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Australia
White Collar Crime

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Australia.

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Australia: White Collar Crime

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

Australia has enacted a comprehensive statutory framework to criminalise financial misconduct and abuse. The primary statutes in this framework are the *Criminal Code Act 1995* (Cth) (**Criminal Code**) and the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Criminal Code is the primary federal statute criminalising financial crime offences.

- Tax offences are contained in sections 134 and 135 of the Criminal Code. Offences include obtaining property by deception, obtaining a financial advantage by deception and conspiracy to defraud. The *Taxation Administration Act 1953* (NSW) (**TAA Act**) also criminalises tax offences. A person will commit an offence if they knowingly give false or misleading information, deliberately omitting information and failing to lodge relevant documents.
- Money laundering offences are covered in Part 10.2 of the Criminal Code, which prescribes it as an act that conceals the fact that money is the proceeds of crime. The Criminal Code prescribes that a person commits this offence if they knowingly deal with the proceeds of crime. AUSTRAC's regulatory priorities for 2025-26 financial year include, regulating Tranche 2 entities e.g. lawyers, accountants, real estate agents, etc, targeting high-risk sectors like digital currencies and cash intensive business, and expanding oversight to more than 80,000 new businesses.
- Fraud is covered in Part 7.3 of the Criminal Code. Fraud offences involve the use of deception or dishonesty to obtain an unjust advantage at the expense of another person. Fraud can be charged where a person by any deception or dishonestly, obtains property belonging to another or obtains any financial advantage or causes any financial disadvantage. Common fraud offences relating to financial crime include cyber fraud, bank fraud, credit card fraud, and insurance fraud.
- Foreign bribery is covered in the *Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024* (Cth) (**Foreign Bribery Act).** Section 70.5A of the new Foreign Bribery Act includes the corporate offence of failing to prevent foreign bribery.

The Corporations Act, which regulates corporations and other business entities in Australia, includes several financial crime provisions. Part 7.10 of the Corporations Act covers market manipulation and insider trading offences.

- Market manipulation is prohibited by section 1041A of the Corporations Act. The Corporations Act defines market manipulation as conduct that has or is likely to have, the effect of creating or maintaining an 'artificial price' for trading in various financial products, including shares and futures. Section 1041A states that market manipulation occurs when a person takes part in or carries out a transaction that has or is likely to have, the effect of creating an artificial price for trading in financial products on a financial market operated in Australia or maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction.
- Insider trading is a type of white-collar crime where a person or company utilises information that is not generally available to the public to obtain an advantage for themselves or others through trading financial products. Inside information is information that is not generally publicly available, and if it were publicly available, a reasonable person would expect it to have a material effect on the price or value of particular financial products. Section 1043A of the Corporations Act provides that if a person or company possesses inside information, and the Insider knew or ought reasonably to have known that the information was insider information, the Insider must not apply for, acquire, or dispose of, relevant financial products.

These statutes are supported by other federal legislation that regulates specific financial activities and conduct and criminalises specific financial crime offences, such as the *Competition and Consumer Act 2010* (Cth), *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**), and the *ASIC Act 2001 (Cth)* (**ASIC Act**)

At the state/territory level, each state and territory's criminal legislation also addresses financial crime

offences. For example, New South Wales's (**NSW**) *Crimes Act 1900* (NSW) contains provisions criminalising money laundering and fraud.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

The Criminal Code provides a statutory framework for corporate criminal responsibility and prescribes that the Criminal Code applies to corporations in the same way it applies to individuals.

Direct liability occurs where both the physical element and the fault element are established. Regarding the physical element, a company is criminally liable when the offence is committed by its directing mind and will. A company can act through its officers or agents, provided they have the requisite authority. Under section 12.2 of the Criminal Code, when agents have actual or apparent authority, their actions that are within the scope of their authority bind the company.

The fault element, being intention, knowledge or recklessness, may be attributable to a company if the company expressly, tacitly or impliedly authorises or permits the commission of the offence as per section 12.3 of the Criminal Code. This authorisation or permission of the commission of the offence can be established if, among other things, the corporation's board of directors or high managerial agents intentionally or knowingly engaged in the relevant conduct, or there was a corporate culture that directed, encouraged, tolerated or led to non-compliance with the relevant provision.

Where the offence is one of strict liability, there is no requirement to prove the fault element. Strict liability offences can be defined as those offences that do not follow the common law presumption that the fault element (or mens rea) is an essential element of the offence.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

In Australia, company directors and officers can be personally prosecuted for several offences related to their corporate responsibilities and conduct. Commonly prosecuted financial crime offences personally applicable to company directors and officers include failing to keep correct financial records, falsifying accounting records, insider trading offences, insolvent trading, fraud and deception, involvement in bribery or corrupt practices, and manipulation of the market in relation to the Australian stock exchange securities trading.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

Public Prosecutors (CDPP and DPPs)

The Australian public prosecutors are the Commonwealth Director of Public Prosecutions (**CDPP**). The CDPP is responsible for criminal prosecutions of offences in breach of Commonwealth laws. The CDPP does not investigate cases. The CDPP works collaboratively with government agencies that may refer matters to the CDPP for prosecution following investigations.

There are also State and Territory Directors of Public Prosecutions (**DPP**). The State and Territory DPPs pursue prosecutions for offences under State and Territory laws.

Australian Federal Police (AFP)

The Australian Federal Police (**AFP**) is responsible for the investigation of offences under the Criminal Code. As part of their investigations, the AFP can undertake duly executed search warrants to obtain evidence in criminal investigations. The AFP also has the power to make arrests when persons are charged with a criminal offence.

Australian Securities and Investments Commission (ASIC)

ASIC is Australia's corporate regulator and has responsibility for enforcing (including bringing criminal prosecutions under) the Corporations Act.

ASIC has wide-ranging investigative powers, including compelling the production of documents and conducting compulsory interviews of persons in relation to its investigations.

