24 August 2015

Dr Kathleen Dermody
Committee Secretary
Senate Economics References Committee

By email to: economics.sen@aph.gov.au

Dear Dr Dermody

Submission: Inquiry into foreign bribery

We are pleased to provide comments from an investor perspective on the Inquiry into foreign bribery. Key elements of our submission are summarised in this letter.

About Regnan

Regnan – Governance Research & Engagement Pty Ltd was established to investigate and address environmental, social, and corporate governance (ESG) related sources of risk and value for long-term shareholders in Australian companies.

Our research is used by institutional investors making investment decisions and in directing the company engagement and advocacy Regnan undertakes on behalf of long-term investors with $61 billion invested in S&P/ASX200 companies (at 30 June 2014). This approximates 4.3% of this index. These institutions include Advance Asset Management; Commonwealth Superannuation Corporation; BT Investment Management; Catholic Super; HESTA Super Fund; NTGPASS; Vanguard Investments Australia; VicSuper; and the Victorian Funds Management Corporation.

Our clients' interests include the efficient functioning of markets and the effectiveness of regulatory frameworks underpinning Australian investment activity.

Corruption risks are increasing and Australian listed companies appear ill-prepared

An increasingly broad set of ASX-listed entities are expanding operations and trade with emerging markets to seek growth opportunities. Many are relatively inexperienced in working offshore and may be ill-prepared for differences in bribery risks in jurisdictions they are newly entering. This is happening at the same time as the legislative and enforcement environment is being strengthened around the world with notable activity in the UK, US, China, and Canada. The reach of foreign anti-corruption measures and enforcement is such that the vast majority of Australia's large listed entities are exposed.

Regnan sees the growing gap between the level of foreign bribery risk and corporate preparedness to assess and mitigate such risk.

A 2015 Deloitte survey of 269 respondents from ASX200 and NZ50 companies, Australian subsidiaries of foreign companies, public sector organisations and other listed and private companies, reported that of organisations with offshore operations:

- 40 per cent of respondents did not have, or did not know if they had, a compliance program in place to manage corruption risks; and
- 77 per cent had never conducted a bribery or corruption risk assessment.[1]

This gap exists despite the availability of comprehensive and valuable information on how to implement a robust conduct culture and despite strong recognition of board responsibility in leading standards, such as the ASX Corporate Governance Principles.

Commonwealth legislation can play an important role in strengthening the incentives for company directors and senior executives to acknowledge responsibility and adopt available guidance to better manage this risk.

A stronger legislative framework with active enforcement would support Australian companies to be better prepared for investment in and trade with emerging markets and would help bring Australia into line with the worldwide trend of amplified anti-corruption activity. It might also help to arrest the recent decline that Australia has recorded in the Transparency International rankings on the corruption perception index.[2]

Phase out facilitation payments

The facilitation payments carve out in the Australian legislation enables Australian businesses to make 'minor payments' to government officials to secure or expedite routine government actions of a 'minor' nature. This may appear to make business easier to conduct in the short run compared to peer companies that chose not to make such payments. However, Regnan believes that the short-term benefits of making facilitation payments are outweighed by long-term costs given: 1) legal risks created; 2) the fact that facilitation payments are not qualitatively different to bribery; 3) the reputational impacts; 4) the accounting dilemmas created; and 5) the evidence that facilitation payments may increase costs by entrenching the behaviour.

In addition, there are wider corrosive effects of illegal payments made to officials of a foreign jurisdiction which include the potential for regulatory or bureaucratic capture by businesses when officials and public sector wage structures come to depend on such payments and entrenchment of other forms of corruption (e.g. nepotism) when opportunities for disproportionate gains are available.

However, facilitation payments are one of the most problematic areas for companies in countering bribery and many choose to adopt outright bans on such payments as part of their management approach. For example, based on public disclosures, 8 of the top 10 ASX-listed entities explicitly ban facilitation payments.

On balance, Regnan views it as inappropriate for Australian legislation to make explicit provision for facilitation payments to be made to foreign officials and we would recommend a grace period for implementation by organisations once a change in legislation has been made.

[1] Deloitte Bribery and Corruption Survey 2015 Australia and New Zealand: Separate the Wheat from the Chaff, 1 April 2015, available at: http://www2.deloitte.com/content/dam/Deloitte/nz/Documents/finance/forensics/bribery-and-corruption-report-finalv1.pdf.

