



Australian Government

Attorney-General's Department

Commonwealth Fraud Control Guidelines, Foreign Bribery and Corruption

- Thursday 8 September
 - Timothy Goodrick
 - A/g Assistant Secretary, Border Management and Crime Prevention Branch,
 - Attorney-General's Department

Attorney-General's Department

- ***Commonwealth Fraud Control Guidelines***
- ***Foreign Bribery***
- ***Corruption Prevention***

Commonwealth Fraud Control Guidelines

- Attorney-General's Department's role
 - The Attorney-General's portfolio has policy responsibility for Commonwealth fraud control policy
 - AGD is taking an active role in putting together better guidance and resources that are available to all agencies

Commonwealth Fraud Control Guidelines

- What they are and who they apply to
 - Issued on 24 March 2011. Last issued in 2002
 - The Guidelines are issued by the Minister for Home Affairs under Regulation 16A of the *Financial Management and Accountability Regulations 1997*
 - The Guidelines are a Legislative Instrument and apply to all agencies subject to the FMA Act
 - Only certain CAC Act agencies are subject to the Guidelines

Commonwealth Fraud Control Guidelines

- What they do
 - Guidelines set out the policy framework and expectations for fraud control
 - Specific language in the Guidelines to set out mandatory requirements and best practice
 - Part of the Australian Financial Management Framework
 - Complimented by ANAO Better Practice Guide, AGIS and other material
 - Require efficient, effective and ethical management, in accordance with the policies of the Commonwealth

Commonwealth Fraud Control Guidelines

- Requirements
 - Regular risk assessments
 - Up to date fraud control plans
 - Appropriate training
 - Referrals and investigation

Commonwealth Fraud Control Guidelines

- Why change them
 - Changed landscape
 - Citizen centric services
 - New technology and online threats

Commonwealth Fraud Control Guidelines

- Key change - Prevention
 - Fraud prevention plans and risk assessments as living document
 - Fraud prevention in:
 - Program design
 - Program implementation, and
 - Business as usual

Commonwealth Fraud Control Guidelines

- Key Change – CEO Role
 - Core responsibility for preventing and dealing with fraud in their agencies
 - Building a fraud resistant culture
 - Practical steps:
 - Resources
 - Training, and
 - Clear advice to government on fraud risks

Commonwealth Fraud Control Guidelines

- Other Changes in the Guidelines
 - Role of the AFP
 - Training obligations
 - Fraud reporting
 - Building a fraud resistant culture

Commonwealth Fraud Control Information Online

<http://fraud.govspace.gov.au/>

Foreign Bribery

- Why is Australia concerned about foreign bribery?
 - Corruption hurts developing countries
 - Foreign bribery damages Australia's international reputation
 - Bribers have an unfair advantage over other businesses
 - Australia is a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Foreign Bribery

- Australia's foreign bribery law
 - Foreign bribery is a serious crime.
 - Bribing, or attempting to bribe, a foreign public official is prohibited.

Foreign Bribery

- Foreign public official
 - An employee, official or contractor of a foreign government body or a public international organisation
 - An office holder under a law, custom or convention in a foreign country, or in a public international organisation
 - A member of the executive, judiciary, magistracy or legislature in a foreign country

Foreign Bribery

- Australia's foreign bribery law applies to:
 - Australian citizens
 - Australian residents
 - Australian companies
 - in Australia or overseas

Foreign Bribery

- Elements of the bribery offence
 - Provide / offer / promise a benefit to someone that is not legitimately due
 - To influence a foreign public official in the exercise of his/her duties
 - In order to obtain / retain business / a business advantage that is not legitimately due

Foreign Bribery

- A bribe...
 - Includes an offer or promise of a bribe
 - Does not have to be successful
- It is a defence if...
 - The benefit is legal under the written law of the foreign country OR
 - The benefit is a “facilitation payment”:
 - A payment of a minor value
 - For routine government action only

Foreign Bribery

- Penalties for foreign bribery
 - Maximum penalty for individuals:
 - 10 years' imprisonment
 - \$1.1 million fine
 - Maximum penalty for companies is the greater of:
 - \$11 million
 - 3 times the value of the benefits obtained from the bribe
 - 10% of total revenue for the year immediately before the bribe

Foreign Bribery

- Investigations
 - The investigation of foreign bribery is a high priority
 - Investigations are very complex
 - Australia often relies on the assistance of foreign governments

Foreign Bribery

- Education
 - Education is important to combat foreign bribery
 - Training of Australian Government officials
 - Information sessions and guidance for private sector
 - Australian Government Foreign Bribery Information and Awareness Pack

Foreign Bribery

- International laws
 - Australian companies need to be aware of US and UK foreign bribery laws
 - UK and US foreign bribery laws may also apply to Australian companies
- Review
 - Part 3 of the review of the Australian foreign bribery laws will occur in 2012

United Nations Convention Against Corruption

- Australia's Review
 - UNCAC is the first binding global instrument on corruption
 - Establishes mechanisms for prevention and criminalisation of corruption, as well as international cooperation and asset recovery.

United Nations Convention Against Corruption

- Australia's Review
 - THE UNODC developed a peer review model for UNCAC – a first for a UN convention
 - Cycle 1 of the Review will cover:
 - Chapter 3 - Criminalisation and Law Enforcement, and
 - Chapter 4 – International Cooperation

United Nations Convention Against Corruption

- Australia's Review
 - Australia's implementation of UNCAC is currently under review
 - Peer Review by the US and Turkey
 - Final report due mid-2012

United Nations Convention Against Corruption

- Consultation
 - AGD coordinating Australia's review
 - Consultation with Commonwealth and State and Territory agencies
 - AGD has also conducted a public consultation process

Thank you

- Do you have any questions?

Contacts

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UNCAC

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