



**SUBMISSION TO THE SENATE ECONOMICS REFERENCES  
COMMITTEE INQUIRY INTO FOREIGN BRIBERY**

**AUGUST 2015**

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## SUMMARY

1. ANZ supports efforts to increase the effectiveness of laws to combat bribery and corruption.
2. ANZ manages the risk of bribery and corruption business both in Australia and abroad through the implementation of a strong global anti-bribery and anti-corruption compliance program, which applies to ANZ employees and contractors.
3. The ANZ Anti-Bribery and Anti-Corruption policy is part of a broad suite of policies that make up the ANZ Conduct and Ethics Policy Framework. The framework includes policies related to anti-money laundering and counter terrorism, management discretions and expenses, risk management, reputation risk, whistle blower protection, political donations, fraud, and conflicts of interest.
4. ANZ believes that the fight against bribery and corruption requires a broad, coordinated multilateral effort. To this end, the Australian Government has a critical role to play in encouraging and, where possible, enforcing anti-bribery and anti-corruption standards in relation to Australian activities in other countries.
5. This Inquiry comes at a time of increased focus on the role of corporate culture in identifying and preventing bribery-related conduct. Criminal liability for bribery by an employee or agent can be attributed to a company where it fails to create a culture of compliance.
6. ANZ would welcome the issue of formal guidance as to what, for the purpose of the *Criminal Code 1995* (Cth), is required for a culture of compliance, and how this is to be assessed. Such good practice guidelines can be a powerful aid to businesses seeking to do the right thing.
7. ANZ believes that more can be done to encourage co-operation between business and Australian law enforcement (and other Australian government agencies on the ground in foreign jurisdictions). ANZ encourages the Committee to look to Australia's existing immunity policy in relation to cartel conduct, and to the self-reporting schemes in place in the US and the UK, as examples of government policies and regulatory regimes that have not only resulted in more effective enforcement, but have also helped shape broader behavioural change.

## A. INTRODUCTION

1. ANZ welcomes the opportunity to contribute to the Senate Economic References Committee's inquiry into foreign bribery. The Committee has been asked to report on the effectiveness, and possible improvements to:
  - (a) Australia's implementation of its obligations under the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention") and the United Nations Convention against Corruption ("UNCAC"), and
  - (b) existing Commonwealth legislation governing foreign bribery.
2. ANZ is committed to complying with the laws of the jurisdictions in which it operates, including those relating to anti-bribery and anti-corruption. Honesty, integrity and fairness are integral to the way it operates, and conduct associated with bribery and corruption is inconsistent with those values. Bribery and corruption exacerbates inequality, undermines the rule of law, is expensive and inefficient for business, and ultimately hurts those who are most vulnerable in our communities.
3. With operations in over 30 countries, ANZ firmly believes that eliminating bribery and corruption from international business transactions is a desirable goal. ANZ also recognises that the criminalisation of bribery under Australian law, building effective enforcement and implementing meaningful sanctions are all necessary parts of this process. However, ANZ is of the view that more can be done to:
  - ensure that Australia's laws in relation to foreign bribery are properly understood and complied with by all individuals and companies to whom they apply
  - encourage information sharing between business, the Australian Federal Police, the Australian Securities and Investments Commission and other government agencies
  - ensure that Australian companies which refuse to engage in bribery-related conduct abroad do not suffer competitive disadvantage in those markets.

## B. ANTI-BRIBERY AND ANTI-CORRUPTION POLICIES

4. ANZ has been working to eradicate the risk of bribery and corruption within its business both in Australia and abroad through the implementation of a strong global anti-bribery and anti-corruption compliance program, which applies to all ANZ employees (including contractors).<sup>1</sup>
5. In addition to developing its core markets in Australia and New Zealand, ANZ is focused on the significant organic growth opportunities which exist within the Asia Pacific region. In the last 10 years, it has built its Asia Pacific footprint to meet the needs of customers who are dependent on regional capital, trade and wealth flows.