[2] Australia's ranking has declined from being perceived the 7th least corrupt country in the world in 2012 to the 11th least corrupt in 2014. See http://www.transparency.org/research/cpi/overview for results.

Create an offence of failing to create a culture of compliance when bribery occurs

Regnan recommends aligning Australian legislation with the UK *Bribery Act* which has included an offence by commercial organisations for failing to prevent persons associated with them from committing bribery on their behalf. It is a defence for an organisation to prove that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing.[3] This creates a strong incentive for organisations to mitigate bribery risk commensurate with the level of risk.

Enhance national whistleblowing protection

Whistleblowers play an essential role in detecting fraud, mismanagement and corruption, and they frequently take on high personal risk. Evidence suggests that it is not unusual for whistleblowers to face victimisation or dismissal from employment; risk of being sued by their employer for breach of confidentiality or libel and/or the risk of becoming the subject of criminal sanctions. Despite corporate voluntary whistleblowing protections, many employees do not feel that their managers would be serious about protecting them – as few as 49% of employees in one survey.[4] Lack of trust in these systems likely blunts their effectiveness in reducing corruption risk.

Research undertaken on the G20 whistleblowing regimes finds there is a link between the number of whistleblowing reports and the existence of comprehensive and effective whistleblower protection laws in country.[5]

Regnan recommends that legislation be introduced to provide robust protection for whistleblowers as in peer jurisdictions. Disclosures made in good faith, including anonymous disclosures, should be protected. Legislation should encourage the establishment of internal whistleblowing systems and would support their effectiveness.

Conclusion

There is strong evidence that the risk of bribery is increasing for the top 200 Australian listed companies and this is especially problematic for investors with a long time horizon, who are likely to continue to hold the stock when poor practices ultimately come to light.

Despite the wide range of highly accessible, comprehensive and valuable information on how to implement a robust conduct culture, many companies appear to be doing far too little to address these risks. Greater incentive appears to be needed to encourage companies to establish stronger conduct cultures and controls to resist corruption demands.

Noting there is a range of options to achieve the necessary incentivisation, we prefer measures that are of broad applicability and increase alignment with other overseas legislation to which Australian companies are often also exposed, as this reduces compliance burden. Accordingly, we recommend phasing out facilitation payments, aligning Australian law with UK requirements to establish adequate procedures as a defence against bribery, and improving whistleblowing protection for the corporate sector. A books and records provision (as per US law) and debarment from government work may be useful supplements. Greater detail on these recommendations along with our perspective on anti-bribery good practice are included in the attached report and appendix.

[3] The Bribery Act 2010, UK Ministry of Justice, http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf
[4] Where does Australia sit in the world of whistleblowing?, Australian Institute of Company Directors, 1 March 2014, http://www.companydirectors.com.au/Director-Resource-Centre/Director-QA/Roles-Duties-and-Responsibilities/Where-does-Australia-sit-in-the-world-of-whistleblowing
[5] Ibid.

We note there is current debate in other fora about whether Australian law has struck the right balance with respect to individual director liability for corporate beaviour. We consider it preferable that liability for particular aspects – such as bribery – be considered as part of a more holistic review of director liability.

Should you have any queries in relation to this submission, please contact Holly Lindsay in the first instance at [redacted] or on [redacted].

Sincerely

Amanda Wilson
Managing Director

Submission to Senate Economics References Committee

Inquiry into Foreign Bribery

1 Background to Regnan

Regnan represents institutional investors with widely diversified portfolios held for very long terms. Our clients include both superannuation funds and fund managers, spanning commercial, public sector and not-for-profit organisations.

The breadth and duration of their portfolios means our clients' interests include the efficient functioning of markets and the effectiveness of regulatory frameworks underpinning Australian investment activity. Such investors seek a legislative environment which encourages robust risk assessment and mitigation regarding foreign bribery with a long time horizon.

Regnan maintains an in-house research capability, which has for many years undertaken detailed analysis of environment, social and corporate governance (ESG) risk – including corruption and bribery – for all stocks in the S&P/ASX200. Our research supports investment decision making by our clients and informs our corporate engagement and advocacy. Our submission draws on our experience in research and engagement with Australian-listed companies on this topic.

