



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra, ACT, 2600
E-mail: economics.sen@aph.gov.au

Uniting Church in Australia, Synod of Victoria and Tasmania Supplementary Submission to Inquiry into Foreign Bribery February 2016

The Uniting Church in Australia Synod of Victoria and Tasmania welcomes the opportunity to provide this supplementary submission to the Government's inquiry into foreign bribery.

The submission provides updates on a number of issues since the Synod made its original submission back in August 2015. The Synod looks forward to being called by the Committee to give evidence when public hearings are held.

Transparency International rated the Australian Government as having engaged in 'Moderate Enforcement' of the OECD Convention on Combating Foreign Bribery in their 2015 assessment.¹ However, this is no change from their previous assessment and points to the need for the Australian Government to do more in enforcing existing foreign bribery laws and in strengthening those laws in line with countries rated as having 'active enforcement' (US, Germany, UK and Switzerland). Australia was singled out for criticism for the weakness of legal protection of whistleblowers in the private sector.²

Additional Recommendation

In addition to the recommendations made in the original joint submission between the Synod and Publish What You Pay Australia, the Synod recommends that legislation and procedures be adopted that maximise the likelihood that payment of restitution will need to be made by the bribe payer to those harmed by the bribery. This is particularly important where the party harmed is a developing country and their people.

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¹ Fritz Heimann, Adam Földes and Sophia Coles, 'Exporting Corruption. Progress Report 2015: Assessing Enforcement of the OECD Convention on Combatting Foreign Bribery', Transparency International, 2015.

² Fritz Heimann, Adam Földes and Sophia Coles, 'Exporting Corruption. Progress Report 2015: Assessing Enforcement of the OECD Convention on Combatting Foreign Bribery', Transparency International, 2015, p. 10.

1. Facilitation Payment Defence

Below is an update of the number of companies in the ASX 100 that have prohibited the payment of all bribes, those whose policy and practice is not clear and those that still allow staff to pay bribes under the facilitation payment defence.

As noted in our original submission the Australian Council of Super Investors (ACSI) had found that in 2011 that 16 of the ASX100 companies had policies banning all forms of bribes, including those that would meet the requirements of the facilitation payment defence. Our work from 2013 suggested that the number of companies in that category had increased to 29, within a period of two years.

Table 1 represents the public policies or statements made in correspondence of the ASX100 companies as of late 2015 with regards to employees being able to pay small bribes to foreign officials under the facilitation payment defence. It is likely there are companies that have banned the payment of all bribes as an internal policy that is not public and which has not been disclosed to us. The ASX 100 companies were the ASX 100 list as of 21 September 2015.

It needs to be noted that in order to make a bribe to a foreign official that relies on the facilitation payment defence requires the company to have some level of process in place (at the very least the requirement to keep a record of the payment) if it wishes to be able to rely on the facilitation payment defence. So businesses without such processes in place are not able to make use of the facilitation payment defence, and the payments made by their employees would be illegal bribes. So a company without the processes to make use of the facilitation payment defence and which has a prohibition on its employees acting illegally, has in practice a ban on making facilitation payments.

Table 1. Policies of ASX 100 Companies as of late 2015 on paying small bribes in the form of facilitation payments. One star signifies connection with developing countries, two stars signifies connection with African countries.

Prohibit Facilitation Payments	Policy does not prohibit them in places where local law does not make facilitation payments illegal. However, no evidence the company has in place systems to would allow facilitation payments to be legally made.	Public policy suggests facilitation payments can only be made if allowed by local law	No Public Prohibition on Facilitation Payments
1. Adelaide Brighton 2. AGL 3. Ansell * 4. ANZ Bank* 5. ALS Limited** 6. Alumina Limited* 7. APA Group 8. Aristocrat Leisure** 9. Asciano 10. ASX 11. AusNet Services 12. Bank of	1. Harvey Norman* 2. Primary Health Care	1. Amcor** 2. AMP 3. Aurizon 4. Brambles ** 5. Caltex Australia 6. Carsales.com.au * 7. Coca-Cola Amatil* 8. Cochlear** 9. Crown Resorts 10. CSR 11. DUET Group 12. GPT Group	1. Transurban

<p>Queensland</p> <p>13. Bendigo and Adelaide Bank</p> <p>14. BHP Billiton Limited**</p> <p>15. BlueScope*</p> <p>16. Boral Limited</p> <p>17. Challenger</p> <p>18. Cimic Group**</p> <p>19. Commonwealth Bank</p> <p>20. Computershare**</p> <p>21. CSL Limited</p> <p>22. Dexus Property Group</p> <p>23. Domino's Pizza Enterprises</p> <p>24. Downer Edi**</p> <p>25. DuluxGroup*</p> <p>26. Fairfax Media</p> <p>27. Flight Centre Travel Group**</p> <p>28. Fortescue Metals Group</p> <p>29. Goodman Group*</p> <p>30. Graincorp*</p> <p>31. Healthscope*</p> <p>32. Henderson Group</p> <p>33. Iluka Resources</p> <p>34. Insurance Australia Group *</p> <p>35. JB Hi-Fi Limited</p> <p>36. Lend Lease*</p> <p>37. Macquarie Group**</p> <p>38. Medibank Private</p> <p>39. Mirvac Group</p> <p>40. National Australia Bank*</p> <p>41. Navitas Ltd**</p> <p>42. Newcrest Mining *</p> <p>43. Oil Search*</p> <p>44. Orica**</p> <p>45. Qantas**</p> <p>46. Qube Holdings</p> <p>47. Ramsay Health Care*</p> <p>48. Recall Holdings*</p> <p>49. Rio Tinto Limited**</p> <p>50. Santos*</p> <p>51. Seek*</p> <p>52. Sims Metal Management**</p> <p>53. Sonic Healthcare</p> <p>54. South32**</p> <p>55. Spark Infrastructure</p>		<p>13. Incitec Pivot **</p> <p>14. Investa Office Fund</p> <p>15. IOOF Holdings</p> <p>16. James Hardie*</p> <p>17. Magellan Financial Group Limited</p> <p>18. Origin Energy*</p> <p>19. Orora</p> <p>20. Perpetual</p> <p>21. QBE Insurance*</p> <p>22. REA Group*</p> <p>23. Resmed*</p> <p>24. Scentre Group Stapled</p> <p>25. Slater & Gordon</p> <p>26. Tabcorp</p> <p>27. Westfield Group</p>	
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Group 56. Spotless 57. The Star Entertainment Group (formerly Echo Entertainment Group) 58. Stockland 59. Suncorp 60. Sydney Airport 61. Tatts Group 62. Telstra** 63. TPG Telecom Limited 64. Treasury Wine Estates** 65. Vicinity Centres (formerly Federation Centres Stapled) 66. Wesfarmers* 67. Westpac* 68. Woodside Petroleum* 69. Woolworths* 70. Worley Parsons**			
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The Appendix of the submission contains further details of individual company policies when it comes to the payment of small bribes under the facilitation payment defence.

As noted in Table 1, the number of companies in the ASX100 on 21 September 2015 that prohibit use of all forms of bribery, including those covered by the facilitation payment defence was 70, which is a massive increase compared to the ASX 100 companies surveyed back in 2013. Of the rest, all but Transurban had public policies that require their employees to always act within relevant laws impacting the company. For those companies stating their employees and representatives must always act within the law means bribes under the facilitation payment defence could only be made in countries where such bribes are not illegal.

For Transurban we could find no public policy that explicitly required employees and other representatives of the company to comply with all relevant laws, we suspect that it is likely that Transurban actually does expect their employees and representatives to act within the law. However, the policies of Transurban were not worded in a way that allowed that assumption to be made beyond any doubt.

What is surprising is that the Australian Parliament has not restricted the facilitation payment defence to situations where making such bribes is not illegal in the country being made. We use the double negative, as it is our understanding that usually where facilitation payments are made and they are not explicitly illegal, it is not usually because the government in question has authorised them or approves of them. It is usually because the anti-bribery laws of the jurisdiction have loopholes in them that allow officials to accept or seek bribes in the form of facilitation payments. That said, we can find no examples ourselves of where the laws of a country contain such a loophole.

