

Annex I

State Measures for Strengthening Business Integrity

The secretariat is seeking information from States parties to the United Nations Convention against corruption on good practices, practical examples and lessons learned from engaging the private sector and using sanctions and incentives to strengthen business integrity in the last decade. This is in line with relevant resolutions of the Conference of the States Parties to the United Nations Convention against Corruption, including, resolutions 5/6, 6/5, 9/6 and 9/8, as well as the commitments made by Member States in the political declaration entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, adopted by the General Assembly at its special session against corruption held in 2021. The answers provided by States parties will be used to update the 2013 UNODC publication “A Resource Guide on State Measures for Strengthening Corporate Integrity” ([English](#) - [Spanish](#) - [Russian](#)) with contributions from relevant international organizations and to develop an e-learning tool that will further support States parties’ efforts to strengthen business integrity.

The Resource Guide provides a catalogue of measures that States parties can adopt to promote business integrity and the reporting of corruption involving the private sector. The Resource Guide features three chapters: i) The United Nations Convention against Corruption and the private sector, which describes the articles of the Convention that frame State interaction with the private sector; ii) Engaging the private sector, which outlines the business case for countering corruption with emphasis on governance and other factors that can drive business integrity; and iii) Using sanctions and incentives, which describes the range of sanctions and incentives that have been developed to prevent and address corruption involving the private sector.

The secretariat invites States parties to disseminate this questionnaire among relevant stakeholders, with a view to identifying internal measures adopted by private sector entities to prevent and counter corruption. Respondents may choose to answer the whole questionnaire or only sections that are applicable and relevant to a State party. The secretariat would especially welcome the provision of illustrative examples.

Respondents’ contact details will be kept confidential. The secretariat may contact a respondent to seek additional information. Unless a State party requests otherwise when providing the relevant information, the secretariat may make the submissions publicly available, including through the [UNODC Business Integrity Portal](#).

The Government may wish to provide relevant information by completing the [online questionnaire](#) or by submitting its answers to the questionnaire (attached) to the secretariat by email to uncac@un.org at its earliest convenience but no later than **19 May 2023**.

Questionnaire

Chapter 1 – The United Nations Convention against Corruption (UNCAC) and the private sector

Background: It is important that States' legislative and other measures contain sufficient detail to inform the private sector of their requirements and scope of application. In line with the principle of legal certainty, it is important to have clear provisions outlining prohibited conducts and consequences to the private sector.

1(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote business integrity and/or reporting of corruption in the private sector in line with the United Nations Convention against Corruption.

Guidance on 1(a) and 1(b): Measures could, for example, include policies and/or laws and regulations designed to achieve the following:

- Prevent bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector
- Promote private sector transparency
- Promote cooperation between law enforcement agencies and private entities
- Promote cooperation between national authorities and private entities
- Prevent trading in influence
- Prevent conflicts of interest
- Prevent embezzlement of property in the private sector
- Promote the development of standards and procedures to safeguard the integrity of companies

Foreign Bribery Offences

Australia has a criminal offence that imposes heavy penalties for the bribery of a foreign public official. This offence criminalises giving a benefit to or causing a benefit to be given to another person that is not legitimately due, with the intention of influencing a foreign public official to gain a business advantage. The offence applies to conduct in Australia and to conduct outside of Australia committed by an Australian citizen, resident or Australian registered companies, regardless of the outcome of the bribe.

Bribery Prevention Network

The Bribery Prevention Network is a public-private partnership that brings together business, civil society, academia and government with the shared goal of supporting Australian business to prevent, detect and address foreign bribery and promote a culture of compliance. The BPN focuses on strengthening business awareness of bribery and corruption risk, particularly amongst small to medium enterprises (SMEs) who have business operations outside Australia and may operate in higher risk sectors or jurisdictions.

Corporate Sector Whistleblower Protections

Australia's *Corporations Act 2001* (Cth) (Corporations Act) gives certain people legal rights and protections as whistleblowers, to encourage whistleblowers to come forward with their concerns and protect them when they do. Reforms that commenced on 1 July 2019 significantly strengthened Australia's corporate whistleblower regime, by strengthening protections for persons who disclose corporate misconduct, and introducing new protections for persons who disclose tax misconduct.

From 1 January 2020, public companies, large proprietary companies, and corporate trustees of registrable superannuation entities are required to have a whistleblower policy and to make that policy available to officers and employees of the company. There are penalties for failing to comply with the requirement to have a whistleblower policy.

