



Corporate criminal investigations and defence CV

➤ An era of increased risk

Australia is experiencing a rapid change in the way corporate criminal law is enforced. In parallel, consideration is being given to potential significant change to the law to make it easier to prosecute corporations and individuals for corporate criminal conduct. These developments present significant risk for corporations, their boards and executives.

Recent developments include:

- A significant increase in the civil and criminal pecuniary penalties and sentence terms in the Corporations Act, and various financial services legislative instruments, as well as a lowering of the burden required to prove dishonesty offences.
- The Australian Law Reform Commission has been mandated with a comprehensive review of Australia's corporate criminal responsibility regime, looking at, amongst other things, corporate criminal liability and the liability of individuals for corporate criminal conduct.
- The AFP, CDPP, ASIC and the Federal Court have received increased funding for criminal investigations/proceedings. The Government has proposed vesting the Federal Court with an expanded jurisdiction in relation to corporate crime.
- Proposed adoption of an absolute liability offence of failure to prevent foreign bribery.
- Proposed introduction of a deferred prosecution agreement regime for various offences under the Corporations Act and Criminal Code.
- Changes to Australia's whistleblower laws which will encourage greater reporting and criminalise breach of confidentiality and victimisation prohibitions.

Corporate criminal investigations and trials pose unique challenges. Investigations can take years and involve complicated issues of evidence and procedure. Criminal allegations and a conviction can have a significant legal, reputational and financial consequence for a corporation and its people. There can also be complex interactions between corporate criminal matters, mandatory reporting obligations to regulators, continuous disclosure obligations (for listed companies), director duties and ancillary civil penalties and class actions.

Our experience

We have market leading **subject matter expertise** and an understanding of the **unique issues that arise in a criminal investigation and trial process**.

As many criminal matters are **international**, experience of investigative agencies and prosecution processes in other jurisdictions is critical, as is an understanding of **collateral consequences** that can arise on international criminal matters. Through Linklaters, we have access to an international network of corporate crime experts in the US, UK, APAC region and elsewhere.

We are **commercially focused** and understand not only what the law requires, but also the best practice approaches in investigating, defending proceedings, advocating positions, negotiating with prosecutors and resolving risk.

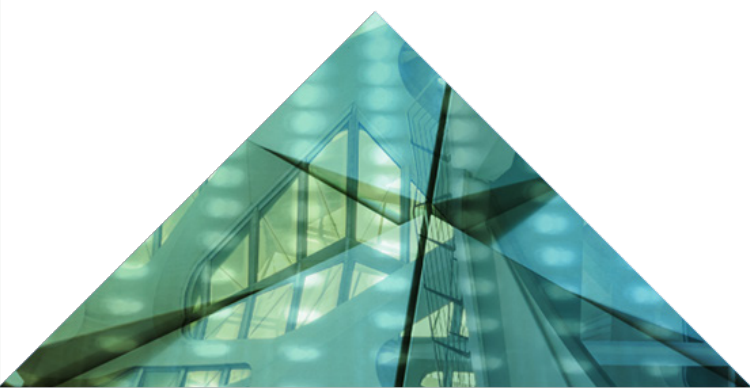
Our team has a depth of experience working with law enforcement bodies, prosecutorial agencies, regulators and commissions of inquiry across a range of areas of corporate crime and jurisdictions, including:

- The Australian Federal Police (**AFP**);
- The Australian Transaction Reporting and Analysis Centre (**AUSTRAC**);
- The Australian Securities and Investments Commission (**ASIC**);
- The Australian Competition and Consumer Commission (**ACCC**);
- The Commonwealth Director of Public Prosecutions (**CDPP**);
- The UK Serious Fraud Office (**SFO**);
- The United States Department of Justice (**DOJ**);
- The Australian Tax Office (**ATO**);
- The United States Securities Exchange Commission; and
- The Independent Commission Against Corruption, along with other State and federal commissions of inquiry such as the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Our team includes experts who have worked at ASIC, the CDPP, the AFP, ATO, ACCC, AGS and the SFO. Our **experience and relationships** mean we can work collaboratively with these agencies to the benefit of our clients.

Through our experience over a number of years, we have built relationships with the **best corporate criminal barristers** at the New South Wales and Victorian bar.

We are **thought leaders** in the area of corporate crime, contributing to Commonwealth Government consultations on foreign bribery, deferred prosecutions and the Australian Law Reform Commission's review of Australia's corporate criminal responsibility regime. Allens' Corporate Crime Head, Rachel Nicolson, chairs the UN Global Compact Network Australia Anti-corruption Leadership Group Steering Committee.



Our experience in relation to criminal investigations and proceedings includes:



Corporations Act Offences

- ▶ Acting for companies (including major financial institutions) and individuals being investigated for offences under the Corporations Act and ASIC Act,
 - ▶ Including dishonest conduct in the provision of financial products or services; client money breaches; insider trading; market manipulation; false accounting and false and misleading representations.
- ▶ Working through investigations by ASIC to referrals of briefs to the CDPP. In some instances we have been able to persuade the CDPP to drop or not pursue charges.