The Australian Parliament continues to maintain the facilitation payment defence even in cases where the Australian company paying the bribe is wilfully engaging in bribery that is illegal in the jurisdiction where it is being made. We suspect that this situation applies to an ever decreasing minority of Australian businesses willing to engage in illegal activity in foreign jurisdictions. We know of no Australian businesses willing to publicly admit they permit their employees and representatives to engage in illegal activities in foreign jurisdictions.

2. Progress on Beneficial Ownership Disclosure

In our August 2015 submission we recommended that Australia adopt a public register of the beneficial of companies. It is worthy of note that in December 2015 it was agreed that the 49 member countries of the Extractive Industries Transparency Initiative (EITI) agreed to beneficial ownership transparency. All 49 governments agreed to request companies who bid for, operate and invest in oil, gas and mining sectors, disclose who their real owners are. Companies that do not reveal their owners will be named.³

3. Deferred Prosecution Agreement Case

The first UK Deferred Prosecution Agreement (DPA) was approved in the UK by a senior judge, Lord Justice Leveson, on 30 November 2015 involving Standard Bank's alleged failure to prevent its Tanzanian subsidiary and its executives from paying bribes. The agreement was the first enforcement action that the UK Serious Fraud Office has taken under the Section 7 'failure to prevent' offence of the UK *Bribery Act*.

The DPA relates to charges, now suspended, alleged that Standard Bank failed to prevent its Tanzanian subsidiary, Stanbic Tanzania, and its top executives from paying bribes to senior government officials to secure the Tanzanian Government's mandate to raise US\$600 million of sovereign debt financing in the form of a bond.⁴ The alleged bribes consisted of a US\$6 million fee paid by Stanbic to a local agent, Enterprise Growth Market Advisors (EGMA) Ltd, paid out of international investors' money raised by Standard Bank for the Tanzanian Government.⁵ EGMA, according to the agreed facts, provided no real services in return for its US\$6 million fee. Its chairman at the time, Harry Kitilya, was Commissioner of the Tanzania Revenue Authority, which was responsible for advising the government on financing needs.⁶ A key factor behind Standard's eligibility for a DPA was the fact it self-reported the alleged misconduct within days of being alerted by Stanbic Tanzania employees and cooperated with the UK Serious Fraud Office.

Non-government organisation Corruption Watch offered an assessment of the DPA.⁷ The case highlights the cautions that need to be addressed if the Australian Parliament agrees to allow for DPAs in foreign bribery cases.

On the positive side it acknowledged the DPA in this case ensured there would be no tax deductibility for the financial penalties imposed, no immunity from prosecution clauses for conduct that has not been disclosed and provision of extensive detail of the alleged criminal activity in a 55 page Statement of Facts admitted by Standard Bank. The Statement of Facts identified either by name or role key players in the alleged criminal conduct. The UK Serious Fraud Office did approach the Tanzanian Government anti-corruption body, the Prevention

³ Rachel Owens, 'Important stop forward in campaign against anonymous companies', <http://www.globalwitness.org/>, 14 December 2015.

⁴ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 3.

⁵ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 3.

⁶ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 3.

⁷ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015.

of Crime and Corruption Bureau to check whether it had any objections to the Serious Fraud Office going ahead with resolving the investigation into Standard Bank with a DPA before the final approval. The DPA includes a 'muzzle clause', which prevents those charged in the DPA with contradicting the narrative of facts in public.⁸

On the negative side Corruption Watch reported the DPA set some worryingly low standards in other key areas, namely:

- Lack of individual accountability – no single individual in the UK was held to account either by Standard Bank or the UK Serious Fraud Office (SFO) for their failure to prevent the alleged bribery. It was noted by Corruption Watch that there was a high level of control and approval by UK individuals for the transaction. These individuals still operate at senior levels within the financial industry.⁹ The team at the Standard Bank PLC in the UK drew up the collaboration agreement with the local agent, supposedly because the local Tanzanian team did not have the capacity or knowledge to do so. The team appears to have deliberately avoided giving any detail about the role of the agent to the compliance team within Standard Bank UK, to the Mandate Approval Committee.¹⁰ Staff in Standard Bank UK also helped draft the Mandate and Fee letters for the transaction. The Mandate letter was specifically drafted to avoid any mention of a partner or third party, while the Fee letter specified that the Government of Tanzania would pay Standard Bank, Stanbic and a 'local partner' a fee of 2.4% without naming who the local partner was.¹¹

In the view of Corruption Watch:¹²

This particular DPA appears to set a precedent that UK employees can approve and draw up agency agreements on behalf of foreign subsidiaries, conduct no due diligence on those agreements, conceal the use of agents from a compliance function and institutional investors, and face no individual penalty. It is questionable whether such a precedent will act as a genuine deterrent to individuals not to engage in high risk behaviour with regards to foreign bribery. It also suggests that the Bribery Act in practice may be significantly weaker in its application than the US Foreign Corrupt Practices Act. Under the FCPA, reckless disregard and wilful blindness, are enough to establish liability for knowledge of an offence.

- Reliance on the Bank's own internal investigation – Corruption Watch expressed deep concern at the almost complete reliance by the UK SFO on the Bank's own internal investigation which means that neither the court or the public will ever truly know whether the full extent of the wrongdoing was exposed, or whether there were systemic problems within the Bank rather than this being an isolated incident.¹³ The Synod shares the concern of the head of enforcement at the UK Financial Conduct Authority that where enforcement bodies or regulators appear to rely on internal investigations it can give the perception that they have let firms "mark their own homework."¹⁴

Even where the company uses an independent law firm to do the investigation, the law firm is entirely reliant on what documents the company provides it with and which staff the company gives it access to. The law firm conducting an internal investigation does not have the search and seizure powers of law enforcement agencies and cannot insist on interviewing certain staff.

⁸ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 4.

⁹ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 1.

¹⁰ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 5.

¹¹ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 5.

¹² Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 5.

¹³ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 1.

¹⁴ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 6.

- Relatively low financial penalties that do not reflect adequate compensation or disgorgement of profits – Standard Bank agreed to pay US\$6 million compensation to the Tanzanian Government based on the calculated harm to the country. However, Corruption Watch raised concern that compensation may have been over 13 times higher – possibly as high as US\$80 million – if the full harm to Tanzania had been taken into account. Meanwhile, the profits to be disgorged by the Bank were set at US\$8.4 million, which did not take into account revenue streams made by the Bank on the transaction (which could have been up to US\$10 million) or the market advantage achieved by the Bank as a result of the alleged criminal activity.¹⁵

Corruption Watch raised the concern the DPA casts doubt on the deterrent value of both Section 7 of the UK *Bribery Act* and DPAs themselves, particularly where no individuals are held accountable, and whether the DPA has fully served the interests of the real victims of the wrongdoing: the people of Tanzania.¹⁶

The US Department of Justice's Yates Memo (issued by Sally Yates, US Deputy Attorney General on 9 September 2015) emphasised the importance of holding individuals to account for corporate criminal activity they are involved with. It stated:

One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system....

The guidance in this memo will also apply to civil corporate matters. In addition to recovering assets, civil enforcement actions serve to redress misconduct and deter future wrongdoing. Thus, civil attorneys investigating corporate wrongdoing should maintain a focus on the responsible individuals, recognizing that holding them to account is an important part of protecting the public fisc in the long term.

The guidance in this memo reflects six key steps to strengthen our pursuit of individual corporate wrongdoing, some of which reflect policy shifts and each of which is described in greater detail below: (1) in order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct; (2) criminal and civil corporate investigations should focus on individuals from the inception of the investigation; (3) criminal and civil attorneys handling corporate investigations should be in routine communication with one another; (4) absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation; (5) Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases; and (6) civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay....

- 1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.**

¹⁵ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 1.

¹⁶ Corruption Watch, 'The UK's First Deferred Prosecution Agreement', December 2015, p. 3.

In order for a company to receive any consideration for cooperation under the Principles of Federal Prosecution of Business Organizations, the company must completely disclose to the Department all relevant facts about individual misconduct. Companies cannot pick and choose what facts to disclose. That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct. If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor pursuant to USAM 9-28.700 et seq. Once a company meets the threshold requirement of providing all relevant facts with respect to individuals, it will be eligible for consideration for cooperation credit. The extent of that cooperation credit will depend on all the various factors that have traditionally applied in making this assessment (e.g., the timeliness of the cooperation, the diligence, thoroughness, and speed of the internal investigation, the proactive nature of the cooperation, etc.).