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<sup>1</sup> A summary of ANZ's Anti-Bribery and Anti-Corruption Policy is available at <https://www.anz.com.au/resources/8/c/8cbdb200419ebd4b816ed36bc18dd1dc/ANZ-Global-Anti-Bribery-Policy.pdf?CACHEID=8cbdb200419ebd4b816ed36bc18dd1dc> and <http://www.anz.com.au/about-us/corporate-responsibility/more-mike/bribery-fraud-corruption/>

6. Under its published policies, ANZ commits to complying with anti-bribery and anti-corruption laws in combating bribery and corruption in all of the jurisdictions in which it operates. ANZ's Anti-Bribery and Anti-Corruption Policy applies to all employees and controlled entities, including when acting at ANZ's request in operational roles or as directors of other entities.
7. This policy is part of the broader suite of global policies that make up the ANZ Conduct and Ethics Policy Framework. This broader suite of policies includes the ANZ Code of Conduct and Ethics, and policies related to anti-money laundering and counter terrorism, management discretions and expenses, risk management, reputation risk, whistle blower protection, political donations, fraud, and conflicts of interest.
8. In FY2014 there were 1,718 alleged breaches of our Code of Conduct and Ethics, for which appropriate actions were undertaken. Breaches ranged from conflict of interest through to allegations of fraud, bullying and email misuse. Outcomes following investigations of breaches included 336 dismissals, 229 resignations, 414 verbal warnings and 739 formal warnings. Breaches of the Code of Conduct are reported to the Governance Committee and form part of regular risk reporting to the Operational Risk Executive Committee.
9. The following points provide a brief overview of the ANZ anti-bribery and anti-corruption policy. The policy prohibits conduct where an employee (or contractors or through families, friends, associates and acquaintances):
  - directly or through a third party offers, promises, gives, requests, agrees to receive or accepts a bribe
  - offers, promises, provisions or receives, directly or through a third party gifts or entertainment or sponsored travel that could affect, or be perceived to affect, the outcome of business transactions
  - makes a donation as a way of obtaining or retaining an advantage for the benefit of ANZ or any other person.
10. ANZ will not enter into a business relationship if it cannot be satisfied that the person will behave in a manner consistent with its policy. It carries out risk-based anti-bribery and anti-corruption due diligence before entering into new business relationships. We make persons with whom we have a business relationship aware of this policy and our expectations under this policy.
11. ANZ acquisitions (including joint ventures) that we undertake are governed by our Global Anti-Bribery and Anti-Corruption Policy. This requires us to conduct thorough due diligence to provide reasonable assurance that any target business is not involved in any bribery or corruption. We encourage our partners (such as suppliers and service providers) to adopt and maintain similar conduct and ethics principles.
12. All ANZ employees must be aware of their obligations arising from the policy and other obligations under the ANZ Code of Conduct and Ethics. They are required to complete compulsory training. Any potential or actual breaches of the policy are required to be reported internally to line management, human resources or compliance, depending on circumstances. ANZ has a Whistleblower Policy, Whistleblower Protection Officer and a Whistleblower Protection hotline managed by a third party.

13. ANZ appoints senior managers who are required to implement and maintain processes and procedures to comply with the anti-bribery and anti-corruption policy and requirements. The ANZ compliance function oversees the execution of the policy, as well as providing leadership, guidance, advice and direction to promote compliance. An ANZ senior management risk committee provides overall oversight of the effectiveness and compliance with the policy and related obligations.
14. ANZ employees are made aware that failure to comply with the policy may lead to criminal, civil or regulatory liability. An employee or contractor who breaches the policy may be subject to disciplinary action, including dismissal or termination of contract.
15. Employees and contractors are encouraged to report concerns in good faith as early as possible to their line manager, business unit compliance representative, policy owner or policy administrator or ANZ Group Investigations without fear or risk of reprisal.
16. ANZ employees may also report suspected policy breaches under the ANZ whistleblower protection policy. The policy commits ANZ to providing means through which employees and contractors can safely disclose reportable conduct. The policy also seeks to ensure employees and contractors who disclose reportable conduct are not victimised or disadvantaged. All investigations must be conducted in accordance with the principles of fairness and natural justice, and be timely, impartial and comprehensively documented.
17. In FY2014, reports under our WPP increased by 14 per cent on the previous year, partly due to improved awareness of the policy and reporting processes. The majority of the 80 reports made this year did not uncover any significant issues. In the small number of cases where our policies were breached we took appropriate action, including dismissal and, in some instances, referral to police.
18. ANZ is a signatory to the United Nations Global Compact and reports annually on its commitment to work against corruption in all its forms, including extortion and bribery.<sup>2</sup>

