Australia's foreign bribery laws - new offence for Australian companies proposed

Regulatory Update

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The Attorney-General's Department recently published a consultation paper on proposed amendments to Australia's existing laws on foreign bribery.

The proposed changes to existing laws, and introduction of a new offence for businesses that fail to prevent foreign bribery, may have a significant impact on a number of Australian companies operating overseas that interact with officials of foreign governments. They reflect a continuing drive to strengthen Australia's anti-bribery regime, following the introduction of false accounting offences in March 2016 (read our update about those offences here).

In summary, the paper, available here, seeks comments from the public on:

- creating a new corporate offence of failing to prevent foreign bribery (similar to the provisions in the UK's Bribery Act)
- extending the reach of current foreign bribery laws to:
  - include candidates for public office in the definition of foreign public official
  - capture bribery engaged in for the purpose of obtaining a personal advantage, not just a business advantage
  - creating a new offence based on reckless (as distinct from intentional) conduct
  - remove the requirement of influencing a foreign public official in the exercise of their official capacity
  - clarify that the advantage sought by the bribery does not need to be for the individual charged, it can be for another person.

The proposed new corporate offence of failing to prevent foreign bribery, if implemented, is the change likely to have the biggest impact on Australian business. It would mean an Australian company would be automatically liable for bribery by employees and others acting on their behalf (including those operating overseas), except where the company can prove that they had proper compliance controls and procedures in place to prevent the bribery from occurring. If passed, it will be essential for Australian businesses operating overseas to not only have robust anti-corruption and bribery policies in place but to also train staff and ensure adherence to those policies.

If you'd like our assistance in preparing a submission on the proposed changes, please contact Rani John or Jonathon Ellis.

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