This condition of cooperation applies equally to corporations seeking to cooperate in civil matters; a company under civil investigation must provide to the Department all relevant facts about individual misconduct in order to receive any consideration in the negotiation. For example, the Department's position on "full cooperation" under the False Claims Act, 31 U.S.C. § 3729(a)(2), will be that, at a minimum, all relevant facts about responsible individuals must be provided.

The requirement that companies cooperate completely as to individuals, within the bounds of the law and legal privileges, see USAM 9-28.700 to 9-28.760, does not mean that Department attorneys should wait for the company to deliver the information about individual wrongdoers and then merely accept what companies provide. To the contrary, Department attorneys should be proactively investigating individuals at every step of the process - before, during, and after any corporate cooperation. Department attorneys should vigorously review any information provided by companies and compare it to the results of their own investigation, in order to best ensure that the information provided is indeed complete and does not seek to minimize the behavior or role of any individual or group of individuals. Department attorneys should strive to obtain from the company as much information as possible about responsible individuals before resolving the corporate case. But there may be instances where the company's continued cooperation with respect to individuals will be necessary post-resolution. In these circumstances, the plea or settlement agreement should include a provision that requires the company to provide information about all culpable individuals and that is explicit enough so that a failure to provide the information results in specific consequences, such as stipulated penalties and/or a material breach.

2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.

Both criminal and civil attorneys should focus on individual wrongdoing from the very beginning of any investigation of corporate misconduct. By focusing on building cases against individual wrongdoers from the inception of an investigation, we accomplish multiple goals. First, we maximize our ability to ferret out the full extent of corporate misconduct. Because a corporation only acts through individuals, investigating the conduct of individuals is the most efficient and effective way to determine the facts and extent of any corporate misconduct. Second, by focusing our investigation on individuals, we can increase the likelihood that individuals with knowledge of the corporate misconduct will cooperate with the investigation and

provide information against individuals higher up the corporate hierarchy. Third, by focusing on individuals from the very beginning of an investigation, we maximize the chances that the final resolution of an investigation uncovering the misconduct will include civil or criminal charges against not just the corporation but against culpable individuals as well....

4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.

There may be instances where the Department reaches a resolution with the company before resolving matters with responsible individuals. In these circumstances, Department attorneys should take care to preserve the ability to pursue these individuals. Because of the importance of holding responsible individuals to account, absent extraordinary circumstances or approved departmental policy such as the Antitrust Division's Corporate Leniency Policy, Department lawyers should not agree to a corporate resolution that includes an agreement to dismiss charges against, or provide immunity for, individual officers or employees. The same principle holds true in civil corporate matters; absent extraordinary circumstances, the United States should not release claims related to the liability of individuals based on corporate settlement releases. Any such release of criminal or civil liability due to extraordinary circumstances must be personally approved in writing by the relevant Assistant Attorney General or United States Attorney.

So any consideration by the Australian Government or Parliament of deferred prosecution agreements for foreign bribery should align with the advice of the Yates Memo in terms of the importance of holding individuals accountable for their participation in corporate criminal behaviour.

Further the impact of measures to encourage self-reporting of bribery need to be carefully considered against undermining the deterrent impact of the anti-bribery legislation. The U4 Anti-Corruption Resource Centre has pointed out that in the jurisdiction of the bribe payer, transparency has a deterrent effect that may work in two ways. First, when information about penalties imposed against companies or individuals is published, other potential bribe payers realise the potential costs of breaking the law and may refrain from similar behaviour. Second, the publication of information on bribery cases subjects the defendants to reputational consequences and may discourage them from paying bribes again in the future.¹⁷

They point out that settlements present a unique challenge. While trials are usually public, settlements and other related procedures have varying degrees of publicity. For settlements, factors influencing the degree of transparency include whether the hearing is public, whether victims and other affected parties are informed that the settlement is taking place and are made aware of its outcome, as well as whether and at what stage of the process any relevant documents are made public.¹⁸

In general, cases that settle tend to be less transparent than cases that proceed to full trial, in terms of both the agreements or decisions released and amount of proceedings open to the public. This arguably makes it harder for the home government of the public official who

¹⁷ Francesco De Simone and Bruce Zagaris, 'Impact of foreign bribery legislation on developing countries and the role of donor agencies', U4 Anti-Corruption Resource Centre, September 2014, p. 18.

¹⁸ Francesco De Simone and Bruce Zagaris, 'Impact of foreign bribery legislation on developing countries and the role of donor agencies', U4 Anti-Corruption Resource Centre, September 2014, p. 18.

has been bribed to gain access to relevant facts of the settlement and thus to rely on that information for a domestic investigation; it also reduces the potential deterrent effect of foreign bribery laws.¹⁹

5. Restitution to Developing Countries

Where Australian individuals or corporations have been involved in bribing foreign officials, Australian law should ensure that there is a significant possibility that restitution will be required to be paid by the bribe payer for the harm done in the jurisdiction where the bribe was paid. This is especially important for the benefit of developing countries. The U4 Anti-Corruption Resource Centre reported that anecdotal evidence and research in the area of asset recovery suggests that the failure to require bribe payers to provide restitution to those harmed, especially in developing countries, may erode support for institutions in developing countries and for the fight against corruption. It also prevents developing country governments from recovering funds that could be used in a number of activities, including anti-corruption and development programmes. Finally, it can erode the deterrent effect of foreign and domestic bribery policies. Preliminary findings strongly suggest that restitution to developing countries in foreign bribery cases would be desirable and should be done more frequently.²⁰

Dr Mark Zirnsak
Director
Justice and International Mission Unit
Synod of Victoria and Tasmania
Uniting Church in Australia
130 Little Collins Street
Melbourne, Victoria, 3000
Phone:
E-mail:

¹⁹ Francesco De Simone and Bruce Zagaris, 'Impact of foreign bribery legislation on developing countries and the role of donor agencies', U4 Anti-Corruption Resource Centre, September 2014, p. 18.

²⁰ Francesco De Simone and Bruce Zagaris, 'Impact of foreign bribery legislation on developing countries and the role of donor agencies', U4 Anti-Corruption Resource Centre, September 2014, p. 28.

Appendix . Details of company policies on payment of bribes under the Facilitation Payment Defence.

Table 2: List of ASX 100 Companies publicly disclosed Facilitation Payment Policies as of late 2015. One star signifies connection with developing countries, two stars signifies connection with African countries.

Company	Public Prohibition on Facilitation Payments?	Policy details
Adelaide Brighton	Yes	<p>The Adelaide Brighton 'Code of Conduct' states: "In accordance with the key values set out in this Code of Conduct, Adelaide Brighton does not condone the giving or receiving of any bribe, commission or inducement, which may influence business decision or compromise independent judgement, whether through an intermediary or otherwise, in any circumstances, even if it might be culturally acceptable.</p> <p>You should not pay or receive any bribes, inducements or commissions (this includes any item intended to improperly obtain favourable treatment, whether from Government bodies or otherwise)....</p> <p>The giving and receiving of bribes, inducements and commissions is against Adelaide Brighton's policy and laws of many countries where Adelaide Brighton conducts business. Any director or employee found to be receiving, accepting or condoning a bribe, commission or inducement, or attempting to initiate such activities, will be liable to termination (where applicable pursuant to the employment agreement) and possibly criminal proceedings."</p> <p>Correspondence from Adelaide Brighton dated 8 February 2016 stated: "I can confirm that the Company's policy is intended to ban the payment of facilitation payments, including in countries where local law does not make such payments illegal."</p>
AGL	Yes	<p>The AGL 'Code of Conduct' requires employees to act within the law and: "Not participate in any activities that cause, support or conceal corruption or bribery in any form."</p> <p>AGL confirmed that their Code was intended to prohibit the use of the facilitation payment defence in correspondence to the Synod dated 11 February 2016, stating: "The AGL Code of Conduct prohibits employees participating in any activities that cause support or conceal corruption or bribery in any form and this applies to all jurisdictions in which we operate."</p>
ALS Limited**	Yes	<p>The ALS 'Code of Conduct' does not explicitly mention the facilitation payment defence, but states:</p>

