

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

**Crimes Legislation Amendment
(Combating Foreign Bribery) Bill 2024**

No. , 2024

**A Bill for an Act to amend the law in relation to
foreign bribery, and for related purposes**

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1 **A Bill for an Act to amend the law in relation to**
2 **foreign bribery, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Crimes Legislation Amendment (Combating*
6 *Foreign Bribery) Act 2024.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The first 1 January, 1 April, 1 July or 1 October to occur after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

- 4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

4 Review of operation of amendments

- 12 (1) The Minister must cause a review of the operation of the
13 amendments made by this Act to be conducted as soon as
14 practicable after the end of the period of 18 months starting on the
15 day Part 2 of Schedule 1 to this Act commences.
16
17 (2) The persons who conduct the review must give the Minister a
18 written report of the review.

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(3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Criminal Code Act 1995*

4 **1 Before section 70.1 of the *Criminal Code***

5 Insert:

6 **Subdivision A—Definitions**

7 **2 Section 70.1 of the *Criminal Code***

8 Insert:

9 *advantage* means an advantage of any kind and is not limited to
10 property.

11 *annual turnover* has the meaning given by section 70.5C.

12 *associate*: a person is an *associate* of another person if the
13 first-mentioned person:

- 14 (a) is an officer, employee, agent or contractor of the other
15 person; or
16 (b) is a subsidiary (within the meaning of the *Corporations Act*
17 *2001*) of the other person; or
18 (c) is controlled (within the meaning of the *Corporations Act*
19 *2001*) by the other person; or
20 (d) otherwise performs services for or on behalf of the other
21 person.

22 **3 Section 70.1 of the *Criminal Code* (definitions of *benefit* and
23 *business advantage*)**

24 Repeal the definitions.

25 **4 Section 70.1 of the *Criminal Code* (at the end of the
26 definition of *foreign public official*)**

27 Add:

1 ; or (m) an individual standing, or nominated, (whether formally or
2 informally) as a candidate to be a foreign public official
3 covered by any of paragraphs (a) to (k) of this definition.

4 **5 After section 70.1 of the *Criminal Code***

5 Insert:

6 **Subdivision B—Bribery of foreign public officials**

7 **6 Section 70.2 of the *Criminal Code***

8 Repeal the section, substitute:

9 **70.2 Bribing a foreign public official**

- 10 (1) A person commits an offence if:
11 (a) the person:
12 (i) provides a benefit to another person; or
13 (ii) causes a benefit to be provided to another person; or
14 (iii) offers to provide, or promises to provide, a benefit to
15 another person; or
16 (iv) causes an offer of the provision of a benefit, or a
17 promise of the provision of a benefit, to be made to
18 another person; and
19 (b) the first-mentioned person does so with the intention of
20 improperly influencing a foreign public official (who may be
21 the other person) in order to obtain or retain business or a
22 business or personal advantage (whether or not for the
23 first-mentioned person).

24 Note: See also section 70.2A. For defences, see sections 70.3 and 70.4.

- 25 (2) For the purposes of paragraph (1)(b):
26 (a) the first-mentioned person does not need to intend to
27 influence a particular foreign public official; and
28 (b) the first-mentioned person does not need to intend to obtain
29 or retain particular business or a particular business or
30 personal advantage; and
31 (c) business, or a business or personal advantage, does not need
32 to be actually obtained or retained.

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Penalty for individual

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- (3) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

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Penalty for body corporate

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- (4) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

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(a) 100,000 penalty units;

10

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

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(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the *turnover period*) of 12 months ending at the end of the month in which the body corporate committed, or began committing, the offence.

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70.2A Improper influence

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Determination to be a matter for the trier of fact

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- (1) In a prosecution for an offence against section 70.2, the determination of whether influence is improper is a matter for the trier of fact.

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24

25

Matters that must be disregarded

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- (2) In determining whether influence is improper for the purposes of paragraph 70.2(1)(b), a trier of fact must disregard the following:

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(a) the fact that the benefit, or the offer or promise to provide the benefit, may be, or be perceived to be, customary, necessary or required in the situation;

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31

(b) any official tolerance of the benefit;

- 1 (c) if particular business or a particular business or personal
2 advantage is relevant to proving the matters referred to in that
3 paragraph—the following:
4 (i) if the value of the business or advantage is
5 insignificant—that fact;
6 (ii) in the case of an advantage—any official tolerance of
7 the advantage;
8 (iii) in the case of an advantage—the fact that the advantage
9 may be customary, or perceived to be customary, in the
10 situation.