ASIC is also authorised to prosecute generally minor regulatory offences, though it will typically refer matters to the CDPP.

Australian Competition and Consumer Commission (ACCC)

The ACCC is responsible for regulating and enforcing the *Competition and Consumer Act 2010* (Cth). This includes bringing criminal prosecutions for cartel conduct (as well as other litigation, such as civil penalty proceedings). The

Competition and Consumer Act 2010 (Cth) gives the ACCC the power to compel the production of information/documents as well as compulsorily examine witnesses. Safeguards include that evidence given by a person to the ACCC under compulsion is not admissible in a criminal prosecution against that person.

The ACCC can refer matters to the CDDP for prosecution.

Australian Taxation Office (ATO)

The ATO is responsible for administering Australia's taxation legislation. The ATO is also responsible for investigating tax crimes, including large-scale tax fraud and tax evasion, often involving international elements.

The ATO also leads the multi-agency Serious Financial Crime Taskforce (**SFCT**). The Australian Government established the taskforce in 2015 to identify and respond to the most serious and complex forms of financial crime in Australia.

Under the *Tax Administration Act 1953* (Cth), the ATO also prosecutes a range of summary offences and may refer more serious matters to the CDPP to consider prosecution.

Australian Criminal Intelligence Commission (ACIC)

The ACIC has an intelligence mandate, primarily directed at serious organised crime (including financial crime). The ACIC's investigative powers are extensive and include the conduct of in-secret compulsory examinations, with document production requirements on examinees. However, safeguards are afforded against the direct use of material from ACIC examinations in any criminal prosecution of the examinee. The ACIC also works extensively with domestic and international partner agencies in the conduct of its investigations.

5. Which courts hear cases of financial crime? Are they determined by tribunals, judges or juries?

In Australia, financial crime matters can be heard by the commonwealth federal courts, state or territory's local, district, and supreme courts. The court that will hear the case will depend on whether the statute is a federal, state or territory law, the complexity and seriousness of the offence, as well as the pecuniary cost of the offence.

Commonwealth federal courts: Hears cases involving breaches of commonwealth law, including significant financial crime matters.

State and Territory Local Courts: Handle less severe financial crime offences and conduct preliminary hearings for more serious matters.

State and Territory District Courts: Deal with serious financial crime cases that are beyond the jurisdiction of local courts but not severe enough to be heard by supreme courts.

State and Territory Supreme Courts: Hear the most serious financial crime cases, including those involving large sums of money or complex fraud schemes.

In Australia, cases of financial crime can be determined by tribunals, judges, or juries, depending on the nature and severity of the offence. For both commonwealth and state offences, trials are typically by jury. However, in certain circumstances, indictable offences may be heard summarily before a judge alone.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

In Australia, authorities initiate investigations into financial crimes through various methods.

ASIC (Australian Securities and Investments Commission)

ASIC commences an investigation where it has reason to suspect a breach of the Corporations Act. ASIC has wide-ranging investigative powers, including compelling the production of documents and conducting compulsory interviews of persons in relation to its investigations. ASIC can apply for a search warrant under section 3E of the *Crimes Act 1914 (Cth)* (**Crimes Act**), which is granted where an authorised officer is satisfied that there are reasonable grounds to suspect there is or will be evidential material at the relevant premises.

Under the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**), ASIC can also issue production notices, though it cannot compel the production of documents protected by legal professional privilege beyond seeking voluntary disclosure. ASIC can also search and seize evidential materials, extending to anything relevant to the commission of an indictable offence, and can use the seized materials in either administrative, civil, or criminal proceedings.

ACCC (Australian Competition and Consumer Commission):

ACCC has the authority to compel businesses to provide documents and information during investigations, especially in cases of market manipulation or cartel conduct.

AFP (Australian Federal Police)

The AFP has a wide range of investigative powers under *the Australian Federal Police Act 1979* (Cth) (AFP Act). The AFP has the power to compel mandatory interviews, search and seize properties, perform raids, use technical surveillance, complete arrests, and has the power to charge persons. Chapter 3 of the *Proceeds of Crime Act 2002* (POC Act) provides for information-gathering powers and processes in relation to proceeds of crime matters. These are powers relating to: examinations; production orders; notices to financial institutions; monitoring orders; and search and seizure powers.

ATO (Australian Taxation Office)

The ATO conducts audits to ensure that businesses and taxpayers and compliant with tax laws, and has wide investigative powers, contained in the TAA Act. Where the ATO cannot obtain the documents it requires to support an audit under a cooperative approach or where it suspects tax fraud or tax evasion has occurred, the ATO may use its formal powers to access documents and evidence.

The ATO has the power to issue notices requiring the provision of information and documents, as well as the giving of evidence in the initiation process of an investigation. The ATO has broad powers to access premises for the purpose of administering the taxation laws. The power is principally to obtain copies of documents and evidence.

AUSTRAC (Australian Transaction Reports and Analysis Centre)

AUSTRAC has a range of investigative powers. It has broad power to issue a notice compelling production of information and/or documents relevant to the operation of the AML/CTF Act. Under the AML/CTF Act, the issuance of a section 167 notice is not an indication that AUSTRAC is intending to undertake enforcement action against the recipient, rather, it is an investigative tool that allows AUSTRAC to assess potential compliance issues.

7. What powers do the authorities have to conduct interviews?

See Answer to Q6.

Over time, several authorities, including ASIC and the ATO, have obtained compulsory examination powers through legislative amendments.

When ASIC is investigating a matter, it can issue a written notice requiring a person to give all reasonable assistance in connection with the investigation and to appear for examination on oath and answer questions.

A person is legally obligated to attend an ATO-issued notice to attend. Further, the ATO's wide investigative powers enable it to issue notices requiring the provision of information and documents.