On 2 March 2023, Australia's corporate regulator, the Australian Securities and Investments Commission (ASIC) published a [report](#) to help entities improve their arrangements for handling whistleblower disclosures, and ensure they are effective and encourage people to speak up.

The report sets out the good practices ASIC observed from its review of seven entities' whistleblower programs from a cross-section of industries.

1(b) What challenges (if any) did you encounter in developing and/or enforcing such measures?

Enforcement of Foreign Bribery Offences

Obtaining evidence from overseas can be a challenge in the enforcement and prosecution of foreign bribery offences.

Bribery Prevention Network

The BPN must understand the environment in which it is operating. SMEs face specific challenges at a company level in developing and maintaining business integrity initiatives, such as:

- SMEs may perceive the risk of bribery and corruption as low or irrelevant and may be reluctant to invest already scarce resources to its prevention.
- It can be difficult for SMEs to navigate different legal requirements when operating across multiple jurisdictions.
- People who work for SMEs are often time poor and may be performing many roles in addition to those associated with anti-bribery and corruption compliance.

The BPN commissioned the University of Technology Sydney's (UTS) Design Innovation Research Centre to identify SMEs and research their needs in relation to preventing bribery and corruption, which also involved looking at whether the BPN Hub website was meeting their needs.

A key finding of this research was that almost all participants surveyed came to the website looking for case studies and scenarios; however, when participants accessed the case studies, they wanted more specific examples of bribery scenarios and situations – a real-life example rather than regulatory guidance.

Whistleblower Protections

It is important that private sector entities are aware of their obligations to establish whistleblower policies and to provide protections for whistleblowers. It is also important that persons who suspect misconduct are aware of reporting avenues and of whistleblower protections that apply to them.

1(c) Please describe the steps you took to overcome such challenges (if any).

Enforcement of Foreign Bribery Offences

Australia works actively with other countries to combat foreign bribery. The Australian Federal Police is responsible for enforcement of Australia's foreign bribery offence; Australia's International Crime Cooperation Central Authority within the Attorney-General's Department is responsible for Australia's mutual legal assistance (MLA) framework, including processing of MLA requests. Australia also uses informal practitioner-based networks, which are often the most effective and efficient ways to speed up and enhance international cooperation, such as the OECD Global Law

Enforcement Network against Transnational Bribery, Asset Recovery Interagency Network – Asia / Pacific (ARIN-AP), the Camden Asset Recovery Inter-Agency Network (CARIN), INTERPOL, the StAR Initiative and the Egmont Group.

Bribery Prevention Network

The BPN has developed its content with the challenges identified above in mind, including by:

- Using language which acknowledges the complexity of anti-bribery compliance, alongside zero-tolerance messaging.
- Supporting users in their anti-bribery compliance journey, including through peer-to-peer networking events which allow SMEs to learn from each other. These well-facilitated peer to peer interactions enable a community to negotiate and shape the norms on what is acceptable behaviour in this context.
- Providing information in formats that are visual, for example: videos, images, graphs, tables - and infographics. These visual options benefit SMEs who are short on time and more likely to watch or listen to content, rather than engage with written material.

In response to findings by the UTS mentioned above, the BPN are ensuring an ongoing focus on identifying and publishing new case studies. The case studies on the BPN website are developed by anti-bribery specialists, with each document detailing a scenario, guidance on how to respond and additional supportive resources. Designed to help SMEs, these case studies can be easily incorporated into anti-bribery training programs. The case studies cover topics which include:

- Implementing an anti-bribery and corruption policy. This particular scenario follows Finlay, a fictional character who operates a tech start-up, and is ready to launch an application that may expand into several countries. The intention of the case study is to demonstrate that an anti-bribery compliance framework is the first line of defence for an organisation.
- Another series of case studies follows a character called Sarah, who grows Macadamia nuts on rural land in Australia and recently started exporting macadamias into the European market. A number of case studies follow Sarah as she becomes aware of an internal bribery complaint, is required to respond to contact from authorities and, finally, demonstrates the types of enforcement actions and penalties that might apply if a company, its officers or employees are found guilty of bribery and corruption offences.

This iterative format allows readers to understand appropriate management of complaints and how to best cooperate with enforcement authorities.

Some of the key lessons we have learned from developing case studies for the BPN are:

- Content should be in an information form that meets the practical needs of SMEs. For example, use of short, narrative-based case studies; easy to use templates and use of visual resources
- Content should be reliable and up-to-date
- Content should be relevant to SMEs
- The relevance of content to SME operations should be clearly communicated
- Content should be inclusive, integrating gender equality and linguistic diversity.

