure to prevent foreign bribery

The Act introduced a corporate offence for failing to prevent foreign bribery by associates. The entity will have a defence to this offence if it can demonstrate that it had adequate procedures in place to prevent such conduct. The Attorney-General is required to publish guidance on the steps a body corporate can take to ensure their anti-bribery controls are adequate (adequate procedures guidance). However, what constitutes 'adequate procedures' will ultimately be determined by the courts on a case-by-case basis.

The offence, and the framing of the defence, are intended to incentivise corporations to take proactive steps to identify and mitigate bribery risks within their operations and supply chains. In practice, this may include implementing compliance programs, conducting due diligence on third parties or embedding anti-bribery controls into governance arrangements.

Article 2 of the Anti-Bribery Convention requires Parties to ensure that legal persons (corporations) can be held liable for bribery of a foreign public official. Prior to the establishment of the failure to prevent offence, Part 2.5 of the Criminal Code (Corporate criminal responsibility) was the primary mechanism for holding corporations criminally responsible for foreign bribery.

To establish corporate criminal responsibility under Part 2.5 prosecutors are required to prove the corporation expressly, tacitly or impliedly authorised or permitted the offending conduct. This could be established through the actions of the board or senior management, or by proving the existence of a corporate culture that directed, encouraged, tolerated or led to non-compliance with the relevant provision.

In practice, this meant that attributing criminal responsibility to a corporation could be complex, particularly where foreign bribery was committed by an associate and there was limited evidence that the corporation had authorised, permitted or otherwise endorsed the conduct. By contrast, the failure to prevent offence does not require proof that the corporation authorised or permitted the bribery. Where an associate bribes a foreign public official under section 70.2 for the profit or gain of the corporation, the corporation will be liable unless it can prove that it had adequate procedures in place designed to prevent such conduct.

The review provides an opportunity to examine how the new offence is operating in practice, including whether it is driving meaningful changes in corporate behaviour, whether it assists in holding corporations accountable for the actions of their associates, and whether further clarification or amendment may be required to the adequate procedures guidance.

Questions

4. How effective is the failure to prevent foreign bribery offence? You may wish to consider effectiveness from the perspective of deterrence, enforcement and influence on corporate compliance practices.
5. If you have used the adequate procedures guidance, how useful have you found it? Do you have any suggestions about how the guidance could be improved?
6. Are there additional measures (legislative or non-legislative) that are necessary or desirable to improve the operation, implementation or enforcement of the failure to prevent offence?

3. Other components of the legislative framework, including penalties

To effectively detect and deter foreign bribery, conduct aimed at disguising, or avoiding detection of, a bribe must be adequately and effectively criminalised. Division 490 of the Criminal Code contains offences relating to intentionally or recklessly falsifying accounting documents to facilitate, conceal or disguise the receiving or giving of a benefit that is not legitimately due or a loss that is not legitimately incurred. Division 490 was established to strengthen Australia's compliance with Article 8 of the Anti-Bribery Convention which requires Parties to criminalise false accounting conduct.

The false accounting offences include the requirement that the benefit facilitated, disguised or concealed by the conduct is 'not legitimately due'. The Act amended the foreign bribery offence in section 70.2 to remove the concept of 'not legitimately due' and instead provide that the offence applies where a benefit is provided, offered or promised with the intention of 'improperly influencing' a foreign public official. The review is an opportunity to consider whether Division 490 should be amended to align with section 70.2; for example, to provide that it is an offence to falsify documents to facilitate, conceal or disguise a benefit or loss arising from the improper influence of a foreign public official.

Separately, the Anti-Bribery Convention requires Parties to have effective, proportionate and dissuasive penalties for foreign bribery and related offences. This is important to remove the financial incentive to engage in foreign bribery through ensuring the cost of a bribe (and subsequent penalties) outweigh any corporate profits that can be obtained as a result of the business or benefit gained from the bribe.

The maximum penalties under Division 70 and the intentional offence in section 490.1 are substantially aligned. The reckless accounting documents offence in section 490.2 attracts penalties that are approximately one-half of those applicable to the intentional offence in section 490.1.

Division	Offence	Penalty for individual	Penalty for body corporate
70.2	Bribing a foreign public official	Not more than 10 years imprisonment and/or 10,000 penalty units	100,000 penalty units, or 3x benefit, or 10% annual turnover (whichever is greatest)
70.5A	Failing to prevent bribery of a foreign public official	Corporate offence only	100,000 penalty units, or 3x benefit, or 10% annual turnover (whichever is greatest)
490.1	Intentional false dealing with accounting documents	Not more than 10 years imprisonment and/or 10,000 penalty units	100,000 penalty units, or 3x benefit, or 10% annual turnover (whichever is greatest)
490.2	Reckless false dealing with accounting documents	Not more than 5 years imprisonment and/or 5,000 penalty units	50,000 penalty units, or 1.5x benefit, or 5% annual turnover (whichever is greatest)

Questions

7. How effective are offences related to foreign bribery, such as false accounting?
8. Should the Division 490 offences be amended to replace the requirement for the benefit to be 'not legitimately due' with the concept of 'improper influence', to better align with section 70.2?
9. Are current penalties proportionate and effective to deter foreign bribery and related offences? If not, what would a more appropriate penalty be?
10. Are there additional measures (legislative or non-legislative) that are necessary or desirable to improve the operation or enforcement of offences related to foreign bribery?

4. Enforcement

The Act sought to overcome limitations in the previous foreign bribery offence, which was overly prescriptive and difficult to use, creating barriers for law enforcement to successfully investigate and prosecute foreign bribery.