The ACIC also has the power to conduct examinations to assist its partner agencies. An extension of this power is the ability to issue a summons requiring a person to attend an examination. This will often be to either give evidence under oath or produce a document. Failure to comply with a summons is punishable by fines or imprisonment.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

In Australia, individuals interviewed by authorities during financial crime investigations have several rights designed to ensure a fair process.

Generally, white collar crime investigations involve non-compulsory (voluntary) examinations and compulsory examinations mandated by Statute. These processes differ significantly in an individual's legal rights in the interview process. Generally, for **non-compulsory examinations,** an interviewee does not have to attend a recorded cautioned interview unless they have been formally arrested. Whether the interviewee attends voluntarily or after being arrested, they have the right to remain silent during the interview and do have the right to have their lawyer present.

Ultimately, the interviewee does not have to answer any questions posed by the authorities during the interview. The law enforcement authorities must also clearly explain the interviewee's rights to them, including their right to contact a lawyer and their right to silence.

For **compulsory examinations**, interviewees must attend and answer questions, with failure to comply being an offence. The rights afforded to an interviewee may be

limited in compulsory examinations. Depending on the statute, the interviewee may not have a right to silence and may not refuse/fail to provide information to investigating bodies such as the Australian Securities and Investment Commission (**'ASIC'**) on the basis of claiming privilege against self-incrimination.

However, where the examinee claims the privilege before answering, the information cannot be used as evidence against the examinee in criminal proceedings or in proceedings for the imposition of a penalty against the examinee. The interviewee will have the right to be represented by their legal representative and be accompanied by interpreters. These interviews are audio-visually recorded, and a transcript is provided, often with confidentiality restrictions under legislation to protect the investigation.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

Several Commonwealth laws governing financial crimes in Australia, such as the *Criminal Code Act 1995* (Cth) ('***Criminal Code 1995***') and the *Corporations Act 2001* (Cth) ('***Corporations Act***') etc, have extraterritorial effect, capturing conduct by Australian nationals or companies operating overseas.

For instance, the *Criminal Code 1995* section 15.3 and 15.4 contains its **extended geographical jurisdiction** provisions, allowing certain offences to capture persons or entities if the offence's conduct occurs in Australia, or the offence's result occurs in Australia, or the conduct and offence occur overseas but the person is an Australian citizen or the entity is incorporated in Australia.

It is noted that section 16.1 requires the Attorney General's consent if the alleged conduct occurs wholly in a foreign country and the person alleged to have committed the offence is neither an Australia citizen nor a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory before proceedings are commenced.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

Australian federal agencies commonly cooperate with foreign authorities to investigate and prosecute white-collar crimes through formal arrangements like the mutual legal assistance treaties (**MLAT**), memoranda of understanding (MOU), and multilateral frameworks.

Mutual Legal Assistance

Australia's mutual legal assistance system is governed by the *Mutual Assistance in Criminal Matters Act 1987* (Cth), which regulates the provision of international assistance in criminal matters when a request is made by a foreign country and facilitates obtaining international assistance in criminal matters.

Australia currently has bilateral Mutual Legal Assistance Treaties (MLAT) with at least 34 countries which facilitate the exchange of information and evidence between countries for financial crime investigations and prosecutions. Examples of such treaties include the Australia-United States Mutual Assistance in Criminal Matters Treaty (bilateral treaty) and the Council of Europe's Convention on Cybercrime, also known as the Budapest Convention (multilateral treaty)

Australian Transaction Reports and Analysis Centre (AUSTRAC)

AUSTRAC is a member of the Egmont Group of Financial Intelligence Units (**FIUs**), which facilitates the exchange of financial intelligence among member countries to combat money laundering and other financial crimes.

Australian Federal Police (AFP)

The AFP serves as the primary contact for Australian law enforcement agencies concerning global law enforcement inquiries, international collaboration, and coordination. The AFP gathers information from its international operations, Interpol, and Europol. It is empowered to offer police services and support to assist or collaborate with foreign law enforcement agencies under the *Australian Federal Police Act 1979* (Cth) ('***AFP Act***') and Ministerial Directions. Furthermore, international police cooperation is also facilitated by United Nations Conventions, which Australia has signed.

Australian Securities and Investments Commission (ASIC)

ASIC engages in international cooperation through various agreements and frameworks to combat white-collar crime. ASIC is a signatory to the International Organization of Securities Commission's (**IOSCO**) Multilateral Memorandum of Understanding, IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information and IOSCO Administrative

Arrangement as well as numerous Memorandums of Understanding and other international agreements.

These documents outline the relationship between the signing parties with regard to mutual assistance and the exchange of information for the purpose of enforcing and regulating the respective laws and regulations of the signing authorities.

ASIC is additionally a member of the International Forum of Independent Audit Regulators which promotes global collaboration among independent audit regulators to enhance audit quality and combat reporting fraud. Where authorised, ASIC uses the *Mutual Assistance in Business Regulation Act 1992* (Cth) to exercise compulsory powers to obtain documents, information or testimony on behalf of foreign regulators.

Australian Taxation Office (ATO)

The ATO collaborates with foreign authorities to combat global tax evasion and related crimes. It engages in information sharing, intelligence gathering, investigations, and audits with other tax administrations through Australia's bilateral tax treaties and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The ATO also establishes information exchange agreements and obtains data from jurisdictions that were previously known for financial secrecy.

Additionally, the ATO collaborates internationally with the Joint Chiefs of Global Tax Enforcement (known as the J5) to collect information, share intelligence, and conduct joint operations targeting cybercrime, cryptocurrency fraud, and facilitators of offshore tax crimes.

The ATO also partners with other Organisation for Economic Co-operation and Development (**OECD**) networks, such as the Joint International Taskforce and Joint Financial Task Force on Sharing Intelligence and Collaboration, to share information on tax avoidance and evasion.