Whistleblower Protections

Since 2019, ASIC has issued a regulatory guide, information sheets, media releases, articles and other information about the enhanced corporate whistleblower protection regime and continues to engage with stakeholders across the corporate, legal, academic, public, and regulatory sectors on the regime.

ASIC established an Office of the Whistleblower in 2014 to monitor and improve ASIC's handling of disclosers who report corporate misconduct.

ASIC has released Regulatory Guide 270 *Whistleblower policies* (RG 270) to help entities establish a whistleblower policy that complies with their legal obligations. It also contains ASIC's good practice guidance on implementing and maintaining a whistleblower policy. RG 270 can also assist entities that are not required to have a whistleblower policy but are required to manage whistleblowing in accordance with the Corporations Act. Further guidance is contained in ASIC Information Sheet 247 *Company officer obligations under the whistleblower protection provisions* (INFO 247).

ASIC has released two information sheets for people to understand who is eligible to access the whistleblower rights and protections under the Corporations Act and how ASIC will respond to reports of misconduct from whistleblowers.

- Information Sheet 238 *Whistleblower rights and protections* (INFO 238)
- Information Sheet 239 *How ASIC handles whistleblower reports* (INFO 239)

Chapter 2: Engaging the private sector

Background: Anti-corruption programmes, commonly referred to as compliance programmes, are a primary tool used by companies to advance ethical business practices. They provide a framework for articulating the values, policies and procedures used by a company to educate its employees and to prevent, detect and counter corruption in its business operations.

2(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote integrity through anti-corruption programmes in the private sector.

Guidance on 2(a) and 2(b): Measures and good practices could, for example, include those designed to:

- Raise awareness of business integrity
- Encourage the private sector to establish anti-corruption policies, procedures and/or programmes
- Promote training and education on anti-corruption in the private sector
- Provide trainings or guidance, or develop model anti-corruption programmes or policies for companies to use and adapt

Australia has undertaken a number of initiatives to promote integrity in the private sector.

Bribery Prevention Network

As mentioned in response to question 1, the BPN is a public-private partnership that brings together business, civil society, academia and government with the shared goal of supporting Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance. The BPN offers a free, online portal of accessible, relevant and reliable resources, curated by Australia's leading anti-bribery experts, to support Australian business to manage bribery and corruption risks in domestic and international markets. Further information can be found at: <https://briberyprevention.com/>.

Please refer to information provided on the BPN in response to question 1.

Draft Adequate Procedures Guidance to Prevent Foreign Bribery

In 2019 the Australian Government developed [draft adequate procedures guidance](#) for companies of all sizes, including SMEs, concerning steps that companies should put in place to prevent the bribery of a foreign public official by an associate.

In 2021 the Attorney-General's Department launched a revised version of its foreign bribery [online learning module](#) as well as broader guidance about foreign bribery on its [public website](#). The short interactive training module provides industry and government with information about Australia's anti-bribery regime including relevant laws and where they apply, what conduct can constitute bribery and who is a foreign public official.

2(b) Please describe (cite or summarize) good practices and/or examples of measures you have used to encourage transparency, public reporting and/or public participation through your anti-corruption programmes (both for the public and private sectors).

Public Participation in the BPN

One of the most significant features of the BPN is that it was co-designed and continues to be co-led by the private sector and government by way of a Steering Committee comprising representatives from both sectors.

The BPN was launched in October 2020. Consultation with Commonwealth agencies on an initiative of this kind commenced two years prior, in late 2018.

In 2019, the Australian Federal Police (AFP) funded a three-day forum which brought together anti-bribery and corruption experts and private sector representatives to discuss and lay the foundations for a new approach to foster private sector engagement.

The forum was Chatham House rules and encouraged frank discussions and assessments of Australia's challenges in combatting bribery of foreign public officials.

The forum brought together over 50 representatives from a range of private and public organisations to co-design new ways of working together to prevent bribery.

This was crucial because it allowed us to identify common goals in bribery prevention across Government and the private sector and to have an open and honest discussion about the barriers to increasing bribery awareness at the SME level.

Engaging in discussions with non-government stakeholders was a necessary step in Australia's decision to form the BPN, which could not have been achieved without first investing in the three day forum to bring together relevant experts and private sector representatives.

In terms of governance, the BPN is led by a Steering Committee that comprises 11 representatives.

