Department of Justice and Attorney-General

# ‘Corrupt conduct’ under the *Crime and Corruption Act 2001*

Issues paper

February 2016

Queensland Government

# Contents

# 1. Introduction

## *1.1 Commitment*

The Government has committed to making a number of changes to the *Crime and Corruption Act 2001* (CCA) to restore the independence and integrity of the Crime and Corruption Commission (CCC), and ensure that Queensland has a government that lives up to the highest standards of integrity.

The Government is implementing a number of these changes in the Crime and Corruption Amendment Bill 2015, which was introduced to the Parliament in the December 2015 parliamentary sittings. The Bill makes changes to the CCA to deliver on the following election commitments:

- restore bipartisan support of the Parliamentary Crime and Corruption Committee (PCCC) into the appointment process for CCC Chief Executive Officer (CEO) to support transparency and accountability in that appointment;
- limit temporary appointments for the CCC chair, commissioners and CEO to three months, unless there is PCCC bipartisan support, to prevent any future long-term partisan appointments being made;
- ensure the CEO is not a commissioner, consistent with best practice governance arrangements;
- reinstate the CCC's corruption prevention function as well as the CCC's independence when undertaking its research function to support the CCC being able to more effectively carry out its functions and ensure the CCC is able to research topics without political interference; and
- allow complaints to be made anonymously to the CCC to foster a culture that encourages complaints about corruption to be made.

As part of its election commitment to ensure Queensland has a government that lives up to the highest standards of integrity, the Government has committed to widening the definition of 'corrupt conduct' in the CCA.[1]

This issues paper has been developed to provide the opportunity for public consultation on the definition of corrupt conduct.

## *1.2 Purpose of Paper*

A key recommendation of the *Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*[2] was the establishment of an independent body to address public sector corruption.

It is important that the CCC as Queensland's anti-corruption body has the necessary jurisdiction to ensure that the integrity of the public sector is upheld and that corruption in public administration is identified and addressed.

[1] Letter dated 19 January 2015 from Mr Tim Mulherin, then Deputy Leader, Queensland Labor Party to Dr Richard Denniss, Executive Director, The Australia Institute; and letter dated 22 January 2015 from Mr Tim Mulherin, then Deputy Leader, Queensland Labor Party to the Honourable TH Smith QC, Chair of the Accountability Round Table.

[2] Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, Report, July 1989, pages. 300, 302.

The definition of corrupt conduct sets the bounds of the CCC's jurisdiction in relation to addressing public sector corruption.

The purpose of this paper is to seek information about:

- issues arising from the current definition of corrupt conduct under the CCA; and
- potential changes to the current definition to address these issues.

## *1.3 How to have your say*

In providing comments or a submission please refer to the relevant question number and provide reasons and supporting details or data for your response. Please feel free to comment on other issues about the definition of corrupt conduct which are not raised in the issues paper.

Please provide any comments or submissions by 29 March 2016.

- by email: corruptconductissuespaper@justice.qld.gov.au

- by post: Corrupt Conduct Issues Paper
  Department of Justice and Attorney-General
  GPO Box 149
  Brisbane QLD 4001

### 1.4 Privacy statement

Any personal information in your comment or submission will be collected by the Department of Justice and Attorney-General (DJAG) for the purpose of undertaking the review on the definition of corrupt conduct. DJAG may contact you for further consultation on the issues you raise, and your submission and/or comments may be provided to others with an interest in the review, for example, the parliamentary Legal Affairs and Community Safety Committee (LACSC).

Submissions provided to the DJAG in relation to this issues paper will be treated as public documents. This means that in all but exceptional cases, they may be published on the DJAG website, together with the name and suburb of each person making a submission. If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. Please note however that all submissions may be subject to disclosure under the *Right to Information Act 2009*, and access applications for submissions, including those marked confidential, will be determined in accordance with that Act.

DJAG reserves the right not to publish:

- abusive or hurtful comments or material about another person, which may include:
    - inappropriate language (e.g. profanity, racial, ethnic or gender-based language);
    - personal attacks or defamatory statements or comments (e.g. negative personal or untrue comments about a person), instead of properly informed criticism, honest opinion or comment.
- irrelevant and redundant comments (e.g. promotion of events, groups, pages, websites, organisations and programs unrelated to the discussion topic);
- comments that violate the privacy of another person;
- material that may be in breach of copyright law; and
- material or comment that is in any other way in breach of a law.

# 2. Context

The CCC has responsibility to reduce the incidence of corruption (which comprises corrupt conduct and police misconduct) in the public sector.[3] The CCC is to investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct.[4] The CCC does not investigate every complaint about corrupt conduct and under the provisions of the CCA may refer complaints to units of public administration to be dealt with by that agency and monitor how these complaints are then dealt with.[5]

Under the CCA, the CCC and units of public administration need to work cooperatively to deal with corrupt conduct. Where appropriate, actions to deal with corrupt conduct should generally happen within the unit of public administration, subject to the capacity of the unit of public administration to deal with the matter and public interest principles.[6]

The Public Service Commission (PSC) has a role in reviewing the responses of public sector agencies to work performance matters that are outside of the definition of 'corrupt conduct' in the CCA.

[3] *Crime and Corruption Act 2001*, section 4(1)(b).
[4] *Crime and Corruption Act 2001*, section 5(3).
[5] For further information on how complaints about corrupt conduct are dealt with see Attachment 1 to this issues paper.
[6] *Crime and Corruption Act 2001,* section 34.

Police misconduct is conduct, other than corrupt conduct, of a police officer that is disgraceful, improper or unbecoming a police officer; shows unfitness to be or continue as a police officer; or does not meet the standard of conduct the community reasonably expects of a police officer. Under the CCA, the Commissioner of Police has primary responsibility for dealing with 'police misconduct'.[7] The Commissioner of Police may, in an appropriate case, ask the CCC to deal with a complaint about police misconduct or to deal with the complaint in cooperation with the Commissioner of Police.[8] The CCC also has the power to monitor how the Commissioner of Police deals with police misconduct or assume responsibility for the investigation.[9]

## *2.1 Recent legislative amendments*

The former Liberal National Party (LNP) Government made significant changes to the then Crime and Misconduct Commission's (CMC) organisational structure and operations in the *Crime and Misconduct and Other Legislation Amendment Act 2014* (CMOLA Act), which included amendments to change the name of the CMC to the CCC and the name of the conduct within the CCC's jurisdiction from 'official misconduct' to 'corrupt conduct'; and raise the threshold for what matters are captured within that definition. The term CCC is used throughout this paper even though in the particular context the commission's name at the relevant time may have been CMC.