Australian Competition and Consumer Commission (ACCC)

The ACCC cooperates with foreign authorities to investigate conduct that may constitute white-collar crimes related to competition and consumer laws under the Commonwealth legislation, for example cartel conduct and anti-competitive behaviour. This cooperation is facilitated through formal and informal arrangements (e.g., MOUs and multilateral frameworks).

The ACCC is a signatory to the International Competition Network (ICN) and the OECD's Competition Committee, which enable information sharing and coordination on cross-border investigations. Under bilateral agreements such as the Australia-United States Mutual Antitrust Enforcement Assistance Agreement (1999), the ACCC exchanges evidence with counterparts like the U.S Department of Justice. The ACCC may also initiate or support requests for assistance through law enforcement agencies such as the AFP, particularly in criminal cartel matters.

National Anti-Corruption Commission (NACC)

The NACC is an independent Commonwealth agency, it investigates serious or systemic corrupt conduct within the Commonwealth public sector. Examples of white-collar crimes the NACC investigates are bribery of public officials, agencies or contractors. While the NACC's primary mandate is domestic, the NACC may investigate conduct that is extraterritorial.

Its extraterritorial reach, under the *Criminal Code 1995*, allows it to address corruption by Australian nationals or entities overseas, supporting Australia's obligations under the anti-corruption treaties like the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption (UNCAC). Australia's participation in international anti-corruption frameworks such as the OECD and UNCAC, enables sharing of intelligence and coordinate with foreign counterparts.

Additionally, under the *Mutual Assistance in Criminal Matters Act 1987* (Cth), the NACC may request or provide formal assistance in gathering evidence form foreign jurisdictions, typically in collaboration with the Attorney-General's Department.

Extradition

Australia cooperates with foreign authorities on white-collar crimes through extradition processes governed by the *Extradition Act 1988* (Cth) ('***Extradition Act***'). This facilitates the surrender of individuals to or from Australia for prosecution or sentencing, including those committed by Australian nationals or companies overseas. The extradition is supported by bilateral treaties and multilateral conventions.

Australia has extradition treaties with many countries (e.g., Extradition Treaty between Australia and the United States of America), allowing for the transfer of individuals accused or convicted of crimes, including white-collar offenses. The Attorney-General's Department oversees requests, coordinating with agencies like the AFP, ASIC etc. Information sharing is often facilitated under the *Mutual Assistance in Criminal Matters Act 1987* (Cth).

11. What are the rules regarding legal professional privilege? What, if any, material is protected from production or seizure by financial crime authorities?

Within financial crime investigations, the relevant agencies including AUSTRAC, ASIC, ATO and AFP possess broad statutory powers to compel the production of documents or information through mechanisms like notices to produce, and in some cases produce seizure notices.

The fundamental legal principle of legal professional privilege protects certain communications between a lawyer and their client, provided they are made for the dominant purpose of giving or receiving legal advice (advice privilege) or preparing for existing or reasonably anticipated litigation (litigation privilege) from being disclosed without the client's consent. The scope and application of this privilege can vary depending on the circumstances.

In the context of white collar and financial crime investigations legal professional privilege can be claimed in opposing such notices by investigative bodies.

Litigation privilege protects confidential communications between client and their lawyer, including through agents, and between the lawyer or client and third parties, for the dominant purpose of use in existing or anticipated litigation. The litigation must be existing or reasonably anticipated.

Advice privilege protects confidential communications between the client and their lawyer, including through agents, and between the lawyer or client and third parties, for the dominant purpose of a client obtaining, or the lawyer providing legal advice.

Legal professional privilege is a right of the client and cannot be waived by their lawyer or a third party. To maintain this privilege, it is important to adopt practices that clearly label confidential communications and to conduct interactions with third parties through a lawyer.

It is important to note that communications made with the intent of furthering fraudulent or illegal activities are not protected by legal professional privilege.

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

In Australia privacy and data protection during a financial crime investigation involves a balancing act between individual rights and the powers of law enforcement and regulatory agencies.

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (***AML/CTF Act***) places obligations upon businesses, including customer due diligence, mandatory reporting to AUSTRAC and record keeping. Personal data collected pursuant to these obligations is subject to *the Privacy Act 1988* (Cth) ('***Privacy Act***') and the Australian Privacy Principles, which are contained in Schedule 1 of the *Privacy Act,* which require entities to notify individuals of data usage, protect the information from misuse or unauthorized access.

Generally, corporations are not permitted to provide personal data to third parties without obtaining the consent of the data subject and must take reasonable steps to protect the information from misuse, unauthorised access or disclosure, as stated in Australian Privacy Principle 11.

However, companies are generally required to cooperate with law enforcement agencies in relation to financial crime investigations. This may involve providing access to data if legally compelled, such as through a warrant or subpoena.

Additionally, those rights of companies and individuals can be limited by the intelligence-gathering capabilities of authorities and organisations such as ASIC, ACIC, and the AFP. This is because agencies like the ASIC, ACIC, and AFP have statutory powers that may override privacy protections in specific circumstances, including the coercive powers under the *Australian Crime Commission Act 2002* (Cth).

For example, under the *Australian Crime Commission Act 2002* (Cth), ACIC may use coercive powers to obtain information. Exceptions to privacy or data protection rights may apply where disclosure is needed to establish, exercise, or defend a legal or equitable claim. ASIC additionally may use their information gathering powers as prescribed by the *Australian Securities and Investment Commission Act 2001* (Cth) and *Corporations Act 2001* (Cth).

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

There is no concept of criminal liability for successor corporations under Australian law. A successor entity will

not be held liable for offences committed by the target entity that occurred prior to the merger or acquisition.

Specific arrangements for the transferring of liabilities can be ordered by the court under section 413 of the Corporations Act.

In relation to mergers and acquisitions, the *Corporation Act 2001* (Cth) includes provisions related to transfer of liabilities in mergers and acquisitions, however it primarily addresses civil liabilities rather than criminal liability.