2 Corruption risks are increasing

Investment exposure to corruption risks is increasing for Australian companies for two principal reasons:

- First, more and more Australian companies are expanding into emerging markets to seek growth opportunities – both off-shore operations and trade. Some Australian industry sectors, such as mining, oil and gas, have been operating in low governance zones for some time and have the benefit of experience. But we now observe a broader set of industry sectors increasing overseas activity, including health, banks, and engineering services. These companies have not necessarily developed expertise in managing bribery and corruption risks. At the same time, the weight of non-mining stocks in key indices and client portfolios is growing, increasing corruption and bribery risk at the portfolio level.
- Second, considerable strengthening has occurred around the world in the last five years in anti-bribery legislation, anti-corruption prosecutions by governments and non-government organisational activity regarding transparency. Examples include: the bringing into effect of the UK *Bribery Act*; the Chinese Central Government anti-corruption campaign; the extensive number of US Security and Exchange Commission prosecutions; *Dodd-Frank* legislation in the US; and similar legislation in the UK, Canada and Hong Kong.

The extra-territoriality provisions of the US *Foreign Corrupt Practices Act* (FCPA) and UK *Bribery Act* (UKBA) expose Australian companies to large fines (and potential jail terms) in particular:

- The US FCPA applies to non-US companies (and their JV partners, and any companies that they acquire with FCPA liabilities) that issue securities (including American Depository Receipts) on US

exchanges (and therefore file reports with the SEC) and any companies that have business operations in the US. The legislation also covers actions that may have been undertaken by a third party agent in an overseas location. Our analysis indicates that only 16 of the S&P/ASX100 have ***not*** filed with the SEC in the last 10 years. US authorities have investigated a number of Australian companies in recent years and in 2015 BHP Billiton was fined US$25 million for violating the 'books and records' provision of the FCPA (essentially improper recording of information on internal forms) when it sponsored the attendance of foreign government officials at the Beijing Olympics. US authorities actively pursue non-US entities covered by the FCPA to ensure a 'level playing field' for American companies operating overseas.

- The UKBA applies to non-UK companies having any part of their operations in the UK or that do business in the UK, including capital raising. Liability includes subsidiaries, agents or service providers. UK authorities have indicated that they will target foreign companies to ensure UK companies are not disadvantaged by bribery laws. The UKBA has been called one of the world's toughest anti-corruption laws. Bribery offences committed by individuals now carry a penalty of up to 10 years' imprisonment, an unlimited fine and confiscation of assets. Corporations are subject to unlimited fines. In December 2014 the UK Serious Fraud Office announced its first conviction under the new law.[6] Three Britons were jailed for 13, 9, and 6 years respectively for organising a £23 million biofuel investment scam in Southeast Asia.

3 Corporate responses need to be enhanced

There is extensive, good quality information readily available on how to implement an effective anti-bribery program. In Section 5 below we provide our perspective, drawing on the extensive guidance available, on how to implement a culture of compliance and a good anti-bribery program. This includes a ten-step process wherein 'tone at the top', risk assessment and robust investigation processes are key.

But we observe a considerable gap between well enunciated good practice and what happens in practice. Many companies appear to be doing far too little to address these risks. A 2015 Deloitte survey[7] of 269 respondents from ASX200 and NZ50 companies, Australian subsidiaries of foreign companies, public sector organisations and other listed and private companies reported that of organisations with offshore operations:

- 40 per cent of respondents did not have, or did not know if they had, a compliance program in place to manage corruption risks; and
- 77 per cent had never conducted a bribery or corruption risk assessment.

Regnan believes that stronger incentives are required to encourage Australian companies to improve practice and reduce the risk of lost value from fines, loss of market share, reputational damage and other implications.

[6] Chon, Carolyn and Ridley, Kirstein, SFO nails its first convictions under new bribery laws, 8 December 2014, Reuters, available at: http://uk.reuters.com/article/2014/12/08/uk-courts-britain-bribery-idUKKBN0JM22M20141208.
[7] Deloitte Bribery and Corruption Survey 2015 Australia and New Zealand: Separate the Wheat from the Chaff, 1 April 2015, available at: http://www2.deloitte.com/content/dam/Deloitte/nz/Documents/finance/forensics/bribery-and-corruption-report-finalv1.pdf.