## *2.2 Why was the definition of 'official misconduct' changed to 'corrupt conduct'?*

According to the Explanatory Notes for the Crime and Misconduct and Other Legislation Amendment Bill 2014, the shift from 'official misconduct' to 'corrupt conduct' was intended to raise the threshold for what matters are captured within that definition.[10]

This shift responded to the findings of the 2013 *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Callinan/Aroney report) that the CCC's operational focus should be on investigating serious cases of corrupt conduct[11] and that there should be a reduction in the number of trivial complaints handled by the CCC to ensure that its resources are used most effectively in dealing with corruption.[12] In the Callinan/Aroney report, it was recommended that there must be a large reduction in the matters going to, and being dealt with (even for the purposes of referring these matters to units of public administration) by the CCC.[13]

In this context, Callinan and Aroney found that the definition of 'official misconduct' had a wider application when compared with the definitions contained in other interstate anti-corruption legislation[14] and recommended that the threshold of what constitutes official misconduct should be narrowed.[15]

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[7] *Crime and Corruption Act 2001*, section 41(1).
[8] *Crime and Corruption Act 2001*, section 42(4).
[9] Crime and Corruption Act 2001, section 47.
[10] Explanatory Notes Crime and Misconduct and Other Legislation Amendment Bill 2014, pages 2 and 4.
[11] *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel,* the Honourable Ian Callinan AC and Professor Nicholas Aroney, April 2013, pages 47,120 and 205 – (Callinan Aroney Report)
http://www.parliament.qld.gov.au/apps/TabledPapers/RelatedDocs.asp?RefNo=5413T2447;
Explanatory Speech, Crime and Misconduct and Other Legislation Amendment Bill, 19 March 2014, page 699, 700, 701 Hansard.
[12] Callinan Aroney Report above note 11 pages 41, 47-48, 70, 115, 120, 194, 202 and 204.
[13] Callinan Aroney Report above note 11 Recommendation 3, page 212.
[14] Callinan Aroney Report above note 11 page 50.
[15] Callinan Aroney Report above note 11 Recommendation 3A, page 213.

The former LNP Government's response to the Callinan/Aroney report accepted the then definition of 'official misconduct' had a lower threshold which should be raised to allow the CCC to deal with its primary functions of crime prevention and investigation of official misconduct.[16]

Prior to the commencement of the CMOLA Act, the CCC had jurisdiction with respect to 'official misconduct'. Official misconduct was defined as follows in the then section 15 of the *Crime and Misconduct Act 2001* (CM Act):

> ***15 Meaning of official misconduct***
> *Official misconduct is conduct that could, if proved, be—*
> *(a) a criminal offence; or*
> *(b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.*

'Conduct' and 'hold an appointment' were defined in section 14 of the CM Act:

> ***14 Definitions for div 2***
> *In this division—*
> ***conduct** means—*
> *(a) for a person, regardless of whether the person holds an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of—*
> *(i) a unit of public administration; or*
> *(ii) any person holding an appointment; or*
> *(b) for a person who holds or held an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves—*
> *(i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or*
> *(ii) a breach of the trust placed in the person as the holder of the appointment; or*
> *(iii) a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.*
>
> ***hold an appointment** means hold an appointment in a unit of public administration.*

The CMOLA Act replaced the definition of 'official misconduct' with a definition of 'corrupt conduct' in section 15 of the CCA:

> ***15 Meaning of corrupt conduct***
> *(1) **Corrupt conduct** means conduct of a person, regardless of whether the person holds or held an appointment, that—*
> *(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—*
> *(i) a unit of public administration; or*
> *(ii) a person holding an appointment; and*
> *(b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—*
> *(i) is not honest or is not impartial; or*

[16] Queensland Government Response to the Parliamentary Crime and Misconduct Committee's *Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Commission of Inquiry documents* and the Honourable Ian Callinan AC and Professor Nicholas Aroney, *Review of the Crime and Misconduct Act 2011 and related matters*, tabled 3 July 2013, page 23.

*(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or*

*(iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and*

*(c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and*

*(d) would, if proved, be—*

*(i) a criminal offence; or*

*(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.*

*(2) Without limiting subsection (1), conduct that involves any of the following could be corrupt conduct under subsection (1)—*

*(a) abuse of public office;*
*(b) bribery, including bribery relating to an election;*
*(c) extortion;*
*(d) obtaining or offering a secret commission;*
*(e) fraud;*
*(f) stealing;*
*(g) forgery;*
*(h) perverting the course of justice;*
*(i) an offence relating to an electoral donation;*
*(j) loss of revenue of the State;*
*(k) sedition;*
*(l) homicide, serious assault or assault occasioning bodily harm or grievous bodily harm;*
*(m) obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person;*
*(n) illegal drug trafficking;*
*(o) illegal gambling.*

The CMOLA Act also amended section 14 to provide the following definitions of 'appointment' and 'conduct':

***appointment** means appointment in a unit of public administration.*

***conduct** includes—*
*(a) neglect, failure and inaction; and*
*(b) conspiracy to engage in conduct; and*
*(c) attempt to engage in conduct.*

## *2.3 Key changes to the definition*

'Corrupt conduct' is narrower than the definition of 'official misconduct' in the following ways:

- elements of the definition are cumulative rather than alternative ('and' rather than 'or'). Therefore, the conduct, if it is to be considered 'corrupt conduct', must satisfy each of the elements in subsections 15(1)(a) to (d);
- there is an additional requirement that conduct 'is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person';
- there is an additional requirement that where conduct results or could result in the performance of functions or exercise of powers in a way that involves a breach of trust placed in a person holding an appointment, this is done either knowingly or recklessly; and
- there is a requirement that the conduct **would** (rather than **could**) if proved be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment in a unit of public administration.

Section 15(2) of the CCA includes a list of offences or behaviours, which are not conclusive of corrupt conduct, but could be corrupt conduct if the preconditions of section 15(1) of the CCA are met.

# 3. What were the criticisms of the definition of 'corrupt conduct'?

The submissions made to the parliamentary Legal Affairs and Community Safety Committee (LACSC) in response to the Crime and Misconduct and Other Legislation Amendment Bill 2014 identified objections to the change in definition of 'official misconduct' to 'corrupt conduct' generally focussed on a perception that the narrowing of conduct that was within the CCC's jurisdiction would mean that certain conduct in units of public administration would no longer be able to be adequately investigated and addressed. No submitters identified the type of conduct or behaviour that was excluded.

Also, the elements of the definition that were of concern in relation to narrowing the CCC's jurisdiction were the requirements that 'corrupt conduct':

- be engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person;[17] and
- **would** (instead of **could**), if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services (if the person is or were the holder of an appointment).[18]

A related but separate issue raised in the submissions was the perception that public sector agencies do not have the capacity to adequately deal with complaints that would no longer be within the jurisdiction of the CCC.[19]

Apart from the matters raised above, the Department of Justice and Attorney-General (DJAG) is not aware of any instances since the 2014 amendments where a complaint/incident should have been investigated by the CCC but was not able to because it was outside the definition of corrupt conduct.

As noted above, the CCC has never been required to investigate all complaints about corrupt conduct and the relevant agency must deal with those corrupt conduct (previously official misconduct) complaints the CCC devolves back to the agency. **Attachment 1** sets out how complaints about corrupt conduct and non-corrupt conduct are managed by the CCC and units of public administration.

**Question 1: Do the concerns raised at the time of the proposed change to the definition of 'official misconduct' to 'corrupt conduct' still exist?**

**Question 2: Is there any evidence that these concerns have been realised since the new definition has been in place?**

# 4. What conduct is not covered by the definition but should be?

A key issue is whether the definition of corrupt conduct sufficiently captures conduct that should be within the CCC's jurisdiction.