11 *Matters to which regard may be had*

- 12 (3) In determining whether influence is improper for the purposes of
13 paragraph 70.2(1)(b), a trier of fact may have regard to the
14 following:
15 (a) the recipient or intended recipient of the benefit;
16 (b) the nature of the benefit;
17 (c) the manner of the provision of the benefit (or, if applicable,
18 the offered or promised manner of the provision of the
19 benefit);
20 (d) whether the value of the benefit is disproportionate to the
21 value of any consideration provided or purported to have
22 been provided for the benefit;
23 (e) if the benefit was provided, or the offer or promise to provide
24 the benefit was made, in the absence of any legal obligation
25 to do so—that fact;
26 (f) whether the benefit was provided, or the offer or promise to
27 provide the benefit was made, dishonestly;
28 (g) whether, and to what extent, the provision of the benefit, or
29 the offer or promise to provide the benefit, is recorded or
30 documented;
31 (h) if the provision of the benefit, or the offer or promise to
32 provide the benefit, is recorded or documented:
33 (i) the accuracy of the record or documentation; and
34 (ii) whether the record or documentation is consistent with
35 the ordinary practices of the person who made the
36 record or documentation;

- 1 (i) whether there is evidence that due diligence was exercised by
2 the first-mentioned person in section 70.2 in relation to the
3 benefit, or the offer or promise to provide the benefit;
4 (j) whether any of the following conduct is contrary to a written
5 law in force in the place where that conduct occurs:
6 (i) the provision of the benefit, or the offer or promise to
7 provide the benefit;
8 (ii) the acceptance of the benefit;
9 (iii) any conduct directly connected with conduct referred to
10 in subparagraph (i) or (ii);
11 (k) if particular business or a particular business or personal
12 advantage is relevant to proving the matters referred to in that
13 paragraph—the following:
14 (i) whether the business or advantage was awarded on a
15 competitive or non-commercial basis;
16 (ii) whether there is any demonstrable conflict of interest in
17 the provision of the business or advantage.
- 18 (4) To avoid doubt, subsection (3) does not limit the matters to which
19 the trier of fact may have regard.

20 **7 After subsection 70.3(2) of the *Criminal Code***

21 Insert:

- 22 (2A) A person does not commit an offence against section 70.2 if:
23 (a) the person's conduct occurred in relation to a foreign public
24 official (the ***relevant foreign public official***); and
25 (b) the relevant foreign public official is covered by
26 paragraph (m) of the definition of ***foreign public official*** in
27 section 70.1 because the relevant foreign public official is a
28 candidate to be a particular foreign public official (the
29 ***substantive foreign public official***); and
30 (c) assuming that the first-mentioned person's conduct had
31 occurred wholly in the place, the foreign country or the part
32 of the foreign country, as the case may be, (the ***relevant***
33 ***place***) referred to in the item of the table in subsection (1)
34 that would be applicable if the first-mentioned person's
35 conduct had occurred in relation to the substantive foreign
36 public official, a written law in force in the relevant place

1 permits the provision of the benefit to the relevant foreign
2 public official.

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (2A). See subsection 13.3(3).

5 **8 After section 70.5 of the *Criminal Code***

6 Insert:

7 **Subdivision C—Failure to prevent bribery of foreign public**
8 **officials**

9 **70.5A Failing to prevent bribery of a foreign public official**

10 *Offence*

- 11 (1) A person (the *first person*) commits an offence if:
- 12 (a) the first person is a body corporate:
- 13 (i) that is a constitutional corporation; or
- 14 (ii) that is incorporated in a Territory; or
- 15 (iii) that is taken to be registered in a Territory under
- 16 section 119A of the *Corporations Act 2001*; and
- 17 (b) an associate of the first person:
- 18 (i) commits an offence against section 70.2; or
- 19 (ii) engages in conduct outside Australia that, if engaged in
- 20 in Australia, would constitute an offence (the *notional*
- 21 *offence*) against section 70.2; and
- 22 (c) the associate does so for the profit or gain of the first person.
- 23 (2) Absolute liability applies to:
- 24 (a) paragraphs (1)(a) and (c); and
- 25 (b) the circumstance in subparagraph (1)(b)(i) that the associate
- 26 commits an offence against section 70.2; and
- 27 (c) the circumstance in subparagraph (1)(b)(ii) that the associate
- 28 engages in conduct outside Australia that, if engaged in in
- 29 Australia, would constitute the notional offence.
- 30 (3) To avoid doubt, the first person may be convicted of an offence
- 31 against subsection (1) because of the commission by the associate

1 of an offence against section 70.2 even if the associate has not been
2 convicted of that offence.

3 (4) Section 12.6 applies in relation to an offence against subsection (1)
4 of this section as if the reference in section 12.6 to an employee,
5 agent or officer of a body corporate included any associate of the
6 body corporate.

7 *Exception*

8 (5) Subsection (1) does not apply if the first person proves that the first
9 person had in place adequate procedures designed to prevent:

- 10 (a) the commission of an offence against section 70.2 by any
11 associate of the first person; and
12 (b) any associate of the first person engaging in conduct outside
13 Australia that, if engaged in in Australia, would constitute an
14 offence against section 70.2.