### C. GOVERNMENT ROLE AND TRADE

19. ANZ believes a broad, coordinated multilateral effort is necessary to reduce bribery and corruption globally, particularly in those jurisdictions where bribery and corruption risk is at its highest.
20. ANZ considers that the Australian Government can play a greater role in supporting good governance and transparency in the way in which business is conducted in foreign jurisdictions. We would encourage the Government to:
  - consult with Australian businesses “on the ground” in foreign jurisdictions to identify particular areas of vulnerability (for example, in particular sectors or regions) where improper or non-transparent business practices are taking place, and advocate on behalf of Australian businesses in-country to eradicate those practices
  - provide additional practical guidance on how Australian businesses should respond to suspected incidents of bribery abroad, tailored to the specific political, cultural and commercial context

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<sup>2</sup> <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/active/148351>

- include specific commitments around anti-bribery and anti-corruption in international trade agreements to which Australia is a party. This should extend to enforcement mechanisms
- use supra-national and regional organisations and summits, such as the upcoming Pacific Islands Forum, to advocate for better enforcement of existing domestic anti-bribery laws, and to encourage the implementation of and compliance with the OECD Convention and UNCAC. We note that, of the Asia Pacific countries, only Australia, New Zealand, Japan and South Korea have ratified the OECD convention (i.e., the OECD Convention has not been implemented in many of the countries in the Asia Pacific region where bribery and corruption risk is highest, as measured against Transparency International's Corruption Perception Index<sup>3</sup>).

#### **D. GUIDANCE ON WHAT CONSTITUTES A CULTURE OF COMPLIANCE**

21. ANZ acknowledges that good corporate culture may inhibit misconduct and make incidents of improper behaviour easier to identify; and, equally, that misconduct may flourish in a bad corporate culture. However, the concept of a “corporate culture of compliance” is by nature imprecise.
22. ANZ supports the development of official guidance to corporations and others as to what is a “culture of compliance” and a good anti-bribery program along the lines of those issued in the UK (in relation to the Bribery Act 2010 (UK)<sup>4</sup>) and in the US (in relation to the Foreign Corrupt Practices Act (US)<sup>5</sup>).

#### **E. ENCOURAGING THE CO-OPERATION OF BUSINESS**

23. The Committee has been asked to consider measures to encourage self-reporting by companies (Term (b)(vii)).
24. ANZ considers that an open and transparent relationship with all levels of law enforcement (both criminal and civil) is critical to effective and responsible business. We would support a formal self-reporting regime which included, where appropriate, negotiated settlements, non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs). The current legislative framework does not give companies sufficient certainty as to when and what information or concerns should be raised with law enforcement and what are the consequences of that disclosure.
25. We note that NPAs and DPAs are used as a key enforcement tool in the US. For example, in 2014 the US Department of Justice entered into 19 DPAs and ten NPAs, and the SEC entered into one DPA.<sup>6</sup> The UK's Serious Fraud Office has in place a published prosecution policy which encourages leniency in cases of self-reporting and co-

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<sup>3</sup> See <http://www.transparency.org/cpi2014>

<sup>4</sup> See <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

<sup>5</sup> See <http://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>

<sup>6</sup> Brown, Courtney M., Diamant, Michael., Farrar, Melissa L., Rosenberg, Jeffrey S., Warin, F. Joseph, Gibson Dunn, '2014 Year-End Update on Corporate Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs)', 6 January 2015, <http://www.gibsondunn.com/publications/pages/2014-Year-End-Update-Corporate-Non-Prosecution-Agreements-and-Deferred-Prosecution-Agreements.aspx>

operation.<sup>7</sup> A corporate self-reporting and leniency regime could be appropriate in Australia, where the immunity policy in relation to cartel conduct has provided an important cartel detection tool for the Australian Competition and Consumer Commission.

26. We further note that DFAT officials have an obligation under the Australian Public Service Values to report any instances involving Australians or Australian companies that could reasonably be suspected of amounting to an extraterritorial offence (including bribery of a foreign public official) to the AFP. The absence of a formal self-reporting regime may reduce co-operation between Australian companies operating abroad and DFAT to identify and eradicate potential bribery-related conduct.

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<sup>7</sup> See <http://www.sfo.gov.uk/bribery--corruption/corporate-self-reporting.aspx> and [http://www.sfo.gov.uk/media/65217/joint\\_guidance\\_on\\_corporate\\_prosecutions.pdf](http://www.sfo.gov.uk/media/65217/joint_guidance_on_corporate_prosecutions.pdf)