[17] Raised in a submission to the Parliamentary LACSC Professor AJ Brown in a letter dated 14 April 2014 (submission no. 34).
[18] Raised in a submission to the Parliamentary LACSC by the Honourable DP Drummond QC in a letter dated 8 April 2014 (submission no. 16).
[19] Raised in a submission to the Parliamentary LACSC by the Law and Justice Institute Qld (Inc) in a letter dated 11 April 2014 (submission no. 28).

In a general sense, corruption involves acts of dishonesty, abuse or misuse of power by a person in an official position that affects the impartial exercise of the official's power usually for a personal gain or interest.

The definition of 'corrupt conduct' in the CCA aligns with the general understanding of corruption and has similarities with definitions used in legislation establishing interstate anti-corruption bodies (see **Attachment 2** for an inter-jurisdictional comparison of related definitions).

Anti-corruption bodies, such as the CCC, are established to deal with the more serious complaints about public sector conduct with public sector agencies maintaining responsibility for the management of most complaints.[20]

The policy objective of the 2014 amendments[21] was to ensure the CCC focusses on the more serious corrupt conduct but the issue is:

- whether the definitional change has inadvertently resulted in some behaviours or conduct being excluded from the definition when they should be included;
- what specific excluded behaviours or conduct should be captured in the definition of corrupt conduct; and
- if this is the case, what changes should be made to the current definition to capture those behaviours or conduct?

Prior to the 2014 amendments, the CCC analysed the 60 complaints[22] that were used by Callinan and Aroney in their report[23] and applied the new definition of 'corrupt conduct'. The CCC determined that 22 out of the 60 complaints that were captured by the definition of 'official misconduct' would not fall within the definition of 'corrupt conduct' and therefore not be within the CCC's jurisdiction.

The analysis identified that the types of conduct that may not fit within the definition of corrupt conduct, but were captured by the definition of official misconduct, include:

- minor driving offences in a government vehicle;
- minor maladministration – failure to act, improper use of discretion (where information suggests no misuse of powers/conduct is not engaged in for the person's personal benefit);
- accessing personal government records or patient/client records (own records or records of others but not disclosed or used by third parties);
- bullying/harassment/uncooperative behaviour;
- inappropriate behaviour (threatening) – peer on peer; and
- misuse of computer (storage of legal pornographic images).

[20] Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, Report, July 1989, page 315. The complaints branch of the proposed Criminal Justice Commission (CJC) would require Government departments, agencies and statutory authorities to notify the CJC about suspected official misconduct, comply with directions from the CJC and transfer the complaint to the CJC if requested.

[21] Explanatory Speech, Crime and Misconduct and Other Legislation Amendment Bill 2014, 19 March 2014, page 702 Hansard.

[22] The sample of 60 complaints is not equally divided into police and public sector matters nor is it indicative of types and levels of complaints received by the CCC during a financial year. The 2012-13 Annual Report reports states that 51% of all allegations received by the CCC related to police and 48% of allegations related to public sector matters (incl. local government).

[23] *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel,* the Honourable Ian Callinan AC and Professor Nicholas Aroney, March 2013.

Also, in relation to police conduct, the CCC identified the following examples which fall within the definition of 'official misconduct' but may now not fall within the definition of corrupt conduct (provided there is no personal benefit or misuse of powers involved with each of the examples);

- failing to charge someone (inaction);
- inadequate investigation;
- failure to take statement;
- intimidating behaviour/threatening body language; and
- minor allegations regarding comforts in custody.

However, the above examples would still fall within the definition of 'police misconduct' and the CCC would have an oversight responsibility of how the Commissioner of Police dealt with those matters under the CCA.

**Attachment 3** provides some examples of more serious corrupt conduct and corrupt conduct generally, within the current definition.[24] These complaints would either be investigated by the CCC or devolved by the CCC to the relevant unit of public administration to deal with and the CCC maintaining a monitoring responsibility. These examples and other information about how the CCC and units of public administration deal with corrupt conduct are available in the CCC document *Corruption in Focus – a guide to dealing with corrupt conduct in the Queensland public sector*.[25]

## *4.1 Does the Cunneen decision impact on Queensland's definition of corrupt conduct?*

The High Court in *Independent Commission Against Corruption v Cunneen and Ors* [2015] HCA 14 (Cunneen decision) considered the definition of 'corrupt conduct' in the *Independent Commission Against Corruption Act 1988* (ICAC Act). The court considered whether the phrase 'adversely affects' means adversely affects the *probity* (i.e. the integrity) of the exercise of an official function by a public official or whether the phrase also captures conduct that adversely affects the *efficacy* (i.e. the function is exercised in a different manner than would otherwise be the case) of the exercise of an official function by a public official.

At issue in the case was whether the Independent Commission Against Corruption (ICAC) had jurisdiction to investigate the alleged conduct of Ms Cunneen, a Deputy Senior Crown Prosecutor in the New South Wales (NSW) Office of the Director of Public Prosecutions.

ICAC argued that Ms Cunneen and Mr Willey (her son) advising Ms Tilley (her son's partner) to lie at the scene of the accident to avoid providing a blood alcohol sample involved perverting or attempting to pervert the course of justice and adversely affected the (efficacy of) police officers' performance of their investigative function by impeding the investigation – even though the conduct did not result in any impropriety by the police officers in the exercise of their functions.

The High Court held that ICAC did not have jurisdiction to investigate in this case, as corrupt conduct in the ICAC Act is limited to conduct that adversely affects the *probity* (i.e. the integrity) of the exercise of an official function by a public official. However the minority judgement did agree with the ICAC argument.

[24] These examples are taken from the CCC publication, *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector,* http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus.
[25] http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus

The Cunneen decision is not considered relevant to the CCA definition of 'corrupt conduct' because the statutory construction of section 15 is that the circumstances in paragraphs 15(1)(a) to (d) are cumulative rather than alternative and section 15(1)(b) requires the conduct to adversely affect the probity of the performance of a function or the exercise of a power.

In response to the Cunneen decision, NSW recently commissioned an Independent Panel (chaired by the Honourable Murray Gleeson AC) to review the jurisdiction of the ICAC. The Independent Panel handed down its report on 30 July 2015[26] and on 11 August 2015, the NSW Premier announced that the government accepted all the recommendations in the report[27].

The Independent Panel has recommended that the NSW definition of corrupt conduct include conduct of a person (whether or not a public official) that could impair public confidence in public administration and which could involve any of the following matters:

- collusive tendering;
- fraud in or in relation to applications for licences, permits or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of resources;
- dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- defrauding the revenue; and
- fraudulently obtaining or retaining employment as a public official.[28]

## *4.2 Should Queensland adopt the approach of another jurisdiction?*

There are variations in the approach to defining corruption in anti-corruption legislation equivalent to the CCA in other Australian jurisdictions, which means corruption investigation bodies have differing jurisdictions (see **Attachment 2**).

South Australia defines 'corruption in public administration' under the *Independent Commissioner Against Corruption Act 2012* solely in terms of whether the conduct constitutes particular offences, for example bribery and abuse of public office.

