

Updates from the Bribery Prevention Network



Critical developments for your business in the anti-corruption landscape

Friday 8 September 2023

Speakers

- **UN Global Compact Network Australia:**
Dan Wilcock, Sustainability & Governance Manager
- **Minerals Council of Australia:**
Chris McCombe, General Manager – Sustainability
- **Australian Federal Police**
*Detective Inspector John Whitehead, Financial Crime / Criminal Assets
Confiscation Taskforce*
- **Transparency International Australia**
Dr Ana Estefania Carballo, Research & Program Manager - Accountable Mining

Topics

1. Context
2. Launch of the National Anti-Corruption Commission
3. Legislative Updates on Foreign Bribery
4. Oz Minerals Ltd investigation
5. High Court decision in The King v Jacobs Group
6. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct
7. Anti-bribery & corruption resources

Working together for a bribery free society

We have a shared goal of supporting Australian business to prevent, detect and address bribery and corruption, and promote a culture of compliance

- In addition to causing **serious reputational damage** to businesses, bribery distorts markets, undermines the rule of law, erodes trust and harms local communities.
- We recognise that in identifying, managing and addressing bribery and corruption risks, Australian businesses can engage in the **global fight** against bribery and corruption.
- The BPN is a **collective action**, public-private partnership that brings together peak government, corporate, civil society and academic organisations.

Bribery Prevention & Governance

- **SDG 16:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
- **Global Compact Principle 10:** Businesses should work against corruption in all its forms, including extortion & bribery
- In Australia, Commonwealth laws criminalise bribery of its officials, as well as foreign public officials
- State & Territory laws criminalise the bribery of their own officials and commercial agents



Launch of the National Anti-Corruption Commission

- NACC launched on 1 July 2023
- jurisdiction goes well beyond the conduct of Parliamentarians
- significant implications for business and the corporate sector because of the scope of the definition of “Commonwealth public official”
- includes employees of government agencies, including consultants and contractors
- this broad scope underscores the importance of addressing corruption within the corporate sector and the need to embed robust and rigorous integrity frameworks
- appropriate moment for businesses to review their touchpoints with government and update their anti-bribery and corruption policies and procedures



Legislative Updates on Foreign Bribery

- the Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023 was introduced in the House of Representatives 22 June 2023
- the Bill creates a new offence for corporations that fail to prevent foreign bribery
- holds companies directly liable for the foreign bribery activities of their employees, external contractors, agents and subsidiaries, unless the business can demonstrate that they had adequate procedures in place
- maximum penalty of \$27.5 million or higher
- key measures of this Bill are substantially the same as the previous Crimes Legislation Amendment (Combatting Corporate Crime) Bills that lapsed

Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023

Type	Government
Portfolio	Attorney-General
Originating house	House of Representatives
Status	Before Reps
Parliament no	47

Oz Minerals Ltd investigation

- The AFP announced the first decision made pursuant to the AFP/CDPP Best Practice Guideline: Self-reporting of foreign bribery and related offending by corporations.
- The Commonwealth Director of Public Prosecutions applied the principles in the Self-reporting Guideline and determined that it was not in the public interest to prosecute in respect of conduct by Oz Minerals Ltd.
- The company was still required to relinquish the benefits derived from the alleged offending pursuant to the Proceeds of Crime Act 2002 (Cth).

An Australian mining company investigated by the AFP over alleged foreign bribery has agreed to confiscation orders to the value of at least \$9.3 million



High Court decision in *The King v Jacobs Group*

- 2 August 2023: The High Court allowed the crown's appeal in the Jacobs Group matter.
- The High Court found that the maximum available penalty for foreign bribery in that matter was effectively 3 times the gross benefit obtained as a result of the offence.

HIGH COURT OF AUSTRALIA

KIEFEL CJ,
GAGELER, GORDON, EDELMAN, STEWARD, GLEESON AND JAGOT JJ

THE KING APPELLANT

AND

JACOBS GROUP (AUSTRALIA) PTY LTD
FORMERLY KNOWN AS SINCLAIR KNIGHT MERZ RESPONDENT

The King v Jacobs Group (Australia) Pty Ltd
[2023] HCA 23
Date of Hearing: 12 April 2023
Date of Judgment: 2 August 2023
S148/2022

ORDER

1. *Appeal allowed.*
2. *Set aside the order of the Court of Criminal Appeal of New South Wales made on 11 July 2022, in so far as it dismissed the appeal against sentence for sequence three, and remit the matter to that Court for redetermination of that part of the appellant's appeal under s 5D of the Criminal Appeal Act 1912 (NSW).*

On appeal from the Supreme Court of New South Wales

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

- Internationally agreed framework of responsible business conduct standards that governments expect multinational enterprises to comply with. The standards supplement domestic laws but do not override them.

- Standards covered include disclosure, human rights, employment and industrial relations, environment, bribery and extortion, consumer interests, science and technology, competition and taxation.

- The Guidelines apply to multinational business activity both onshore and offshore.