14. What factors must prosecuting authorities consider when deciding whether to charge?

The Commonwealth Director of Public Prosecution (CDPP) is the statutory agency responsible for prosecuting criminal offenses on behalf of the Commonwealth and handles cases involving federal crimes which include white collar and financial crimes.

The CDPP prosecutes in accordance with the Prosecution Policy of the Commonwealth. The CDPP is required to **consider two factors** in deciding whether to charge and prosecute.

The first is the **evidence test**. The CDPP must assess whether there is sufficient evidence to support a reasonable prospect of conviction. This involves reviewing the quality and quantity of evidence to determine if it meets the legal standard required for prosecution.

The second is the **public interest test**. Even with sufficient evidence, the CDPP must consider whether it is in the public interest to proceed with a prosecution. This involves evaluating factors such as the seriousness of the offence, the impact on the community, the potential deterrent effect of a prosecution, and the need to maintain public confidence in the justice system.

15. What is the evidential standard required to secure conviction?

The prosecution carries the burden of proof and must prove the charges beyond a reasonable doubt to secure a conviction. The burden of proof shifts to the defendant when they decide to argue any affirmative defences whereby the standard of proof is the balance of probabilities.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

Limitations to enforcing or prosecuting criminal matters are prescribed under the legislation and will usually be determined by the type of crime and penalty involved.

Generally, the statute of limitations does not apply for indictable criminal matters, however, a limitation period will apply to summary offences. Where limitation periods apply, the time cannot be stopped.

There is no limitation period for prosecution of federal offences under the Crimes Act committed by corporations where the maximum penalty exceeds AU$ 31,500. Neither is there a limitation period applied to charges of conspiracy to commit a serious offence.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Federal agencies such as AUSTRAC, ASIC, and the ACCC accept enforceable undertakings from reporting entities in place of civil or criminal action for breaches of their respective statutes. These agencies can also issue infringement notices, fines or both for particular breaches. Additionally, the agencies can also require an entity to perform specific actions, such as undertaking risk assessments and suspending or cancelling the registration of remittance provider.

Deferred prosecution and non-prosecution agreements are not currently available in Australia.

Enforceable undertakings are generally negotiated between the parties without the supervision of a court. Neither party has an obligation to accept an enforceable undertaking but are generally accepted as alternative to other enforcement proceedings where appropriate. Relevant factors include whether the person is likely to comply with the undertaking, the likely effect of the undertaking on the person's future conduct, including whether the undertaking is likely to deter the person from engaging in misconduct in the future, whether the undertaking will deter others from engaging in similar conduct; and the public interest, including remediation outcomes such as compensation for affected consumers.

18. Is there a mechanism for plea bargaining?

Plea bargaining is not officially recognised in Australia; however, the defence and prosecution can engage in charge negotiation or charge resolution which is governed by the Prosecution Policy of the Commonwealth. States also allow for charge negotiation, which in the case of NSW, is governed by Chapter 4 of the NSW Office of the Director of Public Prosecutions Prosecution Guidelines.

Charge negotiations/charge resolutions can be initiated by the prosecution and are encouraged where appropriate, due to their role in promoting the effective and efficient conduct of prosecutions.

These negotiations may result in a defendant pleading guilty to lesser or fewer charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

19. Is there any obligation to disclose discovered misconduct to prosecuting authorities, or any benefit to making a voluntary disclosure? Is there an established route or official guidance for making such disclosures?

Certain corporations are required to report actual or suspected breaches of legislative or regulatory requirements imposed by authorities, such as in the case of holders of Australian Financial Services (AFS) licensees or reporting entities under the AML/CTF Act. Holders of AFS licenses are required to make a report in writing to ASIC within 30 days of cases of gross negligence or serious fraud.

ASIC and ATO have cooperation policies which in certain cases may lead to immunity from prosecution in extraordinary circumstances, settlement or reduced penalties for taxation offences. However, voluntary disclosure does not guarantee that authorities will not take enforcement action against a corporation. The CDPP will ultimately decide the extent to which voluntary disclosures affect their decision-making but can consider the recommendations of relevant regulatory bodies.

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

There are legislative regimes that judges are required to follow when imposing sentences, including section 16A of the Crimes Act for federal offences. Regard must be had to aggravating and mitigating factors.

When a corporation is convicted of a federal offence, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the maximum amount that could be imposed by the court on a natural person convicted of the same offence under section 4B(3) of the Crimes Act.

Corporations that make voluntary disclosures in a timely manner and cooperate with regulatory bodies may receive a discounted sentence. Wigney J of the Federal Court, in Commonwealth Director of Public Prosecutions v Nippon Yusen Kabushiki Kaisha [2017] FCA 876, stated where a corporation has engaged in multiple contraventions, 'the more objectively serious the offence is likely to be'.

In these circumstances, the court will have regard to the whole of the relevant conduct. General and specific deterrence will be taken into account, although specific deterrence is afforded less weight where corporations can show they have taken extensive steps to minimise the risk of the offending conduct from reoccurring.

21. How are compliance procedures evaluated by the prosecuting authorities and how can businesses best protect themselves?

Under the Criminal Code, a corporation's compliance procedures will be relevant to corporate criminal liability. It may also be relevant for other statutory regimes.

The requirements or recommended elements of any corporate compliance programme are dependent on the statutory regime. For example, the AML/CTF Act requires 'reporting entities' to have an anti-money laundering and counterterrorism financing compliance programme specifying how they comply with the relevant legislation and how they identify, mitigate and manage the risk of products or services being used for money laundering or terrorism financing.

Under the Criminal Code, liability for some offences can be established on the basis that the corporate impliedly authorised the offending conduct by failing to create and maintain a culture that required compliance with the relevant provision. While the existence of a compliance programme can be relevant to discharging liability by proving that the corporate exercised due diligence to prevent the conduct, or the authorisation or permission.