Victoria does not require any benefit or detriment to arise in relation to the conduct. Like Victoria, the NSW definition of corrupt conduct in the *Independent Commission Against Corruption Act 1988* also does not require any benefit or detriment to arise in relation to the conduct. It requires that the conduct could constitute a criminal offence or disciplinary offence.

Western Australia (WA) uses the term 'misconduct' to describe the behaviour captured in its anti-corruption legislation (*Corruption Crime and Misconduct Commission Act 2003* (CCMA)), but the definition includes the word 'corruptly' when describing the behaviours captured in the definition. Recent amendments to the CCMA[29] now require the WA Corruption and Crime Commission to deal with only serious misconduct and the WA Public Sector Commission to deal with minor misconduct. These definitions are defined in the CCMA.[30] Serious misconduct differs from definitions in other jurisdictions, in the sense that the conduct has to be undertaken by the public officer.

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[26] Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption Report, 30 July 2015 http://www.dpc.nsw.gov.au/announcements/independent_panel_review_of_the_jurisdiction_of_the_independent_commission_against_corruption.

[27] https://www.nsw.gov.au/media-releases-premier/securing-future-icac.

[28] Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption Report, 30 July 2015, page xi.

[29] *Corruption and Crime Commission Amendment (Misconduct) Act 2014* (Act. 35 of 2014). Provisions amending the definition of misconduct commenced on 1 July 2015.

[30] *Corruption Crime and Misconduct Commission Act 2003*, section 4 defines 'misconduct' and section 3 defines 'serious misconduct' and 'minor misconduct'.

Tasmania also uses the term 'misconduct' in its *Integrity Commission Act 2009* in relation to complaints that can be made to its Integrity Commission. There are specific powers that can be used in relation to the Commission investigating a complaint of 'serious misconduct'. 'Serious misconduct' is defined as 'misconduct by any public officer that could, if proved, be a crime or an offence of a serious nature or misconduct providing reasonable grounds for terminating the public officer's appointment'. 'Misconduct' is broader than the definition of corrupt conduct in Queensland. Like Western Australia, misconduct under the Tasmanian legislation does not need to involve a benefit being obtained or an offence being committed. Any conduct that breaches the public service code of conduct constitutes misconduct.

The definition of corrupt conduct in New South Wales is broader than the definition in Queensland (primarily because individual limbs of the definition constitute corrupt conduct rather than the limbs being cumulative like Queensland).

However, it is less clear whether the definitions of conduct regulated in anti-corruption legislation of other jurisdictions (apart from NSW) is broader or narrower than Queensland. This is because some elements of a definition may be broader while others are narrower. For example, the South Australian definition of 'corruption in public administration' is narrower than the Queensland definition of 'corrupt conduct' in the sense that it is limited to conduct that constitutes certain offences (compared with Queensland where corrupt conduct does not need to constitute a criminal offence but can be conduct that would, if proved, be a disciplinary breach providing reasonable grounds for employment termination); whereas the South Australian definition is broader in the sense that the conduct does not need to be engaged in for the purpose of providing a benefit to the person or another person, or a detriment to another person.

While the definition of corrupt conduct (or its equivalent) provides the starting point for an anti-corruption body's jurisdiction in relation to addressing corruption, this jurisdiction is also determined by the scope of the body's purpose and functions, which also varies among jurisdictions.

**Question 3: What type of specific conduct is not captured in the definition of 'corrupt conduct' but should be?**

**Question 4: If there is conduct that is not captured in the current definition of 'corrupt conduct' that should be, what changes to the current definition of 'corrupt conduct' should be made to capture this?**

**Question 5: Should Queensland adopt the approach to defining 'corrupt conduct' taken in another jurisdiction and why?**

# 5. What is the impact of the new definition of 'corrupt conduct' since its commencement on complaints made to the CCC?

Since the CMOLA Act commenced, the CCC has advised that for the period 1 July 2014 to 30 June 2015, there was a 40% decrease in the number of complaints about corruption (which comprises corrupt conduct and police misconduct) compared with the 2013-2014 financial year (i.e. a reduction from 3881 complaints in 2013-14 to 2347 complaints in 2014-15).

The CCC has advised that since the 2014 amendments, there has been:

- a 29% decrease in the number of complaints made by the public in 2014-15 compared with 2013-14; and
- a 45% decrease in the number of agency notifications to the CCC in 2014-15 compared to 2014-15.

Further information on complaints to the CCC is available in the CCC's submission to the PCCC's current review of the CCC (http://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/five-year-review).

The QPS has advised that the reduction in corrupt conduct and police misconduct complaints it has received has not deviated in the 2014-15 financial year from the longer term trend where complaints have been reducing steadily over the last five years.

The decrease in agency notifications may be in part a result of the 2014 amendment that raised the threshold for when an agency will refer corrupt conduct to the CCC. Likewise, the decrease in complaints from the public may be in part due to the 2014 amendment that requires complaints to be made by way of statutory declaration.

Given the new definition commenced operation on 1 July 2014, it may not be possible for a proper assessment of the effect of the definition change to be adequately made at this point in time particularly in the context of other changes made to the CCA as referred to above.

The CCC is conducting an audit (due to be completed early this year) to test whether public officials are correctly applying the new threshold to refer matters if they raise a reasonable suspicion of corrupt conduct. This audit may provide further information for the reason for the decrease in notifications to the CCC over the previous 12 months.

## *5.1 Impacts of new definition on the Queensland Ombudsman*

The Ombudsman has responsibility for investigating complaints about the administrative actions (e.g. decisions, proposals and recommendations) of agencies (government departments, local governments and public universities). However, the Ombudsman's role does not include investigation of the operational actions of members of the police service. The Ombudsman is also the oversight agency for the *Public Interest Disclosure Act 2010*. Public Interest Disclosures (PIDs) can be about a range of issues including maladministration that affects a person's interests in a substantial and specific way, **corrupt conduct** (as defined in the CCA), reprisal or specific dangers to the health or safety of a person with a disability or the environment (see **Attachment 1** for more information on the Ombudsman's role).

In a meeting held on 15 July 2015 with the LACSC, Mr Phil Clarke, Queensland Ombudsman noted that in the last financial year, there has been a reduction in the total number of PIDs recorded. The main cause of this reduction was that the number of corrupt conduct PIDs reported in 2014-15 was substantially lower than the number of official misconduct PIDs reported in the previous year. The Ombudsman also noted that under the new definition, minor conduct issues that were PIDs that would previously have been considered as official misconduct are not categorised as corrupt conduct. The Ombudsman also noted that as a result of the new definition of corrupt conduct it was possible that the number of complaints to his office would increase because public sector agencies would be responsible for a greater number of complaints. The Ombudsman stated that his office had not undertaken any detailed analysis of the impact of the new definition of corrupt conduct on his office or agencies. The Ombudsman noted that many matters that would have fallen within the definition of official misconduct, but are not captured by the definition of corrupt conduct, were matters that the CCC would have referred back to the relevant agency for action under the then existing devolution principles. The CCC no longer has a role in these kinds of matters and agencies' administrative actions on these complaints are now within the ambit of the Ombudsman's office.[31]

[31] http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/Oversight.