A stronger legislative framework with active enforcement would support Australian companies to be better prepared for investment in and trade with emerging markets entities and would help bring Australia into line with the worldwide trend of amplified anti-corruption activity. It might also help to arrest the recent decline that Australia has recorded in the Transparency International rankings on the corruption perception index.[8]

4 Recommendations to strengthen the legislative framework

There are a number of options available to strengthen the legislative framework. In this section, we discuss our recommendations. These are ordered according to the priority that we place on them.

4.1 Phase out facilitation payments

The facilitation payments carve out in the Australian legislation enables Australian businesses to make 'minor payments' to government officials to secure or expedite routine government actions of a 'minor' nature. This may appear to make business easier to conduct in the short run compared to peer companies that choose not to make such payments. It is argued, for example, that allowing facilitation payments ensures that Australian companies are not put at a disadvantage to other companies. Given that facilitation payments are increasingly perceived around the world as small bribes and companies are increasing disallowing them, this argument does not hold as strongly as it once did.

Regnan believes that the short-term benefits of making facilitation payments are outweighed by long-term costs for the following reasons:

- **Legal risk** – Facilitation payments are typically illegal under the laws of the countries in which they are made. A lack of resources, political will or interest has meant that violations have rarely been prosecuted but this is changing; extra-territoriality of UK and US law acts as a trigger for this latent risk.
- **Facilitation payments are not qualitatively different to bribery** – Facilitation payments can, in practice, confer non-trivial business advantages (relative to other market participants) that are not legitimately due; they can lead to a preferential allocation of limited resources such as physical constraints on port infrastructure, or utilities supply or quotas on visas. An increasing number of Australian companies are introducing policies banning the use of facilitation payments. Of the 10 largest ASX-listed companies, 8 companies already ban facilitation payments.
- **Companies may suffer a loss of reputation and potentially a negatively affected licence to operate** when facilitation payments are made to bypass administrative delays that local citizens and companies must endure. When a bureaucratic delay is legitimate – rather than created by the bribe-taker – it effectively purchases preferential treatment for the Australian company and bumps others further down the waiting list, which is likely to create resentment.

[8] Australia's ranking has declined from being perceived the 7th least corrupt country in the world in 2012 to the 11th least corrupt in 2014. See http://www.transparency.org/research/cpi/overview for results.

- **Accounting dilemma** – It is difficult to obtain a receipt for a facilitation payment to evidence the transaction. Failure to keep accurate records of receipts and expenses is also a contravention of standard accounting practice and likely local law. Companies making facilitation payments must choose between falsifying records or recording payments accurately and documenting a violation of local law and standard accounting practice.[9]
- **Uncertainty and delay** – Facilitation payments do not resolve uncertainty and delay regarding bureaucratic processes; well run businesses seek clear, dependable terms and enforceable contracts.
- **Facilitation payments are not associated with lower costs and may increase costs** – Economic modelling based research published by the IMF conclusively finds no evidence to support the hypothesis that facilitation payments help to reduce time waste or capital costs. Instead the researchers found tentative evidence that the more 'grease payments' are made, the higher (not lower) the level of time waste and cost of capital.[10] The study suggests that bribe-takers learn to focus their demands on companies that have paid bribes before. For those companies, the level of harassment for small bribes actually increases with the rate at which they were paid. This is linked with the costs associated with entrenching the behaviour. Small bribe-takers thrive on inefficiency and bureaucratic obstacles in order to increase their income.
- **Wider corrosive effects of illegal payments made to officials of a foreign jurisdiction** – these include:

  a. The potential for regulatory or bureaucratic capture by businesses when officials and public sector wage structures come to depend on such payments;

  b. The increase and/or entrenchment of other forms of corruption (e.g. nepotism) when opportunities for disproportionate gains are available;

  c. The erosion of local trust in local institutions and consequently reduced confidence in and compliance with the rule of law;

  d. The undermining of efforts to reduce corruption and to improve governance within the foreign jurisdiction, including efforts of the foreign jurisdiction as well as those of home country agencies (including anti-corruption work undertaken by the Department of Foreign Affairs, for example).

Regnan acknowledges that the elimination of the facilitation payments carve out may cause businesses to seek other means by which to obtain advantages (or foreign officials to seek other means to which solicit benefits) ranging from conventional practices like hospitality to corrosive but poorly detectable benefits (such as nepotistic hires or hollow consultancy contracts).