Further, corporations may rely on the defence of mistake

of fact under section 9.2 of the Criminal Code. To do so, the corporate must prove that it exercised due diligence, in which case, a compliance programme may be a relevant consideration.

When considering what action to take, prosecuting authorities are very likely to consider whether a company has sufficient control mechanisms in place to prevent wrongdoing when considering what action to take. Therefore, the impact of a robust and appropriately tailored compliance system can be significant.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

Courts may impose criminal or civil penalties on individuals and corporations in relation to the key offences listed in the Answer to Q1.

The key offences found under the Criminal Code attract criminal penalties, which vary depending on the seriousness of the offence and the offender's degree of knowledge i.e. intentional or reckless. Individuals are subject to imprisonment and/or fines, while corporations are subject to fines.

For example, the maximum penalty for money laundering varies based on the value of the money or property and the offender's degree of knowledge. The maximum penalty for individuals is life imprisonment and a fine of AU$ 660,000 (i.e. 2,000 penalty units). However, this is only for money or property worth AU$10 million or more. For corporates, the maximum penalty for the same offence is a fine of AU$ 3,300,000 (i.e. 10,000 penalty units).

The Criminal Code does not provide a specific fine, therefore as stated by section 4B of the Crimes Act 1914, the fine would be an amount not exceeding an amount equal to five times the amount of the maximum penalty unit that would be imposed by the court on a natural person convicted of the same offence. One penalty unit is currently AU$330, since 7 November 2024 (section 4AA of the Crimes Act 1914).

Under some statutes, such as the Corporations Act, individuals and corporates may also be subject to criminal or civil penalties. Some offences attract both criminal and civil penalties. For example, under section 1043a of the Corporations Act, which criminalises insider trading, an individual may be subject to a criminal or civil penalty.

The criminal penalty for insider trading for an individual is 10 years imprisonment, while the civil penalty is and/or the greater of AU$ 1.565 million or three times the profit gained, or loss avoided. While corporates are only liable for the civil penalty which is greater than AU$15.65 million, three times the profit gained, or loss avoided or 10 per cent of the company's annual turnover in the relevant period.

The new foreign bribery offences in passed in *the Crimes Legislation Amendment (Combatting Foreign Bribery) Act* 2024 impose new, harsher penalties. The maximum penalty (subsection 70.5A(6) Criminal Code) is not more than the greatest of the following, AU$ 31.3 million, three times the assessed value of the benefit obtained by the associate if determinable, or 10% of the body corporate's annual turnover for the 12-month period ending at the end of the month in which the associate committed or began committing the offence.

Where an individual is convicted of foreign bribery, the maximum penalty is 10 years imprisonment or a fine of not more than AU$ 3.130 million, or both.

23. What rights of appeal are there?

If convicted of criminal offences, both natural persons and corporations have the right to appeal both the conviction and the sentence. Ordinarily, this first lies in a state Court of (Criminal) Appeal. From there, parties can seek special leave to appeal to the High Court of Australia, which sits at the apex of the Australian judicial system.

In deciding whether to grant special leave, the court considers whether the proceedings involve a question of law that is of public importance, whether it is necessary to resolve differences of opinion between different courts, or within the same court, as to the state of the law and whether the interests of the administration of justice, whether generally or in the particular case, require consideration by the High Court of the judgment.

24. How active are the authorities in tackling financial crime?

In the last few years, Australian authorities have ramped up efforts to tackle financial crime, with continued leadership from the Serious Financial Crime Taskforce (SFCT) and AUSTRAC. In July 2023, the Australian Government provided AU$ 223.8 million to the ATO over four years to extend the SFCT through to 30 June 2027.

At the same time, the SFCT was merged with Australia's

Serious Organised Crime program. The SFCT website notes that the effect of these changes will "*maximise the disruption of organised crime groups that seek to undermine the integrity of Australia's public finances*."

As of 31 March 2024, the SFCT's work has resulted in 2,152 audits and reviews, 38 individuals being convicted and sentenced, over AU$ 2.182 billion in liabilities being raised, and the collection of more than AU$ 842 million.

Since 2025, AUSTRAC has expanded its enforcement activities to target smaller regional casinos (e.g. Ville Resort-Casino and Mindil Beach Casino), digital currency exchanges, and non-bank financial platforms.[1]

By June 2025, the National Anti-Corruption Commission (NACC) had received approximately 2,690 referrals and commenced 26 formal corruption investigations.[2]

AUSTRAC also commenced landmark proceedings against Entain (Ladbrokes Australia) for alleged systemic breaches of AML/CTF obligations.[3]

Footnote(s):

[1] Australian Transaction Reports and Analysis Centre, 'Casino operators under scrutiny as AUSTRAC orders compliance audits' (Media Release, 30 May 2025) https://www.austrac.gov.au/news-and-media/media-release/casino-operators-under-scrutiny-austrac-orders-compliance-audits

[2] https://www.transparency.gov.au/publications/attorney-general-s/national-anti-corruption-commission/national-anti-corruption-commission-annual-report-2023-24/part-2—annual-performance-statements/results

[3] Australian Transaction Reports and Analysis Centre, 'AUSTRAC takes Ladbrokes and Neds' operator – Entain – to Federal Court over serious non-compliance with Australia's money laundering laws' (Media Release, 16 December 2024), https://www.austrac.gov.au/news-and-media/media-release/austrac-takes-ladbrokes-and-neds-operator-entain-federal-court-over-serious-non-compliance-australias-money-laundering-laws#:~:text=%E2%80%9CAUSTRAC's%20proceedings%20allege%20that%20Entain,serious%20risk%20of%20criminal%20exploitation.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

Notable focuses over the past five years have been on developing corruption and bribery offences, the Australian sanctions regime and regulating the casino and gambling industry.