**Question 6: Given the new definition of 'corrupt conduct' has only been in place for one year, is it too early to evaluate the effect of the new definition? Why/why not?**

# 6. General comments

**Question 7: Please raise any further issues or provide any further comments you would like to make about the CCC's jurisdiction in respect of corrupt conduct.**

# Attachment 1: Management of conduct in public agencies

## A. Corrupt conduct

The management of corrupt conduct is dealt with in the *Crime and Corruption Act 2001* (CCA). The Crime and Corruption Commission (CCC) has responsibility for investigating and monitoring 'corrupt conduct' in units of public administration (defined in the CCA, section 20). In addition, while the commissioner of police has primary responsibility for dealing with complaints about police misconduct, the CCC is responsible for monitoring how the commissioner of police deals with police misconduct.

Under the CCA, a public official (i.e. the chief executive officer of a unit of public administration, ombudsman or a person who constitutes a corporate entity that is a unit of public administration) must notify the CCC if he or she reasonably suspects that corrupt conduct has occurred. The CCC may issue directions (CCA, section 40 directions) to the public official about the kinds of complaints that need (or need not) be notified to the CCC and also how and when complaints are to be notified to the CCC (CCA, section 40). The CCC is also made aware of possible corrupt conduct through its complaints system or other information that it receives.

The CCC determines whether a matter is to be referred back to the public official for action or whether the CCC will investigate.

The CCA provides that a public official is responsible for dealing with a matter involving corrupt conduct in the way the public official considers most appropriate, subject to the CCC's directions about the complaint and its monitoring role. This could include referring matters to the police or taking disciplinary action (including terminating employment).

The CCC may monitor how a public official deals with conduct (corrupt conduct or police misconduct) in the following ways:

- taking no further action – where the conduct is relatively minor – however these matters will be subject to CCC's audit program, so agencies need a complaints management system for dealing with and recording these matters;
- audit – CCC has an audit program to undertake audits of the systems within units of public administration for dealing with corrupt conduct;
- public interest review – where CCC considers that a matter involving serious corruption or systemic corruption should be dealt with by the agency in the first instance – the CCC will closely monitor how the matter is dealt with, potentially take over the investigation or require strict adherence for reporting and addressing the matter in the way determined by the CCC; and
- merit and compliance review – used to monitor whether an agency is dealing with matters involving serious or systemic corruption appropriately, with strict timeframes for reporting and dealing with a matter.

Subject to certain exceptions, the CCC may only investigate allegations of corrupt conduct made against a judicial officer if the conduct, if established, would warrant the judicial officer's removal from office. In addition, the investigation must be conducted in accordance with appropriate conditions and procedures agreed by the CCC chair and the Chief Justice (CCA, section 58).

## B. Conduct other than corrupt conduct

***(1) Public sector agencies – under the Public Service Act 2008 (e.g. a department)***

Under the *Public Service Act 2008* (PS Act) organisational performance is the responsibility of executive managers and managers, with the chief executive in a department having responsibility for disciplinary action.

The Public Service Commission (PSC) has a role in reviewing agency responses to work performance matters that are outside of the definition of 'corrupt conduct' in the CCA. Work performance matters are matters involving a public service employee's work performance or personal conduct including for example, an allegation against the employee that constitutes or would, if proved, constitute a disciplinary ground (PS Act, section 88H).

In 2014, the PSC established the Conduct and Performance Excellence (CaPE) service to assist agencies in the timely, proportionate and relevant management of unsatisfactory employee conduct or work performance. The functions of CaPE are to:

- provide specialist advice and support on the management of conduct and performance in the public sector;
- undertake strategic monitoring of conduct and performance matters and reporting on trends;
- undertake audits or reviews of individual matters;
- set benchmarks (timeliness) and standards (quality) for the management of these matters;
- contribute to activities that ensure agencies develop and maintain high standards of human resource and managerial skills; and
- work closely with the CCC to ensure conduct, performance and corruption matters are effectively addressed.

The PSC works with the CCC to ensure that matters are dealt with by the relevant agency and monitored by the relevant oversight body, whether this be the PSC or CCC.

***(2) Legislative Assembly and parliamentary service***

Under section 84(a) of the *Parliament of Queensland Act 2001*, the Committee of the Legislative Assembly has responsibility for the ethical conduct of members of parliament.

However, the Ethics Committee under section 104B of the *Parliament of Queensland Act 2001* is responsible for dealing with complaints against particular members for failing to comply with the ethical code of conduct, reporting on complaints to the Assembly and recommending action by the Assembly.

Under the *Parliamentary Service Act 1988*, officers or employees of the parliamentary service may be subject to disciplinary action (such as dismissal, reprimand, or reduction in salary) for misconduct.

The parliamentary service is required to have a code of conduct under the *Public Sector Ethics Act 1994*.

***(3) Police Service***

Police misconduct is conduct other than 'corrupt conduct' of a police officer that is disgraceful, improper or unbecoming a police officer, shows unfitness to be or continue as a police officer or does not meet the standard of conduct the community reasonably expects (CCA, Schedule 2).

The Commissioner of Police deals with complaints about police misconduct in a way that the Commissioner considers appropriate or may ask the CCC to deal with a complaint where appropriate (CCA, section 42).

***(4) Local Government***

Under the *Local Government Act 2009* (LG Act), misconduct of local government councillors is dealt with by, the Regional Conduct Review Panel, the Local Government Remuneration and Discipline Tribunal, or the department that administers the LG Act. Misconduct by local council staff is dealt with by the CEO of the relevant local council.

The Brisbane City Council has equivalent provisions in the *City of Brisbane Act 2010* applying to its local government councillors and employees.

Local governments are required to have a code of conduct under the *Public Sector Ethics Act 1994*.

***(5) Corporate Entity (Government Owned Corporations or universities)***
There are a number of entities that can be established as corporate entities.

Corporations established under the *Government Owned Corporations Act 1993* (GOCs) are corporate entities and are not to appoint employees under the *Public Service Act 2008.* Misconduct of GOC employees is dealt with under the Commonwealth *Corporations Act 2001*, with responsibility generally with the CEO.

Universities generally consist of elected or appointed members, which are part of the university's governing body (may be called a council or senate). The council/senate has responsibility for the management of conduct of the elected or appointed members and university staff.

Universities are required to have a code of conduct under the *Public Sector Ethics Act 1994*.

***(6) State courts, their registries and other administrative offices***
Officers of a court are usually employed under the *Public Service Act 2008* (PS Act).

Bailiffs of the District court are appointed under the PS Act and can therefore be dealt with under the PS Act framework (*District Court of Queensland Act 1967*, section 41). In addition, if a bailiff is charged with extortion or misconduct, a judge may inquire into the matter and may make an order for payment of damages (*District Court of Queensland Act 1967*, section 50).

A judge appointed under the *Constitution of Queensland Act 2001* can be removed by the Governor in Council from office for misbehaviour or incapacity (*Constitution of Queensland Act 2001*, section 61). Magistrates and judicial registrars are appointed by the Governor in Council under the *Magistrates Act 1991.* The Governor in Council may remove a magistrate or judicial registrar from office if the magistrate or judicial registrar is guilty of proved misbehaviour, misconduct or conduct unbecoming of a magistrate. The Governor in Council may on the Minister's recommendation remove a person appointed under the *Queensland Civil and Administrative Tribunal Act 2009* as a member, adjudicator or QCAT justice of the peace when, for example, the person is mentally or physically incapable of satisfactory performance, performed the functions carelessly or inefficiently, engaged in conduct that would warrant dismissal from the public service (if the person was a public service officer) and also if the person is convicted of an indictable offence or becomes insolvent.

