

Changes to the *Crime and Corruption Act 2001*

Factsheet 1 | February 2019



The definition of corrupt conduct (section 15)

This factsheet has been prepared to advise units of public administration (UPAs) about:

- the changes to the *Crime and Corruption Act 2001* that are directly relevant to them
- the actions they must take under the new legislation.

Background

The *Crime and Corruption Act 2001* (CC Act) defines:

- what constitutes “corrupt conduct”
- the Crime and Corruption Commission’s (CCC) jurisdiction to oversee the Queensland public sector, and
- how complaints about public sector corruption are to be assessed and actioned.

On 9 November 2018 the *Crime and Corruption and Other Legislation Amendment Act 2018* was passed, bringing in changes to the CC Act. The changes to the Act came out of recommendations from both the CCC and units of public administration (UPAs) to:

- widen the definition of corrupt conduct to capture additional types of behaviour
- extend the CCC’s jurisdiction over conduct that, while not technically within the public sector, can corrupt its functions and damage public confidence in it
- ensure that full records of decisions about allegations of corrupt conduct are kept by UPAs.

Amendments most relevant to UPAs

Two key amendments are relevant to UPAs. These are:

1. changes to section 15, which defines corrupt conduct, and
2. a new section 40A, which includes an additional record-keeping requirement.

This factsheet deals with the changes to section 15. All references to legislation in this factsheet are to the *Crime and Corruption Act 2001*, unless otherwise specified.



Changes to the definition

Section 15 of the CC Act defines “corrupt conduct”, specifying the requirements that must be met for a complaint or allegation to come within the CCC’s jurisdiction.

What’s been removed

With the changes to the Act, certain requirements have been removed from section 15. As illustrated below, these are:

- the requirement related to a benefit or detriment [15(1)(c)], and
- the list of example offences [15(2)].

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
 - (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.~~

What's been added: new section 15(2)

Section 15 has been extended – by the addition of a new section 15(2) – to capture particular criminal and disciplinary conduct that could impair public confidence in public administration.

This means there are now two alternative definitions of corrupt conduct. Only one needs to be satisfied.

- (2) **Corrupt conduct** also means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) impairs, or could impair, public confidence in public administration; and
 - (b) involves, or could involve, any of the following—
 - (i) collusive tendering;
 - (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
 - (A) protecting health or safety of persons;
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State's natural, cultural, mining or energy resources;
 - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
 - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
 - (v) fraudulently obtaining or retaining an appointment; and
 - (c) 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.

Previously, the focus of section 15 was on the behaviour of public sector employees. The new legislation recognises that the actions of people outside the public sector can result in a loss of confidence in UPAs.

The changes to section 15 ensure that these actions will be recognised as corrupt conduct, and will come within the jurisdiction of the CCC (see case studies 1 and 2 on licensing and contracts).



Timelines for assessments under the new definition

Any complaints **assessed on or after 1 March 2019** must be assessed according to the new definition of corrupt conduct regardless of:

- when the complaint was received, or
- when the conduct is alleged to have occurred.

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The actions of private citizens can damage public confidence in the public sector.

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Case study 1: Issue of fraudulent licences

A government department issues licences. Anyone wishing to obtain a licence from that department must first complete mandatory training and obtain suitable qualifications. The main reason for the licence is to ensure public safety. However, the department has outsourced responsibility for training and qualifying people to a private company. One of the employees of the private company has accepted bribes from an outlaw motorcycle gang to issue qualifications to unqualified persons so that they can obtain licences. The result is that the department is now issuing licences in good faith to unqualified people.

Would this conduct be “corrupt conduct” under the new section 15(2)?

Yes. It meets the requirements of section 15(2), specifically the elements highlighted in **bold**:

- (2) **Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—**
- (a) **impairs, or could impair, public confidence in public administration; and**
 - (b) **involves, or could involve, any of the following—**
 - (i) collusive tendering;
 - (ii) **fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—**
 - (A) **protecting health or safety of persons;**
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State’s natural, cultural, mining or energy resources;
 - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
 - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
 - (v) fraudulently obtaining or retaining an appointment; **and**
 - (c) **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.

This example is based on a real case from 2016 that had to be referred to the QPS as it did not involve the actions of an employee of a UPA and was therefore not in the CCC’s jurisdiction. Should such a matter come to the attention of an agency, the changes to section 15 mean that it should now be referred to the CCC.

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Private citizens who dishonestly obtain contracts from a UPA can now come within the CCC’s jurisdiction.

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Case study 2: Companies involved in collusive tendering

Six road construction companies have engaged in a collusive tendering scheme for six multi-million dollar contracts awarded by a government department. Each company has applied for more than one contract, but has only been successful with one of its tenders. The companies have agreed to “take turns” at winning the contracts, with all companies except the winner deliberately quoting above a certain dollar value to make the winner’s quote appear competitive. The price of each awarded contract is significantly higher than previous contracts for similar work.

Would this conduct be “corrupt conduct” under the new section 15(2)?

Yes. It meets the requirements of section 15(2), specifically the elements highlighted in **bold**:

- (2) **Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—**
 - (a) **impairs, or could impair, public confidence in public administration; and**
 - (b) **involves, or could involve, any of the following—**
 - (i) **collusive tendering;**
 - (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
 - (A) protecting health or safety of persons;
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State’s natural, cultural, mining or energy resources;
 - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
 - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
 - (v) fraudulently obtaining or retaining an appointment; **and**
 - (c) **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.

In this case, the procurement process has been corrupted not by the actions of an employee of a UPA (the departmental officers who awarded the contracts), but by those of the private companies.

As in case study 1, this conduct would not previously have been within the CCC’s jurisdiction because it did not involve the actions of an employee of a UPA. With the changes to section 15, it should now be referred to the CCC.