Corruption and bribery offences

As set out in detail in Question 26, the last year has seen considerable development in the area of bribery and corruption, with the passing of the *Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023* (**2023 Foreign Bribery Bill**) and the commencement of the National Anti-Corruption Commission (**NACC**). From these developments, it's clear that the federal government is placing high importance on tackling bribery and corruption, advising the OECD in November 2022 that it "*is strongly committed to combatting corporate crime and bribery of foreign public officials*"[4].

The Government also made clear its intent to target corporate misconduct in this area, in Attorney-General Mark Dreyfus's second-reading speech for the 2023 Foreign Bribery Bill, on 22 June 2023. He explained that the 2023 Foreign Bribery Bill did not contain a deferred prosecution agreement scheme (DPAs), as:

"*When ordinary Australians commit crimes, they feel the full force of the law. However, under the deferred prosecution agreement scheme proposed by the former government, companies that engaged in serious corporate crime, including foreign bribery, would have been able to negotiate a fine, agree to a set of conditions and have their cases put on indefinite hold.*"

Sanctions law

Regarding Australian sanctions law, the Russia-Ukraine conflict saw the Australian Government impose economic sanctions against Russia, congruently with the US, UK, and EU. Australia introduced a series of measures that targeted persons and entities of strategic and economic significance to Russia. These measures include prohibitions on the importing or purchasing of Russian-origin oil, gas and other energy products, the exporting of aluminium ores and related products to Russia; and targeted sanctions and travel bans on Russian individuals and entities. Australian individuals and entities in breach of these sanctions may be liable to criminal and civil penalties.

Casino and gambling industry

In 2019, AUSTRAC launched an industry-wide casino compliance campaign. This signalled the general shift of Australia's regulator's focus on the casino and gambling industry.

AUSTRAC's anti-money laundering/counter-terrorism financing (AML/CTF) investigations into the casino and gambling industry followed its December 2020 report discussing its first risk assessment program. This programme focused on the banking, remittance and gambling services sectors associated with the examination of junket tour operations (JTO) in Australia to identify, mitigate, and manage risks of exposure to financial crime.

AUSTRAC expressed concern over the high money-laundering/terrorism-financing risks faced by the JTO sector and detected that the Star, one of Australia's leading casinos, maintained ongoing ties with many junkets linked to organised criminal groups in Asia.

In 2024–2025, AUSTRAC broadened its enforcement scope to cover:[5]

- Online gambling and betting operators (e.g. Entain);
- Digital asset platforms and virtual currency exchanges;
- Bullion dealers and precious metal traders; and
- Non-bank financial service providers.

The report also revealed that Australian regulators had identified that casino accounts were being misused to make political donations to expand foreign influence. As a result of these risks, AUSTRAC launched 'Operation Slalom' for enhanced compliance investigations and enforcement actions against the casino and gambling industry.

Footnote(s):

[4] OECD, Phase 4 evaluation of Australia: Additional Written Follow-up Report, 2023, p 13.

[5] Australian Transaction Reports and Analysis Centre, https://www.austrac.gov.au/sites/default/files/2023-12/AUSTRAC%20Regulatory%20Priorities%202024.pdf

26. Have there been any landmark or notable cases, investigations or developments in the past year?

The two most significant developments over the past 12 months have been the passing of the 2023 Foreign Bribery Bill and the commencement of the NACC.

2023 Foreign Bribery Bill

On 29 February 2024, the Federal Parliament passed the 2023 Foreign Bribery Bill. The 2023 Foreign Bribery Bill amends the Criminal Code's current offence for the bribery of foreign public officials. It brought in three key changes:

1. a new corporate offence of failure to prevent foreign bribery
2. the existing offences capture a greater range of corporate conduct
3. increased penalties for corporations found guilty of an offence.

The new offence of failure to prevent the bribery of a foreign public official carries a maximum penalty of AU$ 27.5 million or higher. This offence does two things:

1. it makes companies liable for failing to prevent foreign bribery by an 'associate'; and
2. it gives companies a defence for failure to prevent foreign bribery by an associate if they can show they had adequate procedures in place to prevent the commission of the offence.

'Associate' is broadly defined and includes an employee, contractor, agent, subsidiary, or controlled entity of the corporation, or a person that otherwise performs services on behalf of the corporation.

The last category captures individuals and entities that are not directly engaged or paid by a corporation. For example, indirect suppliers such as customs agents who are engaged by a supplier in another market may fall within this definition.

This is also an absolute liability offence, meaning there is no requirement for the prosecution to show that the company was otherwise involved, authorised or permitted the offence. As a result, unless the company can demonstrate that it has 'adequate procedures' in place to prevent bribery, it could be held criminally responsible for the actions of third parties.

Furthermore, unlike other unsuccessful versions of the bill in 2017 and 2019, the new bill does not include provisions relating to DPAs.

Establishment of NACC

On 1 July 2023, the new NACC commenced operations. The NACC is an independent Commission that detects, investigates and reports on serious or systemic corrupt conduct in the federal public sector. It can also refer matters to the CDPP for criminal prosecution.

Prior to its establishment in 2023, at the federal level there was no independent government authority with the mandate of investigating corruption and bribery in the public sector.

Corruption is defined very broadly and includes any of the following by a public official:

1. breach of trust,
2. misuse of information,
3. abuse of office or
4. something that adversely affects a public official's honest or impartial exercise of powers or duties.

By May 2024, NACC had received 2,888 referrals of suspected corruption at the federal level and is currently conducting 20 corruption investigations.[6] While the focus of the NACC is the public sector, this new Commission will ultimately have an impact on the businesses that work with the Government.

This can include companies working with or for parliamentarians and their staff, federal agencies' staff, or contract service providers to the Australian Government. Private entities and their employees can be investigated by NACC for conduct that adversely affected a public official's honest or impartial exercise of their official duties.

If NACC investigates a private entity, it will have the power to:

1. compel the production of documents;
2. compel officers or employees to attend a hearing to give evidence;
3. search the company's premises;
4. use covert investigative powers, including intercepting telecommunications; and
5. use surveillance devices and authorise covert law enforcement operations.