## C. Role of the Ombudsman

The Ombudsman has responsibility for investigating complaints about the administrative actions (e.g. decisions, proposals and recommendations) of agencies (government departments, local governments and public universities) (*Ombudsman Act 2001*, section 12). The Ombudsman makes recommendations to agencies about appropriate ways of addressing inappropriate administrative actions (e.g. where the administrative action is unlawful, unreasonable, unjust, oppressive, or improperly discriminatory) or for the improvement of practices and procedures (*Ombudsman Act 2001*, sections 49 and 50).

However, the Ombudsman has no jurisdiction to review decisions made by the CCC, including how the CCC has managed a complaint about corrupt conduct. The Ombudsman may investigate a complaint about how a public sector agency has dealt with a complaint about corrupt conduct even if it is first referred to the CCC.

The Ombudsman is the oversight agency for the *Public Interest Disclosure Act 2010* (PID Act). Public Interest Disclosures (PIDs) can be about a range of issues including maladministration that affects a person's interests in a substantial and specific way, corrupt conduct (as defined in the CCA), reprisal or specific dangers to the health or safety of person with a disability or the environment (see PID Act, sections 12 and 13). As the oversight agency, the Ombudsman monitors the way PIDs are managed by public sector entities, and undertakes an educational and advisory role about PIDs (PID Act, sections 58 and 59).

# Attachment 2: Corrupt conduct or similar – Definitions for Integrity bodies similar to CCC

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| *Crime and Corruption Act 2001* | *Independent Commissioner Against Corruption Act 2012* | *Independent Broad-based Anti-Corruption Commission Act 2011* | *Independent Commission Against Corruption Act 1988* | *Police Integrity Commission Act 1996* | *Corruption, Crime and Misconduct Act 2003* | *Integrity Commission Act 2009* |
| Crime and Corruption Commission | Independent Commissioner against Corruption; and the Office for Public Integrity | Independent broad-based anti-corruption commission (IBAC) | Independent Commission Against Corruption | Police Integrity Commission (NSW) | Corruption and Crime Commission | Tasmanian Integrity Commission |
| 15 Meaning of corrupt conduct<br><br>(1) ***Corrupt conduct*** means conduct of a person, regardless of<br><br>whether the person holds or held an appointment, that—<br><br>(a) adversely affects, or could adversely affect, directly or<br><br>indirectly, the performance of functions or the exercise | 5 Corruption, misconduct and maladministration<br><br>(1) **Corruption in public administration** means conduct that constitutes—<br><br>(a) an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following<br><br>offences:<br><br>(i) bribery or | 4 Corrupt conduct<br><br>(1) For the purposes of this Act, corrupt conduct means conduct—<br><br>(a) of any person that adversely affects the<br><br>honest performance by a public officer or<br><br>public body of his or her or its functions as a public officer or public body; or<br><br>(b) of a public officer or public body that constitutes or involves the dishonest<br><br>performance of his or her or its functions as a public officer or public body; or<br><br>(c) of a public officer or | 3 Definitions<br><br>Conduct includes neglect, failure and inaction.<br><br>7 Corrupt conduct<br>(1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9.<br>(2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2).<br>(3) Conduct comprising such a conspiracy or attempt is not | 5 Police misconduct<br><br>(1) Definition<br>For the purposes of this Act, police misconduct means misconduct (by way of action or inaction or alleged action or inaction) of a police officer:<br><br>(a) whether or not it also involves non-police participants, and<br><br>(b) whether or not it occurs while the police officer is officially on duty, and<br><br>(c) whether or not it occurred before the commencement of this subsection, and | 4 Term used: misconduct<br><br>Misconduct occurs if —<br><br>(a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;<br><br>(b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;<br><br>(c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more | 4 Interpretation<br><br>misconduct means –<br><br>(a) conduct, or an attempt to engage in conduct, of or by a public officer that is or involves –<br><br>(i) a breach of a code of conduct applicable to the public officer; or<br><br>(ii) the performance of the public officer's functions or the exercise of the public officer's powers, in a way that is dishonest or improper; or<br><br>(iii) a misuse of |

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| of powers of—<br><br>(i) a unit of public administration; or<br><br>(ii) a person holding an appointment; and<br><br>(b) results, or could result, directly or indirectly, in the<br><br>performance of functions or the exercise of powers<br><br>mentioned in paragraph (a) in a way that—<br><br>(i) is not honest or is not impartial; or<br><br>(ii) involves a breach of the trust placed in a person<br><br>holding an appointment, either knowingly or<br><br>recklessly; or<br><br>(iii) involves a misuse of | corruption of public officers;<br><br>(ii) threats or reprisals against public officers;<br><br>(iii) abuse of public office;<br><br>(iv) demanding or requiring benefit on basis of public office;<br><br>(v) offences relating to appointment to public office; or<br><br>(b) an offence against the Public Sector (Honesty and Accountability) Act 1995<br><br>or the Public Corporations Act 1993, or an attempt to commit such an<br><br>offence; or<br><br>(c) any other offence (including an offence against Part 5 (Offences of<br><br>dishonesty) of the Criminal Law | public body that constitutes or involves knowingly or recklessly breaching public trust; or<br><br>(d) of a public officer or a public body that involves the misuse of information or<br><br>material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or<br><br>(e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d)—<br><br>being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence.<br><br>***relevant offence*** means—<br>(a) an indictable offence against an Act; or<br>(b) any of the following common law offences committed in Victoria—<br>(i) attempt to pervert the course of justice;<br>(ii) bribery of a public official;<br>(iii) perverting the course of justice; | excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.<br><br>8 General nature of corrupt conduct<br>(1) Corrupt conduct is:<br>(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or<br>(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or<br>(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or<br>(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person. | (d) whether or not it occurred outside the State or outside Australia.<br><br>(2) Examples<br>Police misconduct can involve (but is not limited to) any of the following:<br><br>(a) police corruption,<br><br>(b) the commission of a criminal offence by a police officer,<br><br>(b1) misconduct in respect of which the Commissioner of Police may take action under Part 9 of the Police Act 1990,<br><br>(c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,<br><br>(d) any other matters about which a complaint can be made under the *Police Act 1990*.<br><br>(3) Former police officers<br><br>(cf ICAC Act s 8 (3)) | years' imprisonment; or<br><br>(d) a public officer engages in conduct that —<br><br>(i) adversely affects, or could adversely affect,<br><br>directly or indirectly, the honest or impartial<br><br>performance of the functions of a public authority or public officer whether or not the<br><br>public officer was acting in their public officer capacity at the time of engaging in the conduct;<br><br>(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;<br><br>(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or<br><br>(iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of | information or material acquired in or in connection with the performance of the public officer's functions or exercise of the public officer's powers; or<br><br>(iv) a misuse of public resources in connection with the performance of the public officer's functions or the exercise of the public officer's powers; or<br><br>(b) conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer –<br><br>but does not include conduct, or an attempt to engage in conduct, by a public officer in connection with a proceeding in Parliament; |