- These representatives come from companies and organisations including publicly listed and private companies, government bodies, not-for-profits and two industry associations.
- An Editorial Sub-Committee and Engagement Sub-Committee guide the continued development and promotion of the Hub and relevant activities in addition to the presence across domestic and international markets.
- The UN Global Compact Network was also established as the Host network. The Host network coordinates and provides oversight of all BPN projects and initiatives agreed by the Steering Committee.

This collaborative approach ensures meaningful engagement with both the private sector and civil society in developing practical resources for Australian businesses.

2(c) What was the impact of the measures described above (2a and 2b)?

Bribery Prevention Network

The Bribery Prevention Network has published 8 case studies on a range of industries and scenarios to support businesses to know how to prevent, detect and address foreign bribery, including on implementing an anti-bribery and corruption policy, implementing a whistleblower policy, conducting thorough due diligence, investigating internal complaints, responding to contact by an authority, and other bribery related topics.

As of June 2022, the BPN website had more than 500 subscribers, been viewed over 21,000 times, and accessed by over 6,000 unique users.

2(d) What challenges (if any) did you encounter in implementing the measures above (2a and 2b)?

Please refer to Australia's response in 1(b) and 1(c).

Chapter 3: Using sanctions and incentives

Background: While effective sanctions for corruption offences are required under the United Nations Convention against Corruption, the Convention also recognizes the essential role of incentives that encourage and reward corporate self-reporting and preventive efforts.

Part A - Sanctions

3(a) Please describe (cite or summarize) good practices and/or examples of sanctions used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(a): Sanctions could, for example, include any of the following:

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption
- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company
- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf
- Contract remedies and other means to communicate and enforce anti-corruption contractual provisions
- Suspension and/or debarment of contractual partners from government processes
- Denial of government benefits (fiscal or otherwise)
- Liability for damages and compensation of victims of corruption
- Reputational damages to hold wrongdoers publicly accountable
- Any other type of sanctions not listed above

Foreign Bribery Penalties

The offences for foreign bribery carry significant penalties for individuals and companies.

The maximum penalty for an individual is 10 years imprisonment and/or a fine of 10,000 penalty units (\$2.75 million).

The penalty for a body corporate can be a fine issued in penalty units or it can be a proportional penalty, calculated according to the value of benefits obtained from bribery, or the annual turnover of the company.

If the value of the benefits obtained through bribery can be calculated, the maximum penalty is the greater of the following fines:

- 100,000 penalty units (\$27.5 million)
- 3 times the total benefit obtained from the bribe.

If the value cannot be calculated, the maximum penalty is the greater of the following fines:

- 100,000 penalty units (\$27.5 million)
- 10% of the ‘annual turnover’ of the body corporate and related bodies corporate.

These penalties reflect the serious criminal nature of bribery and the detrimental effects it has on Australian trade and reputation, and international governance.

In addition to criminal penalties, any benefits obtained by foreign bribery can be forfeited to the Australian Government under the *Proceeds of Crime Act 2002* (Cth).

Whistleblower sanctions

Company officers, company auditors, and other senior people within companies have obligations under the Corporations Act if they receive a report from a whistleblower. Unless these people handle the whistleblower report correctly, they may breach the Corporations Act obligations.

The whistleblower protections include criminal offences and civil penalties for a person causing or threatening to cause detriment to a whistleblower or breaching a whistleblower’s confidentiality, including during an investigation into the whistleblower’s concerns.

3(b) What were the main challenges (if any) your country faced in enforcing these sanctions?

Foreign Bribery Enforcement Challenges

In Australia’s [Phase 4 report](#) to the OECD Working Group on Bribery, Australia’s Commonwealth Directorate of Public Prosecutions identified that a challenge in successfully prosecuting Australia’s foreign bribery offences is proving the ‘intent to influence’ a foreign public official where the suspect has been wilfully blind to their conduct. In such cases, it is hard for authorities to prove intention on the part of senior managers and directors owing to difficulties in obtaining evidence from overseas. This is important as almost all foreign bribery payments are made through intermediaries, who are often based overseas.

3(c) What steps did you take to overcome those challenges (if any)?

Australia works actively with other countries to combat foreign bribery. The Australian Federal Police is responsible for enforcement of Australia’s foreign bribery offence; Australia’s International Crime Cooperation Central Authority within the Attorney-General’s Department is responsible for Australia’s mutual legal assistance (MLA) framework, including processing of MLA requests. Australia also uses informal practitioner-based networks, which are often the most effective and efficient ways to speed up and enhance international cooperation, such as the OECD Global Law Enforcement Network against Transnational Bribery, Asset Recovery Interagency Network – Asia / Pacific (ARIN-AP), the Camden Asset Recovery Inter-Agency Network (CARIN), INTERPOL, the StAR Initiative and the Egmont Group.