However, facilitation payments are one of the most problematic areas for companies in countering bribery and many choose to adopt outright bans on such payments as part of their management approach. For example, based on public disclosures 8 of the top 10 ASX-listed entities explicitly ban facilitation payments.

[9] The High Cost of Small Bribes, Trace, 2015, accessible at: http://www.traceinternational.org/resourcecenterposts/the-high-cost-of-small-bribes-2015/

[10] 'Does Grease Money Speed Up the Wheels of Commerce? Daniel Kaufmann, World Bank Institute and Shang-Jin Wei, Development Research Group, Public Economics, World Bank. IMF Working Paper March 2000. Accessible at: http://www.imf.org/external/pubs/ft/wp/2000/wp0064.pdf

On balance Regnan views it as inappropriate for Australian legislation to make explicit provision for facilitation payments to be made to foreign officials and we would recommend a grace period for implementation by organisations once a change in legislation has been made.

4.2 Create an offence of failing to create a culture of compliance

We recommend aligning Australian legislation with that of the UK where an offence has been established for 'failing to create a corporate culture of compliance' in the event of suspicion of bribery of a foreign official. The UK *Bribery Act* permits a defence for organisations that can prove that they have adequate procedures in place to prevent persons associated with it from bribing. We believe that having the onus of having to prove that an organisation has in place a 'culture of compliance' would be more effective than the current legislation.

4.3 Enhance national whistleblower protection

Whistleblowers play an essential role in detecting fraud, mismanagement and corruption, and they frequently take on high personal risk. Evidence suggests that it is not unusual for them to face victimisation or dismissal from the workplace; risk of being sued by their employer for breach of confidentiality or libel; and/or the risk of becoming the subject of criminal sanctions.[11]

A growing number of companies have implemented internal whistleblower programs intended to offer protection against retaliation and/or prosecution. We observed that companies can introduce well written systems which are supposed to protect whistleblowers but turn out to provide insufficient protection. Relying on voluntary corporate policies is accordingly inadequate. Research suggests that while 80 per cent of Australian employees feel personally obliged to blow the whistle on wrongdoing in their organisations, only 49 per cent felt their managers would be serious about protecting them.[12]

While there are whistleblowing provisions in the federal *Corporations Act 2001* the scope of wrongdoing covered is ill-defined; anonymous complaints are not protected; there are no requirements for internal company procedures; and there is no oversight agency responsible for whistleblower protection.[13] In contrast, the UK and US have more comprehensive whistleblowing protection legislation; each have their origins in the numerous financial scandals that may have been avoided if employees had been provided an opportunity to be protected when reporting wrongdoing.

Research undertaken on the G20 whistleblowing regimes finds there is a link between the number of whistleblowing reports and the existence of comprehensive and effective whistleblower protection laws in country.[14]

Regnan recommends that consideration be given to the legislation which:[15]

[11] The Price of Speaking Out, 10 August 2013. http://www.smh.com.au/business/the-price-of-speaking-out-20130809-2rngk.html
[12] Where does Australia sit in the world of whistleblowing?, Australian Institute of Company Directors, 1 March 2014, http://www.companydirectors.com.au/Director-Resource-Centre/Director-QA/Roles-Duties-and-Responsibilities/Where-does-Australia-sit-in-the-world-of-whistleblowing
[13] Simon Wolfe, Mark Worth, Suelette Dreyfus, A J Brown, Whistle-blower Protection Rules in G20 Countries: The Next Action Plan. June 2014 http://transparency.org.au/wp-content/uploads/2014/06/Action-Plan-June-2014-Whistleblower-Protection-Rules-G20-Countries.pdf
[14] Ibid.
[15] These recommendations are based on Transparency International's *Principles for Whistleblowing Legislation*, 2009, https://www.transparency.org/files/content/activity/2009_PrinciplesForWhistleblowingLegislation_EN.pdf

- Provides robust and comprehensive protection for whistleblowers, securing their rights and ensuring a safe alternative to silence.
- Applies to disclosures made in good faith, limited to an honestly held belief that the information offered at the time of the disclosure was true.
- Encourages the establishment and use of internal whistleblowing systems, which should be safe and easily accessible; ensure a thorough, timely and independent investigation of concerns; and have adequate enforcement and follow-up mechanisms.
- Ensures that the identity of the whistleblower may not be disclosed without the individual's consent, and provides for anonymous disclosure.
- Protects the whistleblower against any disadvantage suffered as a result of whistleblowing. This should extend to all types of harm, including dismissal, job sanctions, punitive transfers, harassment, loss of status and benefits, etc.