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| information or material<br><br>acquired in or in connection with the performance<br><br>of functions or the exercise of powers of a person<br><br>holding an appointment; and<br><br>(c) is engaged in for the purpose of providing a benefit to<br><br>the person or another person or causing a detriment to<br><br>another person; and<br><br>(d) would, if proved, be—<br><br>(i) a criminal offence; or<br><br>(ii) a disciplinary breach providing reasonable grounds<br><br>for terminating the person's | Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or<br><br>(d) any of the following in relation to an offence referred to in a preceding<br><br>paragraph:<br><br>(i) aiding, abetting, counselling or procuring the commission of the<br><br>offence;<br><br>(ii) inducing, whether by threats or promises or otherwise, the | (2) Conduct may be corrupt conduct for the purposes of this Act if—<br><br>(a) all or any part of the conduct occurs outside Victoria, including outside Australia; and<br><br>(b) the conduct would be corrupt conduct if it occurred in Victoria.<br><br>(3) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the *Electoral Act 2002*.<br><br>**5 Meaning of *police personnel conduct*, *police personnel conduct complaint* and *police personnel misconduct***<br><br>For the purposes of this Act—<br><br>***police personnel conduct***, in relation to a public officer who is a member of the police force, means—<br><br>(a) an act or decision or | (2)Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:<br>(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),<br>(b) bribery,<br>(c) blackmail,<br>(d) obtaining or offering secret commissions,<br>(e) fraud,<br>(f) theft,<br>(g) perverting the course of justice,<br>(h) embezzlement,<br>(i) election bribery,<br>(j) election funding offences,<br>(k) election fraud,<br>(l) treating,<br>(m) tax evasion,<br>(n) revenue evasion,<br>(o) currency violations,<br>(p) illegal drug dealings,<br>(q) illegal gambling,<br>(r) obtaining financial benefit by vice engaged in by others,<br>(s) bankruptcy and company violations, | Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer involved has ceased to be a police officer. Accordingly, references in this Act to a police officer extend, where appropriate, to include a former police officer.<br><br>5A Corrupt conduct of administrative officers<br><br>(1) Definition<br>For the purposes of this Act, corrupt conduct of an administrative officer means any conduct of an administrative officer that is corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988.*<br><br>(2) Former administrative officers<br>Conduct may be dealt with, or continue to be dealt with, under this Act even though any administrative officer involved has ceased to be | another person,<br>and constitutes or could constitute —<br><br>(vi) a disciplinary offence providing reasonable<br><br>grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the<br><br>allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).<br><br>Section 3-Definitions<br><br>serious misconduct means —<br>(a) misconduct of a kind described in section 4(a), (b) or (c) by a public officer; or (b) police misconduct.<br><br>police misconduct means —<br>(a) misconduct by —<br><br>(i) a member of the Police Force; or<br><br>(ii) an employee of the Police Department; or | serious misconduct means misconduct by any public officer that could, if proved, be –<br><br>(a) a crime or an offence of a serious nature; or<br><br>(b) misconduct providing reasonable grounds for terminating the public officer's appointment;<br><br>Police misconduct – means misconduct by a police officer |

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| services, if the person<br><br>is or were the holder of an appointment.<br><br>(2) Without limiting subsection (1), conduct that involves any of<br><br>the following could be corrupt conduct under subsection (1)—<br><br>(a) abuse of public office; (b) bribery, including bribery relating to an election;<br><br>(c) extortion;<br><br>(d) obtaining or offering a secret commission;<br><br>(e) fraud;<br><br>(f) stealing;<br><br>(g) forgery;<br><br>(h) perverting the course of justice;<br><br>(i) an offence relating to an | commission of the offence;<br><br>(iii) being in any way, directly or indirectly, knowingly concerned in, or<br><br>party to, the commission of the offence;<br><br>(iv) conspiring with others to effect the commission of the offence.<br><br>(2) If the Commissioner suspects that an offence that is not corruption in public<br><br>administration (an **incidental offence**) may be directly or indirectly connected with,<br><br>or may be a part of, a course of activity involving the commission of corruption in<br><br>public administration | the failure or refusal by the member of the police force to act or make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the member of the police force has as, or by virtue of being, a member of the police force; or<br><br>(b) conduct which constitutes an offence punishable by imprisonment; or<br><br>(c) conduct which is likely to bring the police force into disrepute or diminish public confidence in it; or<br><br>(d) disgraceful or improper conduct (whether in the member of the police force's official capacity or otherwise<br><br>***police personnel conduct***, in relation to a public officer who is a member of police | (t)harbouring criminals,<br>(u) forgery,<br>(v)treason or other offences against the Sovereign,<br>(w) homicide or violence,<br>(x)matters of the same or a similar nature to any listed above,<br>(y)any conspiracy or attempt in relation to any of the above.<br><br>(3)Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.<br><br>(4)Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.<br><br>(5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters | an administrative officer. Accordingly, references in this Act to an administrative officer extend, where appropriate, to include a former administrative officer. | (iii) a person seconded to perform functions and<br><br>services for, or duties in the service of, the Police<br><br>Department; or<br><br>(b) reviewable police action.<br><br>minor misconduct means misconduct of a kind described in section 4(d) that is not any of the following —<br><br>(a) police misconduct;<br><br>(b) conduct engaged in by a member of a House of Parliament or the Clerk of a House of Parliament;<br><br>(c) conduct engaged in by a member of a local government or council of a local government.<br><br>Section 18 - It is a function of the Commission to ensure that an allegation about, or information or matter involving, serious misconduct is dealt with in an appropriate way.<br><br>Section 45B - It is a function | |

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| electoral donation;<br><br>(j) loss of revenue of the State;<br><br>(k) sedition;<br><br>(l) homicide, serious assault or assault occasioning bodily<br><br>harm or grievous bodily harm;<br><br>(m) obtaining a financial benefit from procuring prostitution<br><br>or from unlawful prostitution engaged in by another<br><br>person;<br><br>(n) illegal drug trafficking;<br><br>(o) illegal gambling.<br><br>***conduct*** includes—<br><br>(a) neglect, | (whether or not the Commissioner has identified the nature of<br><br>that corruption), then the incidental offence is, for so long only as the Commissioner<br><br>so suspects, taken for the purposes of this Act to be corruption in public<br><br>administration.<br><br>(3) **Misconduct in public administration** means—<br><br>(a) contravention of a code of conduct by a public officer while acting in his or<br><br>her capacity as a public officer that constitutes a ground for disciplinary<br><br>action against the officer; or<br><br>(b) other | personnel other than a member of the police force, means—<br><br>(a) an act or decision or the failure or refusal by the member of police personnel to act or make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the member of police personnel has as, or by virtue of being, a member of police personnel; or<br><br>(b) conduct which is likely to bring police personnel into disrepute or diminish public confidence in police personnel;<br><br>***police personnel misconduct***, in relation to a public officer who is a | listed in subsection (2) refer to:<br>(a)matters arising in the State or matters arising under the law of the State, or<br>(b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.<br><br>(6)The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.<br><br><u>9 Limitation on nature of corrupt conduct</u><br>(1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:<br>(a) a criminal offence, or<br>(b) a disciplinary offence, or<br>(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or<br>(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.<br>(2) It does not matter that | | of the Public Sector Commissioner to ensure that an allegation about, or information or matter involving, minor misconduct is dealt with in an appropriate way. | |