On 2 December 2019, the Australian Government introduced the [Crimes Legislation Amendment \(Combatting Corporate Crime\) Bill 2019 \(Cth\)](#) (the Bill) into Parliament which contained a proposed ‘failure to prevent’ foreign bribery offence for companies. The Bill lapsed on 25 July 2022 when Parliament was prorogued ahead of the 2022 Australian federal election.

The Australian Government is strongly committed to combatting corporate crime and bribery of foreign public officials. The Government will consider reforms to the corporate criminal framework and foreign bribery offences, including reforming offences in the Criminal Code to remove undue impediments to the successful investigation and prosecution of foreign bribery. AGD continues to work closely with the AFP, CDPP and other enforcement agencies to ensure law enforcement agencies have the necessary tools to combat corporate crime. AGD will work with the private sector in relation to any future reforms.

Part B - Incentives

3(d) Please describe (cite or summarize) good practices and/or examples of incentives used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Foreign Bribery Offences

Corporations can receive a discount in penalties if they are implicated in foreign bribery and plead guilty to an appropriate criminal charge at an early stage in the investigation or prosecution process.

Furthermore, the court must also take into account at sentencing the degree to which a corporation has cooperated with law enforcement agencies in the investigation of the offence or of other offences. This cooperation may include self-reporting the offending. During sentencing, the AFP can provide a letter of assistance to be tendered by the prosecution at court that outlines the nature and value of the corporation's assistance to the AFP where that assistance relates to evidence or information beyond the scope of the corporation's own offending.

Whistleblower Protections

Persons who report misconduct have the right to confidentiality and to report misconduct anonymously. The Corporations Act contains criminal offences and civil penalties for a person causing or threatening to cause detriment to a whistleblower or breaching a whistleblower's confidentiality. Whistleblowers are also protected from certain legal actions related to making the whistleblower disclosure. Employees that suffer loss, damage or injury for making a report can seek compensation through a court, seek to be reinstated to their job or seek other remedies through the courts.

3(e) What is the main impact of such incentives?

Whistleblowers play an important role in identifying and calling out misconduct and harm to consumers and the community. To encourage whistleblowers to come forward with their concerns and protect them when they do, the Corporations Act gives certain people legal rights and protections as whistleblowers.

The other incentives in 3(d) encourage parties implicated in foreign bribery to resolve investigations early and cooperate with the investigating authority. This can reduce investigation times and can help corporations improve their foreign bribery compliance by identifying how the conduct was able to occur.

Guilty pleas that lead to the timely and appropriate resolution of matters can save significant investigative, prosecution, court and community resources and are in the public interest.

A corporation may choose to self-report foreign bribery or related offending for many reasons, including to:

- proactively identify and address wrongdoing within the corporation
- comply with directors' statutory and fiduciary duties to act in the best interests of the corporation
- limit corporate criminal liability
- minimise reputational damage
- demonstrate a cooperative intent with the AFP in investigating the conduct

- maximise the sentencing discount that will be available to the corporation in any relevant prosecution of the corporation
- be a good “corporate citizen”.

Part C - Additional measures

3(f) Please describe (cite or summarize) good practices and/or examples of any other additional measures used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(f): Additional measures could, for example, include any of the following:

- Integrity pacts – written agreements between government agencies and companies to strengthen integrity in public procurement, usually overseen by an independent monitor
- Collective action – collaborative initiatives that bring companies and other relevant stakeholders together to prevent and counter corruption and raise standards of business integrity
- Public sector reform – civil service and/or regulatory reforms that reduce the opportunities for corruption
- Public education – activities that raise public awareness of corruption and its harmful effects

Section 490.1 of the *Criminal Code Act 1995* (Cth) creates an offence for false dealing with accounting documents. In addition to foreign bribery offences, the *Criminal Code Act 1995* (Cth) also contains offences related to bribery, including corrupting benefits given to, or received by, a Commonwealth public official.

There are a number of legal responsibilities imposed on directors in Australia. Some of the most significant include:

- to act in good faith in the best interests of the company and for a proper purpose
- to exercise care and diligence to avoid conflicts between the interests of the company and their personal interests (not to dishonestly use their position to obtain a benefit or advantage for themselves or someone else), and to prevent the company trading while insolvent.

Additional information

Is there any other information that you wish to share which has not been addressed by the previous questions?