15 Note: A defendant bears a legal burden in relation to the matter in
16 subsection (5): see section 13.4.

17 *Penalty*

18 (6) An offence against subsection (1) is punishable on conviction by a
19 fine not more than the greatest of the following:

- 20 (a) 100,000 penalty units;
21 (b) if the court can determine the value of the benefit that the
22 associate obtained directly or indirectly and that is reasonably
23 attributable to the conduct constituting the offence, or that
24 would have constituted the notional offence, against
25 section 70.2—3 times the value of that benefit;
26 (c) if the court cannot determine the value of that benefit—10%
27 of the annual turnover of the first person during the period
28 (the *turnover period*) of 12 months ending at the end of the
29 month in which the associate committed, or began
30 committing, the offence or notional offence against
31 section 70.2.

32 *Geographical jurisdiction*

33 (7) Section 15.1 (extended geographical jurisdiction—category A)
34 applies to an offence against subsection (1).

1 *Indictable offence*

2 (8) An offence against subsection (1) is an indictable offence.

3 **70.5B Guidance on preventing bribery of foreign public officials**

4 (1) The Minister must publish guidance on the steps that a body
5 corporate can take to prevent an associate from bribing foreign
6 public officials.

7 (2) Guidance under subsection (1) is not a legislative instrument.

8 **9 Before section 70.6 of the *Criminal Code***

9 Insert:

10 **Subdivision D—Miscellaneous**

11 **70.5C Meaning of annual turnover**

12 (1) For the purposes of this Division, the *annual turnover* of a body
13 corporate, during the turnover period, is the sum of the values of all
14 the supplies that the body corporate, and any body corporate
15 related to the body corporate, have made, or are likely to make,
16 during that period, other than the following supplies:

- 17 (a) supplies made from any of those bodies corporate to any
18 other of those bodies corporate;
- 19 (b) supplies that are input taxed;
- 20 (c) supplies that are not for consideration (and are not taxable
21 supplies under section 72-5 of the *A New Tax System (Goods
22 and Services Tax) Act 1999*);
- 23 (d) supplies that are not made in connection with an enterprise
24 that the body corporate carries on.

25 (2) Expressions used in this section that are also used in the *A New Tax
26 System (Goods and Services Tax) Act 1999* have the same meaning
27 in this section as they have in that Act.

Schedule 1 Amendments

Part 1 Main amendments

1 **70.5D Related bodies corporate**

2 The question whether 2 bodies corporate are related to each other
3 is to be determined for the purposes of this Division in the same
4 way as for the purposes of the *Corporations Act 2001*.

5 **10 Application of amendments**

6 The amendments made by this Part apply in relation to conduct engaged
7 in on or after the commencement of this Part.

1 **Part 2—Other amendments**

2 ***Income Tax Assessment Act 1997***

3 **11 Subsection 26-52(2)**

4 Repeal the subsection, substitute:

5 (2) An amount is a ***bribe to a foreign public official*** to the extent that:

6 (a) you incur the amount in, or in connection with:

7 (i) providing a benefit to another person; or

8 (ii) causing a benefit to be provided to another person; or

9 (iii) offering to provide, or promising to provide, a benefit to
10 another person; or

11 (iv) causing an offer of the provision of a benefit, or a
12 promise of the provision of a benefit, to be made to
13 another person; and

14 (b) you incur the amount with the intention of improperly
15 influencing a *foreign public official (who may be the other
16 person) in order to obtain or retain business or a business or
17 personal advantage (whether or not for yourself).

18 The benefit may be any advantage and is not limited to property.

19 **12 Subsection 26-52(2A)**

20 Omit “a business advantage”, substitute “a business or personal
21 advantage”.

22 **13 Subsections 26-52(6) and (7)**

23 Repeal the subsections, substitute:

24 ***Improper influence***

25 (6) In determining whether influence is improper, disregard the
26 following:

27 (a) the fact that the benefit, or the offer or promise to provide the
28 benefit, may be, or be perceived to be, customary, necessary
29 or required in the situation;

30 (b) any official tolerance of the benefit;

- 1 (c) if particular business or a particular business or personal
2 advantage is relevant to determining whether influence is
3 improper—the following:
- 4 (i) if the value of the business or advantage is
5 insignificant—that fact;
 - 6 (ii) in the case of an advantage—any official tolerance of
7 the advantage;
 - 8 (iii) in the case of an advantage—the fact that the advantage
9 may be customary, or perceived to be customary, in the
10 situation.

11 **14 Application of amendments**

12 The amendments of the *Income Tax Assessment Act 1997* made by this
13 Part apply to a loss or outgoing incurred on or after the commencement
14 of Part 1 of this Schedule.
15

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