



## Significant Reform Signalled for Australia's Foreign Bribery Regime

On 6 December 2017, the Commonwealth Government announced its intention to significantly reform Australia's existing anti-foreign bribery regime.

The *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017*, now tabled in the Senate, contains a number of key reforms including:

- a corporate "failure to prevent foreign bribery" offence;
- a deferred prosecution agreement ("DPA") regime; and
- amendments to broaden the existing foreign bribery offence.

The amendments signal a deliberate shift of responsibility onto companies to prevent foreign bribery occurring and, if improper conduct is detected, to self-report and cooperate with law enforcement agencies.

The failure to prevent foreign bribery offence is modelled closely on an equivalent provision in the United Kingdom's *Bribery Act* and (in the exposure draft legislation) creates an "absolute liability" offence for companies whose employees, agents, contractors or subsidiaries engage in foreign bribery unless the company can prove that it had "adequate procedures" in place designed to prevent the commission of the offence.

The proposed offence requires the Minister for Justice to provide guidance on the steps that a company can take to prevent foreign bribery.

The inclusion of the proposed DPA scheme comes after much speculation with similar schemes having been used to great effect by regulatory agencies in the United States (and more recently in the United Kingdom) for years.

Entry into a DPA would require a company to agree to various conditions such as payment of a pecuniary penalty, cooperation with investigating agencies and implementation of an appropriate compliance program.

The proposed reforms have been tabled in Parliament on the eve of the date on which the Senate Economics Reference Committee was due to release its report on foreign bribery and improving Australia's compliance with its obligations under the OECD Convention.

We will prepare a detailed *Commentary* when the Senate Committee's report has been released.

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### CONTACTS



Steven W. Fleming  
Sydney



Tim L'Estrange  
Sydney



Tom A. Haystead  
Sydney

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