		<p>"Bribery is the act of offering, promising, giving or accepting a benefit with the intention of influencing a person who is otherwise expected to act in good faith or in an impartial manner, to do or omit to do anything in the performance of their role or function, in order to provide ALS with business or a business advantage that is not legitimately due. The benefit that is offered, given or accepted may be monetary or non-monetary. For instance, it may involve non-cash gifts, political or charitable contributions, loans, reciprocal favours, business or employment opportunities or lavish corporate hospitality....</p> <p>ALS employees must not give, offer, promise, accept or request a bribe to be given, offered, promised or accepted by another person. Under no circumstances will the ALS Group approve of any offers, or make, request or receive an irregular payment or other thing of value, to win business or influence a business decision in ALS' favour."</p> <p>The Code makes reference to a 'Anti-Bribery and Corruption Policy', but the Policy document does not appear to be public.</p> <p>In correspondence to the Unit, ALS stated: "As identified in your letter, ALS Limited has established an Anti-Bribery and Corruption Policy that applies to all individuals at all levels, including executives, officers, directors and other ALS staff, and consultants (collectively known as ALS personnel) and other business partners of the Group. Under section 7 of the policy we provide guidance in relation to facilitation payments: "The making of facilitation payments by ALS personnel or business partners is prohibited. Facilitation payments are typically minor, unofficial payments made to secure or expedite a government action by a government official or employee.""</p>
Alumina Limited*	Yes	<p>The Alumina 'Corruption & Money Laundering Policy' does not explicitly mention the facilitation payment defence, but states that employees, agents and intermediaries are forbidden from: "offer, promising, giving, causing to be offered or provided, accepting and intended or actual receipt of any gift, loan, fee, reward, benefit or other advantage to or by any person." The Policy states that it is designed to comply with the UK <i>Bribery Act 2010</i>, which forbids facilitation payments.</p>
Amcor Limited**	Permitted where not illegal under local law under restricted conditions	<p>Amcor's Corporate Code of Conduct and Ethics Policy states: "Amcor is opposed to making such payments as a matter of policy, and every effort should be made to resist them. An understanding of what lies behind a request (e.g. the person may be seeking recognition or status) may suggest ways to meet the request in an acceptable way.</p> <p>Amcor recognises, that in some countries, it may be possible to make minor facilitation payments. In other</p>

		<p>countries, strict legislation exists prohibiting facilitation payments of any kind. Such legislation can have extra territorial reach and can therefore apply to any acts occurring outside the country in which the legislation is made. Accordingly, no facilitation payments of any amount can be made unless the prior consent of all of the following persons within Amcor has been obtained:</p> <ul style="list-style-type: none"> • your Business Group President; • your Business Group Chief Financial Officer; • your Business Group General Counsel; and • the Group General Counsel. <p>When seeking approval, you should confirm that each of the following applies:</p> <ul style="list-style-type: none"> • the purpose of the payment is to expedite the completion of a routine service or administrative action, which Amcor is entitled to under local law and in the ordinary course of events. The payment must not be an attempt to distort a proper decision-making process; • there is no reasonable alternative to making the payment; • the business consequences of not making the payment will be serious; • the type and amount of the payment is consistent with what is customarily sought, made and sanctioned in the country concerned; • the payment will not expose Amcor or the co-worker to legal action under any applicable law or regulation; • management is aware of the payment; and • the payment is accounted for clearly and accurately."
AMP	Policy does not prohibit them where they are not illegal in the country being made	The AMP 'Code of Conduct' makes no reference to bribery or the facilitation payment defence, but does require its employees to act within the law wherever it does business.
Ansell Limited *	Yes	<ul style="list-style-type: none"> • Facilitating payment, gifts, and entertainment and political contribution are separate policies under the Code of Conduct. • Facilitating payments always prohibited by Ansell. Ansell will not distinguish between "facilitating payments" and any other bribe.
ANZ Banking Group Limited*	Yes	<ul style="list-style-type: none"> • The making or receiving of improper payments, gifts and political donations are all covered under ANZ's bribery and corruption policies. • Employees must ensure that all dealings are properly recorded and transparent according to the Anti-Bribery Policy.
APA Group	Yes	<p>The APA Group 'Code of Conduct' makes no explicit mention of bribes or the facilitation payment defence. It states:</p> <p>"APA will at all times honour and respect the culture and laws of any country in which we do business."</p>

		Correspondence with the Synod stated: “APA does not allow facilitation payments as to do so would be a contravention of law as APA does not have in place the structures which would enable it to rely on the defence.”
Aristocrat Leisure Limited**	Yes	<ul style="list-style-type: none"> • Policies cover political donations, gifts and entertainment, bribery and corruption. Facilitation payments are strictly prohibited. • Any business gifts and entertainment must be recorded accurately and fairly in ALL’s records.
Asciano	Yes	The Asciano ‘Code of Conduct’ states that employees must: “Ensure Asciano is not perceived as a Company that accepts or receives or in any way condones the giving or receiving of bribes or ‘facilitation payments’ – this includes payments to government officials to obtain routine services to which Asciano is otherwise legally entitled.”
ASX	Yes	The ASX ‘Anti-Bribery and Corruption Policy’ states: “Facilitation payments, whether legal or not in a country, are prohibited under this policy.”
Aurizon	Policy does not prohibit them where they are not illegal in the country being made	The Aurizon ‘Code of Conduct’ requires employees to act within the law. The Code makes no mention of bribes or facilitation payments.
AusNet Services	Yes	<p>The AusNet ‘Code of Business Conduct’ requires personnel to: “breach any laws, legislation or regulations during the course of their duties.”</p> <p>The Code makes reference to a ‘Fraud and Corruption Control Policy’, but this does not appear to be publicly available.</p> <p>Correspondence from AusNet Services to the Unit stated: “I can confirm that the Fraud and Corruption Policy of AusNet Services prohibits bribes of any kind, whether or not they are paid to foreign persons or entities.”</p>
Bank of Queensland	Yes	<p>The Bank of Queensland ‘Code of Conduct’ makes no mention of facilitation payments and states: “Under no circumstances will I accept, offer or promise a bribe or unlawful inducement to anyone.” The Code requires employees to operate within the law.</p> <p>Correspondence from the Bank of Queensland to the Synod dated 8 February 2016 stated: “We consider facilitation payments akin to bribery and treat them in a similar fashion. Our Code of Conduct acceptance of gifts section states ‘under no circumstances will I accept, offer or promise a bribe or unlawful inducement to anyone’ and we would see this as applying</p>

		<p>equally to facilitation payments.</p> <p>All BOQ directors, officers, employees, agents, contractors, owner managers and their staff are required to accept our Code of Conduct before commencing work with us.”</p>
Bendigo and Adelaide Bank	Yes	<p>The Bendigo and Adelaide Bank ‘Code of Conduct’ requires employees to act within the law, but makes no mention of facilitation payments. The Code states “We do not offer or accept bribes.”</p> <p>Correspondence from the Bendigo and Adelaide Bank dated 8 February 2016 stated:</p> <p>“You are correct that our Code of Conduct does not specifically refer to facilitation payments. This is most likely because, as our business is almost exclusively conducted in Australia, the issue of facilitation payments to foreign officials is unlikely to be relevant to us.</p> <p>Having said that, facilitation payments would fall outside the acceptable standard of conduct. For example, our Code of Conduct provides:</p> <p><i>Bendigo and Adelaide Bank has always taken pride in its reputation with its stakeholders with integrity and respect....</i></p> <p><i>As a rule of thumb, if you are not sure whether an activity might be in breach of the Code, ask yourself the following question.</i></p> <p><i>Would I feel comfortable if what I’m about to do were reported on the front page of a national newspaper for all my work colleagues, friends and family to read?</i></p> <p>Bribes and facilitation payments, to the extent that there is a difference between the two, would fall outside our Code of Conduct.”</p>
BHP Billiton Limited**	Yes	<ul style="list-style-type: none"> • Bribery and Corruption Policy covers facilitation payments, gifts and hospitality and contributions. • The making of facilitation payments is prohibited by BHP Billiton. • Requests for facilitation payments must be reported to line managers and Group legal without delay.
BlueScope Steel Limited*	Yes	<p>The BlueScope ‘Guide to Business Conduct’ states:</p> <p>“It is not uncommon in some countries for employees to be asked to make relatively minor payments, more by way of gratuity, to lower level officials or government employees. These payments (sometimes called “facilitation payments”) are sought to expedite routine services or administrative actions provided or performed by those individuals. BlueScope is opposed to making payments of this kind, and every effort should be made to resist them except in circumstances where an employee’s personal safety is compromised.”</p>