Criminal Cartel Conduct

- ▶ Acting in criminal cartel proceedings for a large financial services client – the first criminal cartel proceeding in financial services in Australia and only the second against an Australian company.



Anti-Bribery and Corruption

- ▶ Acting for companies on investigations into alleged anti-bribery and corruption across a range of sectors, including manufacturing, resources, financial services, construction, defence and engineering, including:
 - ▶ Conducting internal investigations
 - ▶ Reporting to and cooperating with enforcement agencies (including the AFP, the SFO, the DOJ and Non-Government Organisations such as the World Bank) and prosecutorial agencies such as the CDPP.
- ▶ Acting in associated investigations by ASIC, Parliamentary Inquiries and disclosure class actions arising from foreign corruption allegations.
- ▶ Advising an Australian resources company on litigation brought in the US under the Foreign Corrupt Practices Act and Racketeer Influence and Corrupt Organizations Act, related shareholder derivative actions and civil litigation commenced by an affected customer.
- ▶ Acting for employees called as witnesses in investigations by the NSW Independent Commission Against Corruption into various NSW statutory authorities.



Resources Industry

- ▶ Acting for oil and gas industry companies prosecuted in Western Australian and South Australian for pipeline ruptures and gas plant explosions. These cases have turned on the detailed expert evidence that has drawn on our expertise in the resources and oil and gas sectors, and litigation. We have guided these cases through the court systems with charges ultimately being withdrawn.



Anti-Money Laundering/Counter-Terrorism Financing

- ▶ Conducting numerous investigations for banks in relation to potential breaches of the AML/CTF regime, including in response to requests from AUSTRAC.



Environmental

- ▶ Defending companies and directors in criminal prosecutions for breaches of environmental legislation across multiple market segments, including chemicals, energy and forestry.
- ▶ For example, acting for a former chief operating officer of a resource company which is being prosecuted for failing to ensure the company complied with environmental legislation. It is alleged the company wilfully and unlawfully caused serious environmental harm, and the individual in question was in a position to influence the conduct of the corporation but did not take all reasonable steps to ensure it complied with the relevant legislation. This is the most significant environmental prosecution of its type to have occurred in Australia to date.



Workplace Health and Safety

- ▶ Defending companies in criminal workplace health and safety investigations and prosecutions.
- ▶ For example, a large Australian real estate company in a long-running criminal prosecution brought by one of Australia's work health and safety regulators. Allens acted from the date the initial incident occurred – assisting our client through the immediate response of the WHS regulator and through the subsequent lengthy regulatory investigation. The matter involved many complex legal and evidentiary issues. Our client was one of several entities with WHS duties and a critical issue at trial concerned the construction, maintenance and performance of complex pieces of plant and equipment. Detailed, expert scientific evidence was required along with the attendance of several witnesses.



Sanctions and Export Controls

- ▶ Acting for companies being investigated by sanctions or export control regulators, or conducting internal investigations into compliance with sanctions laws.
- ▶ Advised AWB on proceedings emanating from the task force established by the Australian Government following the Cole Inquiry into the UN Oil-for-Food Program.



Taxation Offences

- ▶ Acted for companies defending charges brought by the Australian Taxation Office, including charges in connection with Project Wickenby.
- ▶ Defending a financial institution alleged to have committed promoter penalty offences under the Taxation Administration Act.
- ▶ Assisting a financial institution to produce documents and prepare witnesses for a Commonwealth tax evasion prosecution.



Commissions of Inquiry Other Dawn Raids

- ▶ Acting in government-run inquiries, including Royal Commissions and hearings before ICAC.
- ▶ Acting for a company prosecuting a senior executive for falsification of records.
- ▶ Responding to dawn raids conducted by a range of authorities, including the ACCC, AFP, ATO.
- ▶ Advising various witnesses called to appear in a prosecution brought by the CDPP alleging criminal breaches of directors duties.

> International

Many of our matters are international, where we work closely with the Linklaters team, particularly in the US and UK. The Linklaters network gives us access to a broad range of corporate criminal investigatory and defence experience, including:

- Advising a major European bank in relation to the landmark Euribor/Libor investigations;
- Representing a global energy company as lead counsel in connection with an agent's conduct allegedly in violation of the US Foreign Corrupt Practices Act;
- Leading an investigation into the activities of a European headquartered global bank's FX trading desks across the world concerning industry-wide allegations of possible misconduct in relation to spot foreign exchange trading, including alleged breaches of a US and European competition laws;
- Representing ICBC Standard Bank Plc, as lead U.S. counsel, in connection with the first-ever Deferred Prosecution entered into in the UK, involving a secured DOJ FCPA declination and resolution with the Securities Exchange Commission (SEC).
- Advising News Corporation's Management and Standards Committee, chaired by Lord Grabiner QC, generally in relation to its handling of the News of the World phone hacking case, police payments investigation and all other connected issues across News International.

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