Introduced in 1976, the *Guidelines were updated in 2011 and more recently in 2023* in line with changing expectations

Links to other OECD Guidelines on Responsible Business Conduct (e.g. due diligence and sector specific)

OECD Guidelines - Australian National Contact Point

A requirement of adherent governments.
The role of the NCP is to:

- Promote and provide advice about the OECD MNE Guidelines
- Handle complaints against multinational enterprises in a non-judicial setting where alleged non-observance of the Guidelines are brought to the Australian Government by persons alleging negative impacts.
- Works with businesses, governments, NGOs and OECD to meet Australia's obligations under the Guidelines.

Management

Treasury manages the AusNCP, provides Secretariat services and represents Australia internationally.

Independent Examiner

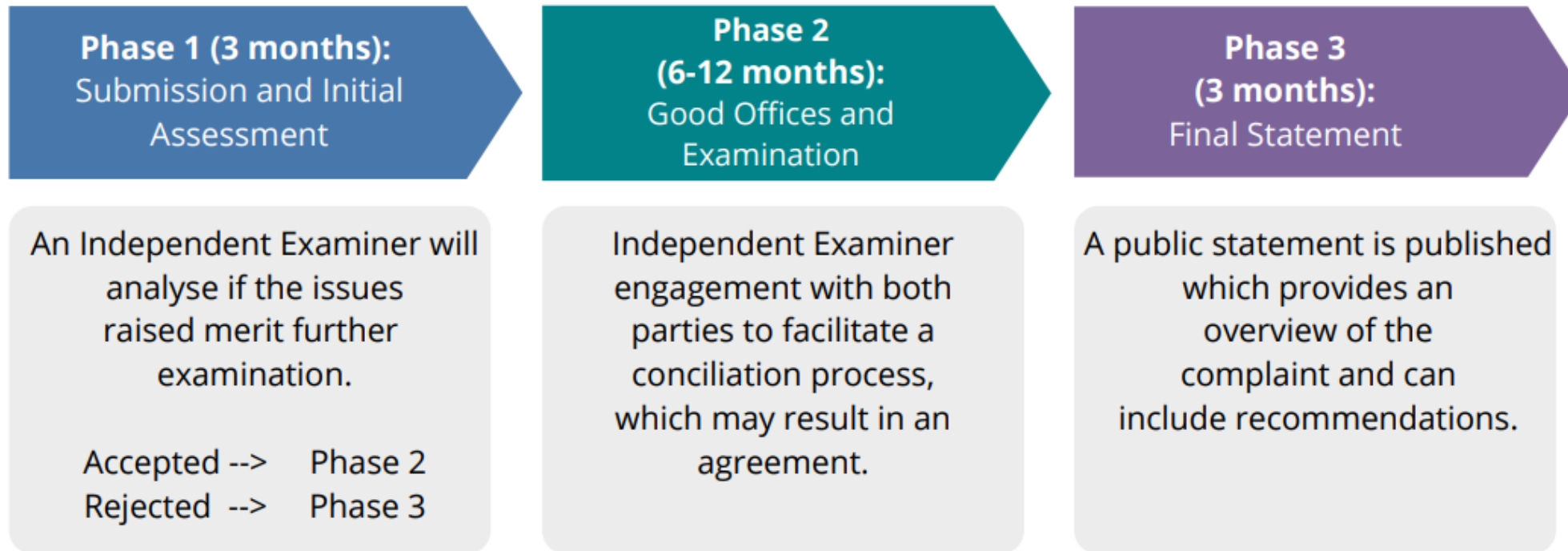
Independent Examiners manage complaints against multinational enterprises and promote the Guidelines.

Governance and Advisory Board

Board members include government and non-government representatives, who provide advice to the Independent Examiner on the management of complaints and promote the Guidelines.

OECD Guidelines - Conciliation

Complaints Process



The Final Statement specifies a timeline for follow up after completion, often after 12 months.
A procedural review process is available upon request.
All timeframes are indicative.

OECD Guidelines – 2023 Updates

- On 8 June 2023, the OECD released the 2023 update of the Guidelines. The update follows an extensive consultation process with key stakeholders.
- Some key updates include:
 - Recommendations on how enterprises are expected to conduct due diligence on impacts and business relationships related to the use of their products and services
 - Updated recommendations on disclosure of responsible business conduct information
 - Expanded due diligence recommendations to all forms of corruption
 - Recommendations for enterprises to ensure lobbying activities are consistent with the Guidelines
 - Strengthened procedures to ensure the visibility, effectiveness and functional equivalence of National Contact Points for Responsible Business Conduct

Anti-bribery & corruption resources

Bribery Prevention Network Hub

briberyprevention.com

- the Bribery Prevention Network is a public-private partnership that brings together business, civil society, academia and government
- shared goal of supporting Australian business to prevent, detect and address bribery and corruption and promote a culture of compliance
- the website includes resources to prevent, detect and address bribery risks for businesses

Transparency International Australia tools

mining.transparency.org.au

- Mining Awards Corruption Risk Assessment Tool
- Responsible mining business integrity tool
- Anti-corruption guide for junior mining companies



Contributing organisations



Allens & Linklaters

Host organisation



BHP



Working together for a bribery free society



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