Brambles Limited**	Permitted with restrictions when allowed for by local law	<p>The Brambles 'Code of Conduct' states:</p> <p>"6.2 Facilitation payments. Facilitation payments are typically small, unofficial payments made to secure or expedite a routine government action by a government official, such as obtaining a permit to do business in a foreign country, obtaining police protection, or processing a visa, customs invoice, or other government paper. They may be common in some jurisdictions in which we operate. Kickbacks are typically payments made in return for a business favour or advantage and are strictly prohibited. All Workers must avoid any activity that might lead to, or suggest, that a facilitation payment or kickback will be made or accepted by us. We will not make or accept kickbacks of any kind, and except as expressly set forth in Section 6.3 below, we do not make facilitation payments.</p> <p>6.3 Some countries allow small facilitation payments to be made to government officials under very limited circumstances. Nevertheless, Brambles does not permit such payments to be made without the prior written approval of the Bribery Prevention Group. Because the line between impermissible bribes and permissible facilitation payments is often difficult to determine, facilitation payments should only be made if all of the following requirements are met and with the prior written approval of the Bribery Prevention Group:</p> <ul style="list-style-type: none"> (a) The payment is necessary to secure or expedite a routine government action that is non-discretionary in nature; (b) The payment is necessary to prevent damage to an important commercial interest of Brambles with no reasonable alternative; (c) The payment is small in amount; (d) The payment is customary; (e) The payment is legal under local and all applicable law; (f) The payment is to a low-level government employee who performs administrative acts not requiring the exercise of discretion; (g) The payment is not being made with an expectation that it will result in business being given to Brambles; and (h) The payment will be accurately recorded in the Brambles books and records as "Legal Facilitation Payment." <p>If you have suspicions, concerns or queries you should raise these with the Bribery Prevention Group.</p> <p>In exceptional circumstances, Workers may find themselves in emergency situations where their personal security or safety may be threatened and they are unable to move to a safer environment due to unreasonable or unlawful obstacles put in place by government officials. If this occurs, it is sometimes the case that the obstacle can be removed, and the threat alleviated, by a payment to a government official. Payments can be made in these</p>
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		circumstances. If Workers make such a payment, they should notify their manager once they are in a safe location and keep a record of the details which caused the payment to be made."
Carsales.com.au	Policy does not prohibit them where they are not illegal in the country being made	The caresales.com.au 'Code of Conduct' requires employees to comply with local laws.
Caltex Australia	Policy does not prohibit them where they are not illegal in the country being made	<p>The Caltex Australia 'Code of Conduct' makes no mention of facilitation payments and states: "Similarly, employees must never use gifts to try to influence another company's or organisation's business decisions."</p> <p>The 'Code of Conduct' also states: "All employees must comply with all federal, state, local and international laws, rules and regulations that are applicable to the business of Caltex."</p>
Challenger	Yes	<p>The public 'Summary of Corporate Code of Conduct' of Challenge forbids employees from engaging in illegal activity.</p> <p>Correspondence with the Synod stated: "I confirm that Challenger's Fraud and Corruption Policy prohibits the payment of any bribes or facilitation payments, to any party, in any jurisdiction in the course of undertaking its business operations."</p>
Cimic Group	Yes	The Cimic 'Group Code of Conduct' states: "The Group prohibits, and has zero tolerance for, all forms of bribery and corruption. You must obey all relevant laws and regulations, and must not participate in any arrangement which gives any person an improper benefit in return for an unfair advantage to any party, directly or through an intermediary. This includes facilitation payments (payments of cash or in kind made to secure or expedite a routine service, or to 'facilitate' a routine Government action), even if allowed under local laws or customs."
Coca-Cola Amatil*	Policy does not prohibit them where they are not illegal in the country being made	<p>The Coca-Cola Amatil 'Code of Business Conduct. Acting with Integrity. Our Guide to Behaviour Expectations' states: "Employees must not engage in any fraudulent, unethical or unlawful activities, or carry out improper payments practices either to obtain business or for personal gain.</p> <p>In particular you must not:</p> <ul style="list-style-type: none"> • Engage in commercial bribery; • Be party to the bribery of public officials; or • In any way facilitate bribery or other improper or questionable practices."
Cochlear	Policy does	The Cochlear 'Anti-Bribery Policy Statement' states:

Limited**	not prohibit them where they are not illegal in the country being made	<p>“Cochlear is committed to conducting our operations in every country where we do business, in compliance with all applicable laws against bribery and corruption.”</p> <p>The policy defines a bribe as:</p> <p>“A bribe may take the form of an inducement, reward, payment or benefit offered, promised or provided in order to gain any improper and/or unethical commercial, contractual, regulatory or personal advantage.”</p> <p>The policy states on the payment of bribes:</p> <p>“We must not bribe, directly or indirectly, government or public officials or private persons, or ask for or accept a bribe.”</p>
Crown Resorts Limited	Permitted in some cases where legal under local law	<p>The Crown Resorts ‘Anti-bribery & Corruption Policy’ states:</p> <p>“As a general rule, Crown prohibits the use of facilitation payments, whether directly or through third parties. In limited circumstances, a facilitation payment may be approved by Crown’s General Counsel in circumstances where that payment does not contravene applicable law or this policy.”</p>
CSR	Policy does not prohibit them where they are not illegal in the country being made	<p>The CSR ‘Code of Business Conduct and Ethics’ makes no explicit reference to facilitation payments and states:</p> <p>“We do not give nor take bribes, kickbacks or gratuities or any other payments for favourable treatment or as an inducement for doing business.”</p> <p>And</p> <p>“CSR will only conduct business by lawful and ethical means, no matter how fierce the competition, or how high the stakes may seem to employees. Legal responsibilities change and employees at all levels must keep themselves informed and comply with all legal responsibilities.”</p>
DEXUS Property Group	Yes	<p>Verbal conversation with the DEXUS Property Group indicated that the company has no internal processes by which facilitation payments could be made by any representative of the company. So in practice the payment of facilitation payments is not legally possible.</p>
Domino’s Pizza Enterprises	Yes	<p>The Domino’s Pizza Enterprises ‘Code of Conduct for Employees’ does not explicitly mention facilitation payments, stating:</p> <p>“12.1 Employees should comply with the letter and where it is clear the spirit of all laws and regulations relating to their business conduct to the best of their abilities....</p> <p>14.1 An Employee should never:</p> <p>14.1.1 accept or offer any improper payment or benefit in connection with their role as an Employee of the Company;</p> <p>14.1.3 try to improperly influence the outcome of an official decision, for example by offering a payment or benefit that is not legitimately due. Such payments or benefits are unacceptable.</p> <p>Correspondence from Domino’s Pizza Enterprise to the</p>

		Synod dated 8 February 2016 stated: “It is our policy that bribes to foreign officials are unacceptable and prohibited. That policy is also intended to prohibit the making of facilitation payments even if strictly legal in any relevant jurisdiction.”
Downer Edl**	Yes	<ul style="list-style-type: none"> • Downer prohibits the making of facilitation payments, as well as getting someone else, including agents or business acquaintances, to make a facilitation payment on Downer’s behalf or on behalf of any of Downer’s people. • Downer has specific statutory obligations in insuring that Downer’s people accurately and completely record and explain Downer’s transactions, financial position and performance. Downer also expects People to fully cooperate with its internal and external auditors and provide true and accurate information.
DUET Group	Policy does not prohibit them where they are not illegal in the country being made	<p>The Duet Group ‘Code of Conduct’ makes no explicit reference to facilitation payments, stating: “DUET is committed to:</p> <ul style="list-style-type: none"> • Conducting all DUET business in accordance with applicable laws and regulations in the jurisdictions in which DUET operates, and in a way that enhances its reputation in those markets. • Prohibiting any activity that seeks to bribe, corrupt or otherwise improperly influence a public official in any country to act (or omit to act) in a way that differs from that official’s proper duties, obligations and standards of conduct for the benefit of DUET or any connected person/entity.”
DuluxGroup Limited*	Yes	<p>The DuluxGroup ‘Fraud, Bribery and Corruption Control Policy’ states: “As a general rule, facilitation payments are expressly prohibited by DuluxGroup, regardless of circumstance. DuluxGroup acknowledges however that in some extreme circumstances a payment may be required where there is a very real and direct threat to personal safety (or such other comparable circumstance). In such situations, the DuluxGroup General Counsel and Company Secretary must be immediately notified.”</p>
Fairfax Media	Yes	<p>The Fairfax ‘Code of Conduct’ makes no explicit reference to facilitation payments stating: “We will not offer bribes or inappropriate payments for the purpose of acquiring, retaining, directing business, or receiving any kind of special or favoured treatment for the company.”</p> <p>Correspondence to the Synod from Fairfax dated 15 February 2016 stated: “Fairfax Media Limited does not make any payment of bribes to foreign officials, including facilitation payments.”</p>
Flight Centre Limited**	Yes	<ul style="list-style-type: none"> • Policies cover facilitation payments, gifts and hospitality. • Facilitation payments are strictly prohibited.
Fortescue	Yes	The Fortescue Metals Group ‘Anti-Bribery and Corruption

