

Module	ANTI-BRIBERY & CORRUPTION
Jurisdictions	CTH, NSW, VIC, SA, TAS, WA, NT, QLD, ACT
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Module Application

Does the organisation conduct business transactions or activities where interactions may create a risk of, or appear to involve, the provision or receipt of benefits not legitimately due to people, other organisations or public officials as an incentive in return for acts or omissions (for example, where there may be political or charitable contributions, or where projects are not undertaken at market prices)?

Is the organisation in an industry that is particularly susceptible to bribery and corruption (as rated by the Transparency International's Bribe Payers Index), such as where there is a high degree of government regulation (such as requiring permits, licences and planning approvals) or a requirement to interact with Australian public or foreign government officials?

Does the organisation engage in overseas operations in geographical locations where the Transparency International's Corruption Perceptions Index is high, where there is a high enforcement rate of anti-bribery and corruption laws (for example, in the People's Republic of China or the United States of America), or where offering benefits in return for acts or omissions is customary?

Module Scope

The ANTI-BRIBERY AND CORRUPTION module provides an organisation operating in Australia an understanding of their legal obligations to prevent bribery and corruption within the organisation. The module provides the practical assistance and guidance to ensure these obligations are complied with by demonstrating the establishment and maintenance of best practice processes.

The ANTI-BRIBERY AND CORRUPTION module covers the process for an organisation to develop anti-bribery and corruption systems, policies and procedures designed to address the risks connected with anti-bribery and corruption by cultivating and supporting an effective and compliant framework. Generally, there is no stated obligation on the organisation to

develop these anti-bribery and corruption systems, policies and procedures, but they are recommended by the module as best practice for the organisation intending compliance with all legal obligations.

There are four broad anti-bribery and corruption legal obligations that organisations need to comply with;

1. To not bribe commonwealth, state, local or foreign public officials;
2. To not bribe non-public officials (private bribery);
3. To not accept or receive a bribe; and
4. To keep and maintain proper and accurate records.

The obligations covered in the module are derived from the following sources;

- › Corporations Act 2001 (Cth);
- › Criminal Code Act 1995 (Cth);
- › Criminal Code 2002 (ACT);
- › Crimes Act 1900 (NSW);
- › Criminal Code Act (NT);
- › Criminal Code 1899 (Qld);
- › Criminal Law Consolidation Act 1935 (SA);
- › Criminal Code Act 1924 (Tas);
- › Crimes Act 1958 (Vic);
- › Criminal Code Act Compilation Act 1913 (WA); and
- › ASX Listing Rules.

Additionally, depending on where the organisation is listed and where the organisation operates, it may also be subject to the legislation of other countries including;

- › Bribery Act 2010 (UK);
- › Foreign Corrupt Practices Act 1977 (FCPA) (US); and
- › Securities Exchange Act 1934 (US).

Organisations operating overseas may face enforcement actions by overseas authorities such as the UK Serious Fraud Office, US Department of Justice (DOJ) and the US Securities and Exchange Commission (SEC).

The responsibility for investigating and prosecuting bribery and corruption offences in Australia is primarily divided between the Australian Federal Police (AFP), Australian Securities Investments Commission (ASIC) and state and territory law enforcement agencies. When bribery and corruption involves state officials it is likely that state-based crime and corruption commissions may be responsible for investigating and prosecution;

- › Independent Commission against Corruption (NSW) (ICAC);
- › Independent Broad-based Anti-Corruption Commission (Vic) (IBAC);
- › Crime and Corruption Commission (Qld);
- › Corruption and Crime Commission (WA);
- › Independent Commissioner Against Corruption (SA); and
- › Integrity Commission (TAS).

The ANTI-BRIBERY AND CORRUPTION module comprehensively covers anti-bribery and corruption obligations through the provision of considered advice and information on the following topic and sub-topic areas;

- Risk identification;
- Foreign public officials;
- Commonwealth public officials;
- State and local authority public officials;
- Private bribery;
- Overseas jurisdictions;
- Industry specific;
- Business specific; and
- Organisational culture.
- The duty of Directors and other officers to act in the best interests of the organisation and exercise powers and discharge their duties in good faith.
- Guidelines and policies;
- Code of conduct;
- Anti-bribery and corruption;
- Regular reviews;
- Responsibility;
- Agents and intermediary's due diligence;
- Gifts and hospitality;
- Political and charitable donations; and
- Facilitation payments.
- Training policies for staff, agents, consultants, contractors and board members.
- Prevention and monitoring;
- Central registers of gifts, hospitality, travel and donations;
- Assessment and review;
- Central registers of agents and intermediaries;
- Internal investigations; and
- Whistle-blower management and complaints.
- Reporting and record keeping;
- Financial records;
- Continuous disclosure;
- Disclosure of corporate governance practices;
- Serious indictable offences; and
- Voluntary disclosure of wrongdoing.
- Investigation and enforcement;
- Managing external investigations; and
- Requests for documents by regulatory authorities.

While there is no specific legal obligation for the organisation to implement the recommended guidelines and policies or undertake anti-bribery and corruption training, failure to do so will significantly increase the risk of bribery and corruption within the organisation. This exposes the organisation to consequences including criminal liability, significant pecuniary penalties and reputational damage to the organisation. The ANTI-BRIBERY AND CORRUPTION module comprehensively covers the range of specific consequences that apply to different breaches or failures by the organisation.

The ANTI-BRIBERY AND CORRUPTION module covers the anti-bribery and corruption legal obligations of organisations operating within Australia. The module additionally considers international obligations from the viewpoint of the Australian organisation. The module covers practical advice and recommendations for organisations intending to comply with anti-bribery and corruption obligations.

The ANTI-BRIBERY AND CORRUPTION module does not provide information to Australian entities not intending to implement anti-bribery and corruption policies and procedures within their organisations.

The module does not cover the procedures or processes to be followed by individuals or entities interacting with Australian organisations that have suffered damages or losses due to breaches of obligations and duties by the Australian organisation.

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