Regnan considers more robust national whistle-blowing protection legislation for the private sector would encourage a greater level of reporting; reduce risk of major corporate scandals and provide a model for corporate whistleblower systems to emulate, enhancing their effectiveness.

4.4 Introduce a 'books and records' provision

Alignment of Australian legislation with that of the US in regards to a 'books and records' provision (which would be incorporated into the foreign bribery section of the Criminal Code) would also enhance bribery risk mitigation activity by companies. In essence, this would prohibit off-the-books accounting through provisions designed to strengthen the accuracy of the corporate books and records and the reliability of the audit process, which constitute the foundation of corporate financial disclosure. As in the US, onus can be placed on the company instead of the regulator to prove that the false record was not for the purpose of bribery.

4.5 Debar offenders from government work

Debarment of companies for government work if bribery offences occur is applicable to a limited number of businesses. Organisations with little exposure to government work will not be affected by such a measure. Thus, while we consider it an appropriate measure, we place higher priority on measures likely to incentivise the greatest number of businesses to adopt sound corruption mitigation.

5 Guidance on a culture of compliance and good anti-bribery programs

The ASX Corporate Governance Principles recommend that the Board 'should lead by example when it comes to acting ethically and responsibly and should specifically charge management with the responsibility for creating a culture within the entity that promotes ethical and responsible behaviour.'[16] To this end, there is a wide range of highly accessible, comprehensive and valuable information on how to implement a robust conduct culture.

[16] Ibid p 18

As part of legislative change, it would be useful for the Commonwealth to provide guidance to the new legislative framework as the UK has done (http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf). It should be emphasised, however, that guidance is not the most critical element; it is providing additional incentive to address the risk via strengthening of the legal framework which will make the most significant difference.

Regnan's research suggests that the common elements to a comprehensive anti-bribery control system include:

1. Tone at the top
2. Oversight mechanisms
3. Risk assessment
4. Policies and Procedures
5. Implementation
6. Managing business relationships
7. Systems to identify issues
8. Investigation systems
9. Monitoring and review
10. Public reporting

Regnan has prepared information (Appendix 1) to provide our perspective on key elements of a comprehensive bribery and corruption control program. We draw the Committee's attention particularly to the following critical elements:

- The 'tone at the top' is of significant importance and it is directly linked to governance oversight of the risk assessment process and the establishment and implementation of policies and procedures. Many companies that have been investigated and prosecuted for bribery have had in place 'tick-box' systems where the systems were not supported by a culture and tone from the top or values embedded in the company.
- The integrity of investigations is also central to a well run integrity system and public reports provide investors and other stakeholders with an understanding of how the system is run and how effective it may be.
- Many bribes are paid indirectly, via business partners or intermediaries, with or without the commissioning company's consent and knowledge. The company should have consistent, detailed policies and procedures for managing its contractors, business partners, agents and other intermediaries. The process for appointing and managing business partners should be underpinned by documentation and monitoring throughout the life of the relationship.
- Effective risk assessment to prioritise efforts is a critical step in order to establish a fit-for-purpose integrity program. Refreshment of the risk assessment need also be done over time as the activities of the business evolve.

6 Conclusion

Corruption risk for Australian companies is on the rise as a result of our increasingly globalised economy as well as the growing chance of being caught by US, UK, Chinese or other countries' legal action.

There is a wide range of highly accessible, comprehensive and valuable information on how to implement a robust conduct culture, but many companies appear to be doing far too little to address these risks.

We conclude there is a strong case to create national level incentives for companies to establish stronger conduct cultures and controls to resist corruption demands.

Noting there is a range of options to achieve the necessary incentivisation, we prefer measures that are of broad applicability and increase alignment with other overseas legislation to which Australian companies are often also exposed, as this reduces compliance burden. Accordingly, Regnan recommends the elimination of the facilitation payment carve out, aligning Australian legislation with that of the UK in regard to putting the onus on companies to demonstrate adequate procedures against bribery, and the strengthening of national whistleblowing legislation. A books and records provision (as per US law) and debarment from government work may be useful supplements.