Metals Group Ltd		Policy' states: "Fortescue will act with integrity by never offering, paying, soliciting or accepting bribes in any form (including Facilitation payments)."
Goodman Group*	Yes	Policies cover gifts and political donations. Facilitation payments are prohibited regardless of whether they are deemed legal under the jurisdiction in which they occur.
GPT Group	Policy does not prohibit them where they are not illegal in the country being made	The GPT 'Code of Conduct' makes no reference to bribes or facilitation payments but states "it is essential that GPT and its employees not be involved in any form of illegal or unethical conduct, or any other situation or activity which might be perceived by others to constitute illegal or inappropriate conduct."
Harvey Norman Holdings Limited*	Policy does not prohibit them where they are not illegal in the country being made. Unclear if there are internal processes that would allow facilitation payments to be made.	Code mentions that the giving and receiving of inducements, bribes, secret commissions and secret profit is not permitted under any circumstances. In correspondence with the Synod dated 29 January 2016, Harvey Norman stated: "Although Holdings' Code of Conduct does not specifically address facilitation payments of foreign officials, it does provide that Holdings will not make any contributions, payments or otherwise give any endorsement or support which would be considered a contribution, directly or indirectly to political parties or candidates. Further, it is the policy of Holdings' that its business affairs are conducted in compliance with all applicable laws and standards in order to promote a culture of fair and ethical behaviour, and to encourage the reporting of corrupt practices and breaches of law. We note that the Code of Conduct is due for its annual review in March, and Harvey Norman will look at updating its policy to clarify its position on facilitation payments to foreign officials. Any later version of the Code of Conduct will be published on our website."
Healthscope*	Yes	Correspondence with the Synod dated 16 February 2016 stated: "Healthscope's Code of Conduct expressly prohibits both offering and receiving bribes including facilitation payments. The relevant policy is explained under the heading "Gifts, Financial Inducements and Bribes" in the Code of Conduct."
Henderson Group	Yes	The Henderson Group wrote to the Synod stating: "Henderson has a global Anti-Bribery and Corruption Policy ("Policy") in place which strictly prohibits all forms of bribery and corruption including the use of facilitation payments without exception. The Policy applies to all directors, employees, agents, consultants and business partners of Henderson and is maintained and monitored by Henderson's Global Compliance team."
Incitec Pivot **	Policy does	The publicly available summary of the Incitec Pivot 'Anti-

	not prohibit them where they are not illegal in the country being made	bribery and Improper Payments Policy' states: "The policy prohibits the following types of improper payments: <ul style="list-style-type: none"> • Bribery of any public official regardless of location; • Improper payments, or the provision of other improper benefits or advantage, whether tangible or intangible, made in the course of business activity, including illegal facilitation payments and secret commissions."
Insurance Australia Group *	Yes	A letter from Chris Bertuch, Group General Counsel & Company Secretary, IAG, to the Uniting Church in Australia dated 30 September 2013 stated: "Under the IAG Code of Ethics policy, facilitation payments made to foreign officials would be considered a breach of the Code, specifically, Chapter 4 – Our Governance; Bribery and Corruption. As such, IAG does not allow or undertake this practice in its business dealings."
Investa Office Fund	Policy does not prohibit them where they are not illegal in the country being made	The Investa 'Code of Conduct Policy' states: "It is essential that employees comply with the laws and regulations in all countries in which Investa operates and with defined company policy. Violations of laws and regulations can have serious consequences for Investa and the individual concerned (including criminal, civil and administrative sanctions). Employees comply with laws and regulations, not simply because they are law but because it is right to do so."
IOOF Group	Policy does not prohibit them where they are not illegal in the country being made	Correspondence from IOOF Group to the Synod dated 1 February 2016 stated: "Accepting or providing bribes are specific examples of fraud and corruption addressed in IOOF's Fraud Policy. The IOOF Group does not tolerate fraud or corruption at any level. In addition, with respect to our external investment management mandates all future mandates will incorporate a clause with respect to our bribery policy." The IOOF 'Code of Conduct' states: "IOOF employees are expected to adhere to all internal rules developed to regulate and manage IOOF's business operations."
James Hardie Industries PLC*	Policy does not prohibit them where they are not illegal in the country being made.	The James Hardie 'Global Code of Business Conduct and Ethics' makes no explicit reference to facilitation payments, stating: "You are not permitted to make, or cause to be made, any improper payment or offer any improper inducement to any actual or potential customer or to any intermediary as a bribe, kickback or similar payment or facilitate any transaction which (i) could constitute money laundering, (ii) is directly or indirectly for the benefit of any individual (including any government official), company or organisation in any country, and (iii) is designed, directly or indirectly, to secure favoured treatment for the company.... These issues are specifically addressed in other Company policies, including the company's Gifts, Entertainment and

		<p>Anti-Bribery Policy, for which training is provided annually.”</p> <p>The Code does state: “It is the Company’s policy to comply with all applicable governmental laws, rules and regulations, and the Company expects you to carry out your responsibilities on behalf of the Company in accordance with such laws, rules and regulations and to refrain from illegal conduct.”</p>
JB Hi-Fi	Yes	<p>The JB Hi-Fi ‘Code of Conduct’ makes no explicit reference to facilitation payments, stating “No bribes, payoffs or kickbacks will be paid.”</p> <p>Correspondence from JB Hi-Fi to the Synod dated 4 February 2016 stated: “I can confirm that JB Hi-Fi bans the payment of all bribes, including facilitation payments, to foreign officials. When we next revise our Code of Conduct we will consider including a specific reference to “facilitation payments” in addition to the current references to “bribes, payoffs or kickbacks.”</p>
Lend Lease Group*	Yes	<ul style="list-style-type: none"> • The Bribery and Corruption Policy cover facilitation payments. • Lend Lease prohibits all forms of bribery, including the offering, promising, or giving, or requesting, agreeing to receive or accepting, directly or indirectly of bribes or “facilitation payments”.
Macquarie Group Limited**	Yes	<ul style="list-style-type: none"> • Policy covers gifts and entertainment and facilitating payments. • Macquarie also declares all its political expenditure in Australia to the Australian Electoral Commission. • Macquarie prohibits the use of facilitating payments, whether directly or through third parties.
Magellan Financial Group	Policy does not prohibit them where they are not illegal in the country being made.	<p>The Magellan Financial Group ‘Code of Conduct’ requires all employees, directors and contractors to comply with “Both the letter and spirit of all laws, rules and regulations that apply to Magellan in the conduct of its business and affairs.”</p> <p>The Code makes reference to a “Gifts, Benefits, Entertainment and Anti-Bribery Policy”, but the policy does not appear to be publicly available.</p>
Medibank	Yes	<p>The Medibank ‘Code of Conduct’ states employees must: “Not support, make or offer any grants, donations or facilitation payments to any political organisations or associated groups, government officials, government employees or contractors, or private parties in your capacity as a representative of Medicare.”</p>
Mirvac Group	Yes	<p>The Mirvac ‘Code of Conduct’ states: “Workplace Participants are prohibited from offering or receiving any sort of facilitation payments (in any jurisdiction) and any request by a third party for such a payment must be immediately referred to Mirvac’s Chief Financial Officer. This will include any payments (no matter how minor) made for the purpose of expediting or</p>