Notable cases

A landmark development has been the Australian authority's regulatory investigation and litigation against casino operators, namely Crown Resorts Limited (**Crown**). On 30 May 2023, AUSTRAC and Crown, Australia's largest gambling and entertainment group, agreed to an AU$ 450 million fine over money-laundering breaches. This was a result of AUSTRAC's industry-wide casino compliance campaign, as discussed in the Answer to Q25.

In December 2024, AUSTRAC commenced Federal Court proceedings against Entain (Ladbrokes Australia) for serious and systemic AML/CTF failures. The regulator alleges inadequate customer due diligence, weak transaction monitoring, and insufficient controls for high-risk individuals.[7]

In July 2025, National Australia Bank (NAB) concluded its enforceable undertaking with AUSTRAC, completing a multi-year remediation process.[8]

Footnote(s):

[6] NACC, Weekly update: referrals, assessment and investigations, 8 May 2024, https://www.nacc.gov.au/news-and-media/weekly-update-referrals-assessment-and-investigations-1.

[7] Australian Transaction Reports and Analysis Centre, 'AUSTRAC takes Ladbrokes and Neds' operator – Entain – to Federal Court over serious non-compliance with Australia's money laundering laws' (Media Release, 16 December 2024), https://www.austrac.gov.au/news-and-media/media-release/austrac-takes-ladbrokes-and-neds-operator-entain-federal-court-over-serious-non-compliance-australias-money-laundering-laws#:~:text=%E2%80%9CAUSTRAC's%20proceedings%20allege%20that%20Entain,serious%20risk%20of%20criminal%20exploitation.

[8] Australian Transaction Reports and Analysis Centre, 'AUSTRAC finalises Enforceable Undertaking with NAB' (Media Release, 25 July 2025), https://www.austrac.gov.au/news-and-media/media-release/austrac-finalises-enforceable-undertaking-nab

27. Are there any pending or proposed changes to the legal, regulatory and/or enforcement framework?

AML/CTF reforms

In 2023 Australia recommenced reforming its anti-money laundering system. Australia's current AML/CTF regime was introduced in 2006, and in 2007, Parliament commenced the consultation processes for a second tranche of reforms to properly bring Australia in line with international standards set by the Financial Action Task Force (**FATF**).

Despite this initial flurry, the second tranche of reforms was never introduced and FATF found in 2015 and again in 2018 that there were key areas that remain unaddressed. In April 2023, the current Attorney-General announced public consultations on reforming Australia's AML/CTF regime and bringing it in line with standards recommended by the FATF.

Part 1 of the consultation addressed the need to simplify and streamline AML/CTF obligations, as recommended by a 2016 Statutory Review of the AML/CTF Act 2006. The review found that the regime was too complex, which made it difficult for regulated entities to comply with their obligations.

Part 2 sought feedback on the tranche 2 reforms, which would extend the AML/CTF regime to "high-risk professions" or the "gatekeeper professions", including lawyers, accountants, trust and company service providers, real estate agents, and dealers in precious metals and stones.

The first round of consultations was undertaken in 2023, and the second round of consultations closed on 13 June 2024.

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024 received Royal Assent on 10 December 2024 and repealed the Financial Transaction Reports Act 1988 from 7 January 2025.[9]

The new AML/CTF regime introduces a two-phase implementation:

- Existing reporting entities: from 31 March 2026[10]
- Newly captured Tranche 2 entities (e.g. lawyers, accountants, real estate agents, precious metal dealers, Virtual Asset Service Providers (VASPs)): from 1 July 2026[11]

Law Reform Commission report

On 10 April 2019, the Australian government commissioned the Australian Law Reform Commission (**ALRC**) to undertake a comprehensive review of the corporate criminal responsibility regime. The ALRC published its report, Corporate Criminal Responsibility in April 2020, and the Attorney-General tabled it for Parliament on 31 August 2020.

In the ALRC report noted that corporations are most often prosecuted for minor regulatory offences, smaller corporations are more likely to be prosecuted than larger corporations, and prosecutors withdraw a significantly higher number of charges against corporations than against individuals for corporate crimes. The report found that the complex mechanisms for attributing criminal responsibility to corporations under federal law pose real difficulties for prosecution.[12]

The ALRC Report made 20 recommendations regarding the simplification of the law, however these have not been implemented.

Footnote(s):

[9] Australian Transaction Reports and Analysis Centre, 'AML/CTF Amendment Bill announcement' (Media Release, 12 December 2024). https://www.austrac.gov.au/amlctf-amendment-bill-announcement

[10] Australian Transaction Reports and Analysis Centre, 'AML/CTF Reform' (last updated, 23 July 2025). https://www.austrac.gov.au/about-us/amlctf-reform

[11] Australian Transaction Reports and Analysis Centre, 'Summary of AML/CTF obligations for tranche 2 entities' (last updated, 24 June 2025). https://www.austrac.gov.au/about-us/amlctf-reform/summary-amlctf-obligations-tranche-2-entities

[12] Australian Law Reform Commission, Corporate Criminal Responsibility (ALRC Report 136), p 7 -9.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

The proposed amendments to Australia's AML/CFT should be adopted in full. The extension of the AML/CTF regime will significantly improve the strength of Australia's AM/CFT framework by increasing the number of entities covered by the regime from 17,000 to 100,000.

Other improvements could include the implementation of a Commonwealth Deferred Prosecution Agreement scheme could assist in ensuring that Australia meets international standards and improves its ability to prevent, investigate and prosecute cases of bribery and corruption.

DPAs have already been implemented successfully in the United States and the United Kingdom, and given the similarities in our legal systems, will likely enable a more effective resolution of bribery and corruption matters, while encouraging increased self-governance and regulation by corporations.

Finally, the ALRC's recommendations in their 2020 report regarding the simplification of the laws attributing misconduct to corporate actors should also be adopted in full.

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