



Australian Government
Attorney-General's Department

Attribution of legal person liability under Australia's Criminal Code

Standard method for attribution of liability

- Physical element (**conduct**)
 - Committed by the legal person if an employee, agent or officer acted within the actual or apparent scope of their employment or authority
- Mental element (**state of mind**)
 - Attributed to the legal person if the legal person **expressly, tacitly or impliedly authorised or permitted** the conduct

“Expressly, tacitly or impliedly authorised or permitted the conduct”

- **Board of directors** carried out the conduct, or authorised/permitted the conduct
- **High managerial agent** engaged in the conduct, or authorised/permitted the conduct
- Existence of a **corporate culture** that led to non-compliance
- Failed to create a **corporate culture** that required compliance

What is corporate culture?

- Relevant factors include:
 - whether authority to commit an offence of the **same or a similar character** had been given by a high managerial agent of the legal person
 - whether the employee, agent or officer who committed the offence **believed on reasonable grounds** that a high managerial agent would have authorised or permitted the conduct

Defence of due diligence

- Liability will not be attributed if the legal person proves that it exercised **due diligence** to prevent the conduct, or the authorisation or permission of the conduct
- Only available where liability is attributed because a high managerial agent permitted/authorised the conduct

Proposed foreign bribery 'failure to prevent' model

- An **associate** of the legal person engages in foreign bribery for the profit/gain of the legal person
- **Defence:** Legal person had **adequate procedures** in place to prevent foreign bribery
- **Associate:**
 - officer, employee, agent
 - contractor
 - subsidiary
 - any entity controlled by the legal person or that performs services for on behalf of the legal person