Foreign bribery investigations are inherently complex. Evidence is frequently in an overseas jurisdiction, and offending may be underpinned by structures and fraudulent transactions that are deliberately concealed in legitimate business transactions. Australia is not alone in experiencing challenges in enforcing foreign bribery offences and works closely with international partners including as part of the International Anti-Corruption Coordination Centre. The Centre brings together law enforcement partners to provide real-time intelligence to investigating agencies.

On 20 October 2025, the AFP established a dedicated multidisciplinary taskforce (known as Taskforce Solaris) focused on preventing, detecting and investigating foreign bribery and grand corruption. The AFP uses search warrant powers to seek evidence in relation to these investigations. Execution of warrants, particularly where evidence is located in foreign jurisdictions, is a complex process. In order to obtain evidence located in a foreign jurisdiction, a mutual legal assistance request is required. This can be challenging in circumstances where a corporation has multiple offices and data servers in different jurisdictions, or if it is unclear where specific evidence may be located.

The review provides an opportunity to consider whether the current enforcement methods and powers are effective to detect, investigate and prosecute foreign bribery offences. The review could consider alternative or additional approaches to improve enforcement outcomes and more efficiently obtain evidence in foreign bribery investigations. For example, a notice to produce power, refining existing warrant processes, or improving processes for identifying legally privileged information.

Consistent with the principles in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, any new coercive power would need to be clearly justified as necessary and proportionate, and designed with appropriate safeguards, including clear thresholds for use and protections for privilege.

Questions

11. What are the current challenges experienced when enforcing foreign bribery offences?
12. How could existing enforcement powers and tools be improved to overcome challenges in obtaining evidence when investigating foreign bribery and related offences?
13. Would you support or not support any alternative or additional approaches to improve enforcement outcomes?

5. Corporate liability: Non-trial resolutions, including a Deferred Prosecution Agreement Scheme

The 2021 OECD recommendation for Further Combatting Bribery of Foreign Public Officials in International Business Transactions (2021 Recommendation) recommends that members consider using non-trial resolutions to resolve cases related to offences under the Anti-Bribery Convention. As per the 2021 Recommendation, non-trial resolutions refer to mechanisms developed and used to resolve matters without a full court or administrative proceeding, based on a negotiated agreement with a natural or legal person and a prosecuting or other authority.

In Australia, there are two non-trial resolution guidelines that may be used in relation to legal persons (corporations) in foreign bribery investigations and prosecutions. The Commonwealth Director of Public Prosecutions and AFP’s Best Practice Guideline: Self-reporting of foreign bribery and related offending by corporations dated December 2017 (CDPP and AFP self-report guideline) and the AFP’s Optimal investigation outcomes for self-reporting and cooperating corporations dated April 2026 (AFP’s optimal investigation outcomes guideline).

Non-trial resolutions can enhance detection through self-reporting, improve long-term compliance through corporate cultural changes, improve operational efficiency through securing enforcement outcomes without lengthy investigation and court processes and require the corporation to cooperate with associated investigations.

When the Act was developed and debated in Parliament, there were differing views on whether a Deferred Prosecution Agreement (DPA) scheme should be included. Under a DPA, criminal proceedings against a corporation are suspended and ultimately discontinued if the corporation complies with the agreed terms and conditions of the DPA.

The United Kingdom, United States and Canada have adopted DPA schemes and have used DPAs to secure financial penalties and corporate compliance in several major bribery cases. In Australia, advocates for the introduction of a DPA scheme have argued that it would encourage earlier self-reporting of corporate misconduct, improve prosecutorial efficiencies, and secure greater cooperation from corporations. This cooperation can often be vital in obtaining sufficient evidence to charge and prosecute. However, opponents argue that a DPA scheme may allow large corporations to avoid being held accountable by “buying their way out of trouble”, risking a perception of unequal justice which may undermine public confidence.

The specific operation of Australia's criminal justice system, such as the separation of police and prosecutorial functions (in some jurisdictions investigators and prosecutors are in the same agency), should be considered in assessing the potential effectiveness of international DPA schemes in Australia. For example, DPAs are considered once an investigation is complete. As a result, they may be less effective than other non-trial resolution approaches in incentivising corporations to self-report or cooperate. This is particularly the case where a corporation believes there is insufficient evidence to prove the offence.

The review provides an opportunity to examine Australia's existing non-trial resolution methods. The review will also consider whether a DPA scheme would improve enforcement outcomes and help detect, deter and prevent foreign bribery.

Questions

14. In your view, how effective is the CDPP and AFP self-report guideline?
15. In your view, how effective is the AFP's optimal investigation outcomes guideline?
16. How could the existing non-trial resolution mechanisms be improved in order to better encourage corporations to self-report, self-disclose and cooperate in investigations?
17. Should Australia introduce a DPA scheme for foreign bribery offences? Please provide details on any benefits, risks or concerns to support your response.
18. If Australia were to introduce a DPA scheme for foreign bribery offences:
    a. How should it operate? What should be its key features?
    b. What would be essential components or conditions of a DPA scheme to incentivise corporations to self-report, self-disclose and cooperate in investigations?

Further information

Other relevant information that may assist in providing feedback can be found here:

- About Australia's foreign bribery offences (Criminal Code): https://www.ag.gov.au/crime/foreign-bribery
- Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024: https://www.legislation.gov.au/C2024A00005
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: https://www.oecd.org/corruption/oecdantibriberyconvention.htm
- 2021 OECD recommendation for Further Combatting Bribery of Foreign Public Officials in International Business Transactions: OECD Legal Instruments
- Guidance on adequate procedures to prevent foreign bribery: Guidance on adequate procedures to prevent the commission of foreign bribery | Attorney-General's Department
- About privacy: https://www.ag.gov.au/rights-and-protections/privacy