		securing the performance of any routine government action, including omission to act (eg processing government papers such as a visa, delivery of mail, providing communication services)."
Navitas Limited**	Yes	The Navitas 'Code of Conduct' states: "No payment in any form may be made directly or indirectly to anyone for the purpose of obtaining or retaining business, or to obtain any other favourable treatment."
Newcrest Mining Limited *	Yes	Payments can be made where legally sanctioned and from part of the relevant regulatory regime for example a "fast-track" visa. Appropriate records must be kept, the official published fee structure must be paid and official receipts must be provided and retained.
Orica Limited**	Yes	Bribery policy covers facilitation payments. Code of Conduct contains policies on gifts, entertainment, travel and political contributions.
Origin Energy*	Publicly available policy does not prohibit them where they are not illegal in the country being made	The Origin Energy 'Code of Conduct' states makes no mention of facilitation payments, but notes the company has a 'Anti Bribery and Corruption' policy, but this policy is not publicly available. The Code also states: "We conduct ourselves and our business with due care and in accordance with relevant laws and regulations."
Orora Limited	Policy does not prohibit them where they are not illegal in the country being made	The Orora 'Corporate Code of Conduct and Ethics Policy' does not explicitly mention bribes made as facilitation payments, stating: "Orora does not countenance the offering, making, requesting or receiving payments or payments in kind (gifts, favours, etc.) to influence individuals to award business opportunities to Orora or to make a business decision in the Company's favour or which has the intention that in consequence a function should be performed improperly. In international business, in particular, team members may sometimes come under pressure to make payments or payments in kind to induce others improperly to grant permits or services to which Orora would not generally be entitled. Under no circumstances will Orora approve any offers, making, requesting or receiving irregular payment or payment in kind to win business or influence a business decision in Orora's favour or which has the intention that in consequence a function should be performed improperly. Offers to and making of bribes, 'kick-backs', secret commissions and similar payments are strictly prohibited." The "Code of Conduct" also states that the company "complies with the applicable laws and regulations of

		countries in which it operates.”
Perpetual	Policy does not prohibit them where they are not illegal in the country being made	The Perpetual ‘Code of Conduct’ states: “Perpetual expects its staff to adhere to applicable legal and regulatory requirements, and to comply with the spirit as well as the letter of the law. Perpetual’s Risk Management Framework is designed to assist employees, officers and directors in complying with their obligations.”
Primary Health Care	Policy does not prohibit them where they are not illegal in the country being made. Unclear if there are internal processes that would allow facilitation payments to be made.	Correspondence from Primary Health Care dated 27 January 2016 stated: “Primary Health care Ltd provides healthcare services, and healthcare-related services, but does so only in Australia.... Our “Code of Conduct” is posted on our website (at “About Us/”Corporate Governance”). Relevantly, two of the 15 paragraphs of our “Code of Conduct” provide: <i>2. Compliance with the Law and Regulations</i> <i>All Primary representatives must comply with the laws that govern Australian and international operations. In the event employees have concerns about legal issues, legal advice must be sought before any decision is taken.</i> <i>It is a governing principle that Primary be operated in accordance with the legal (and cultural) standards appropriate to each country in which it has a presence.</i> <i>3. Corporate Integrity and Social Responsibility</i> <i>All representatives of Primary must at all times strive to conduct themselves with honesty and integrity. This may in certain circumstances require a higher standard of conduct than that required by law. The conduct of Primary staff must be to a standard, which meets community expectations or organisations comparable with Primary, including standards related to environmental and social responsibility.</i> <i>Any employee who believes activities may reflect poorly on Primary should advise an appropriate manager.”</i>
Qantas Airways Limited**	Yes	The Qantas Group Business Practices states: “Our people and every person representing the Qantas Group must, regardless of their position or location, comply with all applicable anti-bribery laws. This means that our people must not offer, give or receive bribes, in any form, to or from any person including government officials, customers or suppliers. Any conduct that creates the perception of bribery should also be avoided. Our people will not suffer adverse consequences for refusing to pay a bribe, even if doing so negatively affects Qantas operations.”
QBE Insurance Group Limited*	Policy does not prohibit them where they are not	The QBE Insurance Group ‘Code of Business Ethics and Conduct’ states: “QBE has no tolerance for financial crime. Financial crime in this context includes:

	illegal in the country being made	<ul style="list-style-type: none"> Bribery and corruption – includes the offering, promising, giving, accepting or soliciting of an advantage or private gain as an inducement for an action which is illegal, illegitimate or inconsistent with one's duty or the rights of others." <p>The QBE Insurance Group 'Code of Business Ethics and Conduct' states: "QBE's employees must comply with the law."</p>
Qube Holdings	Yes	<p>The Qube Holdings 'Code of Conduct and Ethics' advises employees: "Never engage in, or induce another person/ party to engage in, or induce or facilitate another person or agent to engage in any form of bribery or corrupt conduct, including the offering, promising or giving, or requesting, agreeing to receive or accepting, directly or indirectly of bribes or "facilitation payments" (payments to speed up routine legal actions) to anyone. This applies irrespective of whether the conduct involves individuals, incorporated or unincorporated organisations and/or public officials."</p>
Ramsay Health Care*	Yes	<p>The Ramsay Health Care 'Global Anti-Bribery and Corruption' policy states: "Facilitation Payments made anywhere in the world are prohibited by Ramsay and you must not make these types of payments regardless of local custom or law."</p>
Rio Tinto Limited**	Yes	<ul style="list-style-type: none"> Bribery and Corruption Policy covers facilitation payments. Other policies in the Code cover gifts and entertainment and political donations. Facilitation payments are prohibited. Rio personnel must not offer to make facilitation payments, directly or indirectly, to government officials.
REA Group	Policy does not prohibit them where they are not illegal in the country being made	<p>The REA Group 'Code of Conduct' states: "We will not engage in any conduct which could breach laws regarding corruption, bribery and money laundering (domestic or foreign)."</p>
Recall Holdings*	Yes	<p>The Recall 'Code of Conduct' states: "Most countries consider facilitation payments to be illegal bribes. Accordingly, Recall employees and third parties acting on Recall's behalf may not make or offer any facilitation payments to any government employee or private individual in any country."</p>
Resmed Incorporated*	Policy does not prohibit them where they are not illegal in the country being made.	<p>The Resmed 'Code of Business Conduct and Ethics' states: "Therefore, it is a violation of Company policy to give anything of value (gift, services, or entertainment) to government personnel or other officials for the purpose of improperly obtaining or retaining business, influencing the performance of official duties, or any other improper purpose or business advantage. It is just as unlawful to ask or knowingly assist someone else – an agent or a third party consultant – to give gifts or to make any payment</p>

		<p>that it would be improper for the Company to do directly. While some anti-corruption laws in some countries permit small “facilitation payments” to a government official to “get something done”, this Code prohibits all such payments without express review and approval by the Legal Department in advance.”</p> <p>The ‘Code of Business Conduct and Ethics’ also states: “Every employee must comply with the laws, regulations, and rules that apply to the Company’s business. Important examples of the legal requirements that apply to Resmed are discussed further below. Of course, each employee is expected to be familiar with applicable laws of the country where Resmed is doing business.”</p>
Scentre Group	Policy does not prohibit them where they are not illegal in the country being made	The Scentre Group Directors’ Code of Conduct requires Directors to “always abide by applicable laws”.
Sims Metal Management Limited**	Yes	<ul style="list-style-type: none"> • Sims Metal Management operates in the UK, where it would be illegal to allow employees anywhere in their global operations to pay bribes in the form of facilitation payments. • The Sims Metal Management Anti-Corruption Code states: “It is a breach of this Code to offer, give, solicit or receive a bribe of any form, or any improper benefit, to or from any Sims Metal Management customer, or any of their Personnel, or any government official.” <p>“It should be noted that this Code prohibits any bribe or improper benefit, regardless of whether the intended recipient is a public official or someone working in the private sector, and regardless of whether the purpose is to directly influence the recipient, or to indirectly influence some other person.”</p>
Slater & Gordon Lawyers	Policy does not prohibit them where they are not illegal in the country being made	<ul style="list-style-type: none"> • Slater & Gordon operates in the UK, where it would be illegal to allow employees anywhere in their global operations to pay bribes in the form of facilitation payments. • The Slater & Gordon Code of Conduct states: “S&G does not tolerate the offering or acceptance of bribes, nor any other unlawful payment or incentive or inducement.” • Correspondence from Slater & Gordon on 22 January 2016 states: “Whilst our Code of Conduct does not explicitly prohibit the making of facilitation payments. Slater and Gordon does not tolerate the offering or acceptance of bribes, nor any other unlawful payment or incentive or inducement.