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| failure and inaction; and<br><br>(b) conspiracy to engage in conduct; and<br><br>(c) attempt to engage in conduct.<br><br>***Schedule 2***<br><br>***Corruption*** means official misconduct or police misconduct.<br><br>***police misconduct*** means conduct, other than corrupt conduct, of a police officer that—<br><br>(a) is disgraceful, improper or unbecoming a police officer;<br><br>or<br><br>(b) shows unfitness to be or | misconduct of a public officer while acting in his or her capacity as a<br><br>public officer.<br><br>(4) **Maladministration in public administration**—<br><br>(a) means—<br><br>(i) conduct of a public officer, or a practice, policy or procedure of a<br><br>public authority, that results in an irregular and unauthorised use of<br><br>public money or substantial mismanagement of public resources; or<br><br>(ii) conduct of a public officer involving substantial mismanagement in<br><br>or in relation to the performance of | member of the police force, means—<br><br>(a) conduct which constitutes an offence punishable by imprisonment; or<br><br>(b) conduct which is likely to bring the police force into disrepute or diminish public confidence in it; or<br><br>(c) disgraceful or improper conduct (whether in the member of the police force's official capacity or otherwise);<br><br>***police personnel misconduct***, in relation to a public officer who is a member of police personnel other than a member of the police force, means conduct which is likely to bring police personnel into disrepute or diminish public confidence in police personnel | proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.<br>(3) For the purposes of this section:<br>*applicable code of conduct means*, in relation to:<br>(a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or<br>(b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.<br><br>*criminal offence* means a criminal offence under the law of the State or under any other law relevant to the conduct in question.<br><br>*disciplinary offence* includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.<br><br>(4) Subject to subsection (5), conduct of a Minister of the | | | |

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| continue as a police officer; or<br><br>(c) does not meet the standard of conduct the community<br><br>reasonably expects of a police officer. | official functions; and<br><br>(b) includes conduct resulting from impropriety, incompetence or negligence;<br><br>and<br><br>(c) is to be assessed having regard to relevant statutory provisions and<br><br>administrative instructions and directions.<br><br>(5) Without limiting or extending the conduct that may comprise corruption, misconduct<br><br>or maladministration in public administration, this Act applies to conduct that—<br><br>(a) occurred before the commencement of this Act; or | . | Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.<br>(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.<br>(6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement | | | |

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| | (b) occurs outside this State; or<br><br>(c) comprises a failure to act; or<br><br>(d) is conduct of a person who was a public officer at the time of its occurrence<br><br>but who has since ceased to be a public officer; or<br><br>(e) is conduct of a person who was not a public officer at the time of its<br><br>occurrence but who has since become a public officer. | | | | | |

# Attachment 3: Examples of conduct falling within the definition of 'corrupt conduct' in the *Crime and Corruption Act 2001*

(from the CCC document *Corruption in Focus – a guide to dealing with corrupt conduct in the Queensland public sector*[32])

| **Conduct** | **Corrupt conduct under *Crime and Corruption Act 2001*** |
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| A chief financial officer responsible for preparing a unit of public administration's budget fails to reconcile funding movements, resulting in a million dollar deficit in the budget. When the issue comes to her attention, she does not report the deficit to the board in a deliberate attempt to cover up her mistake. | Yes<br>• Adversely affects the performance of the department through budget deficit.<br>• Is dishonest and a breach of trust.<br>• Is engaged in for the officer's benefit.<br>• Is reasonable grounds for dismissal. |
| An audit reveals that a public servant cheated on travel allowances by claiming allowances for trips not taken, and claiming expenses that were not incurred. | Yes<br>• Adversely affects the performance of the department through misuse of resources.<br>• Is dishonest.<br>• Is engaged in for the officer's benefit.<br>• Is a criminal offence (i.e. fraud). |
| An officer responsible for the decision-making with respect to a project worth over $50,000 has failed to adhere to the department's procurement processes and awarded the contract and subsequent amendments to the contract to his brother-in-law's company, in which the subject officer also has a financial interest. | Yes<br>• Adversely affects the performance of the department's decision making powers.<br>• Is a breach of trust.<br>• Is engaged in for the officer's benefit and a family member's benefit.<br>• Is a criminal offence (Chapter 13 Criminal Code – Corruption and abuse of office) and reasonable grounds for dismissal. |
| A transport officer provides personal information obtained through a driver licence application to a friend who is trying to locate his estranged wife. | Yes<br>• Adversely affects the performance of the department through breach of privacy obligations.<br>• Involves a misuse of information.<br>• Is engaged in for the benefit of the officer's friend.<br>• Is a criminal offence (i.e. abuse of public office). |
| A finance officer pilfers $200 from the petty cash tin. | Yes<br>• Adversely affects the performance of the department through misuse of resources<br>• Is dishonest and a breach of trust<br>• Is engaged in for the officer's benefit.<br>• Is a criminal offence (i.e. theft). |
| An employee of a university manipulates a selection panel on which she is sitting to ensure that her spouse gets a position for which he is not qualified. | Yes<br>• Adversely affects the performance of the university through the appointment of an unqualified person.<br>• Lacks impartiality.<br>• Is engaged in for the benefit of the officer and the officer's spouse.<br>• Is reasonable grounds for dismissal. |

[32] http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus.

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| A liquor licensee offers monetary inducements to an investigator for advance information about investigations and search warrants. | Yes<br>• Adversely affects the execution of the department's powers under the relevant legislation.<br>• Is dishonest and involves a misuse of information.<br>• Is engaged in for the benefit of the investigator and the licensee.<br>• Is a criminal offence (e.g. bribery). |
| A prison officer takes no action while a prisoner is violently assaulted by other prisoners in front of him. | Yes<br>• Adversely affects the execution of the officer's powers under the relevant legislation.<br>• Involves a breach of trust placed in the officer by virtue of his position.<br>• Is inaction causing a detriment to the assaulted prisoner.<br>• Is a criminal offence (e.g. party to assault/negligence causing harm). |

# Feedback template

**Question 1: Do the concerns raised at the time of the proposed change to the definition of 'official misconduct' to 'corrupt conduct' still exist?**

**Question 2: Is there any evidence that these concerns have been realised since the new definition has been in place?**

**Question 3: What type of specific conduct is not captured in the definition of 'corrupt conduct' but should be?**

**Question 4: If there is conduct that is not captured in the current definition of 'corrupt conduct' that should be, what changes to the current definition of 'corrupt conduct' should be made to capture this?**

**Question 5: Should Queensland adopt the approach to defining 'corrupt conduct' taken in another jurisdiction and why?**

**Question 6: Given the new definition of 'corrupt conduct' has only been in place for one year, is it too early to evaluate the effect of the new definition? Why/why not?**

**Question 7: Please raise any further issues or provide any further comments you would like to make about the CCC's jurisdiction in respect of corrupt conduct.**