		Our Code of Conduct was adopted in August 2014 and is currently under review. As part of this review Slater and Gordon will certainly take into consideration the growing number of ASX100 companies explicitly banning facilitation payments when revising our anti-bribery provision."
Sonic Healthcare Limited	Yes	The Sonic Healthcare Anti-Bribery & Corruption Policy states that Sonic employees and associates must not "give, promise to give, or offer, a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure (where the payment is not a legitimate payment pursuant to local written law)."
South32	Yes	The SOUTH32 'Code of Business Conduct' states: "Facilitation payments are prohibited by South32 in line with the anti-corruption laws of most countries. Requests for facilitation payments must be reported to your supervisor or manager and Legal Compliance immediately."
Spark Infrastructure Group	Yes	The Spark Infrastructure Group Code of Conduct states: "You must not pay or receive any bribes, facilitation payments, inducements or commissions (this includes any item intended to improperly obtain favourable treatment or avoid unfavourable circumstances)."
Spotless	Yes	Spotless Code of Conduct states "The Company is committed to carrying out business fairly, honestly and openly and has a zero tolerance towards all forms of bribery."
The Star Entertainment Group (formerly Echo Entertainment Group)	Yes	<p>The Group 'Code of Conduct' states:</p> <p>"Echo recognises that when carrying out business in overseas countries, cultural and behavioural expectations are different, and team members may come under pressure to give a gift, cash or other benefit. Nonetheless, Echo prohibits this.</p> <p>You may never provide, offer or promise, either directly or through an intermediary, a financial inducement or bribe to any person (including, but not limited to, a government official or employee or any guest or supplier), whether from Echo's funds or your own funds. This includes soliciting or encouraging the provision of anything of value from any person to stop performing or to improperly perform their function."</p>
Stockland	Yes	<p>Stockland's Fraud and Corruption Policy states that "Employees should never:</p> <ul style="list-style-type: none"> - Offer, request, or receive bribes of any kind to or from any person; - Help, encourage, conspire with, or ask another person to offer a bribe; and - Make, arrange, or direct the making of a facilitation payment."

Suncorp	Yes	<p>In correspondence to the Unit dated 18 January 2016, Suncorp wrote:</p> <p>“The Suncorp Group does not condone the use of facilitation payments to foreign officials in any way. Our position on the issue is articulated in the Group’s Conflict of Interest Policy that a facilitation payment is a type of bribe or an attempt to bribe a foreign or Australian public official which is a serious crime, subject to severe penalties.</p> <p>The Conflict of Interest policy is published on our Intranet and all employees complete online Code of Conduct training annually. This includes reference to fraud, conflicts of interest, responsible use and meeting regulatory and legal obligations. Our employees are communicated to at least quarterly regarding corrupt and fraudulent activity identification and reporting.”</p>
Sydney Airport	Yes	<p>The Sydney Airport ‘Guide to Business Conduct’ states:</p> <p>“When conducting business with government officials in international location, staff must ensure that they are aware of and abide by existing regulations and laws. Staff must not bribe, corrupt or otherwise improperly influence a public official in any country. All payments, no matter how small or routine, or those that would be expected according to local customs, fall within this prohibition.”</p>
Tabcorp	Permitted where not illegal under local law	<p>Tabcorp policy states:</p> <p>“You may never provide, offer or promise, either directly or through an intermediary, a financial inducement or bribe.</p> <p>Tabcorp will report any actual or intended bribery or corruption to the appropriate law enforcement agencies.</p> <p>An exception under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is a facilitation payment where the conduct is legal in the country concerned and the payment is of a minor nature made for the sole or dominant purpose of expediting or securing the performance of a “routine government action of a minor nature”. Prior approval from the Chief Financial Officer or the Executive General Manager Corporate and Legal is necessary before any such payment can be made.”</p>
Tatts Group	Yes	<p>Tatts Group “Anti-Bribery and Corruption Policy states</p> <p>“Bribery or corruption includes any acts which are designed to influence individuals to act dishonestly or illegally in the performance or discharge of their duty, irrespective of whether the individual works in the public or private sector. Bribery or corruption of any kind will not be tolerated by Tatts Group.</p> <p>Directors, employees and third parties acting on Tatts Group’s behalf must:</p> <ul style="list-style-type: none"> • Not engage in bribery or corruption or improper influence;

		<ul style="list-style-type: none"> Not offer, promise or accept (or engage any other party to offer, promise or accept) any benefit, money (including any facilitation payment), gift, entertainment or hospitality in breach of Tatts Group's Gifts (Business) Policy or allow business decisions to be improperly influenced in any way."
Telstra Corporation Limited**	Yes	<ul style="list-style-type: none"> Policies cover gifts, hospitality. Facilitation payments are covered under the Anti-Bribery and Anti-Corruption Policy. There is also a separate Political and Other Donations policy. Facilitation payments are strictly prohibited.
TPG Telecom Ltd	Yes	TPG Telecom Code of Conduct states "Employees must not offer or attempt to offer an incentive to any supplier or business associate of the Company or receive any incentive where such incentive would be classified as a bribe."
Treasury Wine Estates Limited**	Yes	Treasury Wine Estates Limited policy states: "In most countries, facilitation payments are treated the same as bribes and are unlawful. As a result, TWE prohibits so-called 'facilitation payments'. TWE Group Legal should be consulted and involved in any matters which may concern the giving and receiving of facilitation payments."
Vicinity Centres (formerly Federation Centres Stapled)	Yes	<p>The Federation Centres' 'Code of Conduct' made no explicit reference to facilitation payments:</p> <p>"Federation Centres does not countenance the making or receiving of payments or payments in kind (gifts, favours) to influence individuals to make a business decision in the Group's favour. Bribes, 'kick-backs', secret commissions and similar payments are strictly prohibited.</p> <p>Specifically, Federation Centres does not provide or receive anything of value specifically with the expectation of receiving a favourable decision or special treatment. This applies to Federation Centres' dealings with other businesses, government agencies or financial institutions."</p> <p>Vicinity Centres 'Code of Conduct Guidelines' provide less detail:</p> <p>"Vicinity does not countenance the making or receiving of cash or kind (gifts, favours) to influence individuals to make a decision in the Group's or payer's favour."</p> <p>Vicinity Centres called the Unit to say their policy and practice bans the payment of facilitation payments.</p>
Wesfarmers Limited*	Yes	<ul style="list-style-type: none"> Policies cover gifts, gratuities, and relationship with politicians and government officers. Facilitation payments are covered separately. The making of facilitation payments by Westfarmers personnel or Group companies is prohibited.
Westfield Corporation	Policy does not prohibit them where they are not illegal in the	The Westfield Corporation Directors' Code of Conduct requires Directors to "always abide by applicable laws".

	country being made	
Westpac Group*	Yes	<ul style="list-style-type: none"> • Policies cover facilitation payments, gifts, favours, entertainment and political donations. • Westpac employees and contractors do not offer or give facilitation payments.
Woodside Petroleum*	Yes	Policies cover gifts, entertainment, bribes, political donations, financial and other inducements, Facilitation payments are prohibited and any request for bribes or facilitation payments must be reported to the General Counsel.
Worley Parsons**	Yes	<ul style="list-style-type: none"> • The policy covers facilitation payments and gifts and entertainment. Political contributions are covered under a different policy. • Worley Parsons' people and partners may never make facilitation payments. All records such as books, accounts, e-mails and file notes must precisely reflect the transactions they relate to, comply with operational requirements and be retained in line with Worley Parsons' document retention policy. Worley Parsons' has segregated some of the record keeping duties and set up financial controls including audits to prevent fraud and corruption.