

## Glossary

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### **Benefit**

Includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

### **CC Act**

*Crime and Corruption Act 2001*

### **CEO**

See public official

### **Complaint**

See chapter 1 for a full discussion of what constitutes corrupt conduct.

### **Conduct**

Includes —

- neglect failure and inaction
- conspiracy to engage in conduct
- attempt to engage in conduct.

### **Corruption**

Corrupt conduct or police misconduct.

### **Detriment**

To a person, includes detriment caused to a person's property.

### **Discloser**

A person who makes a public interest disclosure in accordance with Chapter 2 of the *Public Interest Disclosure Act 2010*.

### **Holding an appointment in a unit of public administration**

A person holds an appointment in a unit of public administration if the person holds any office, place or position in the unit, whether the appointment is by way of election or selection.

### **Information**

A communication received by the CCC concerning suspected corruption that is not a complaint, notification or matter

OR

information from other sources (see examples below).

Examples of information may include, but are not limited to:

- information given to the commission through a commission activity, including, for example—
  - evidence given by a witness at a commission hearing
  - information obtained through telephone interception or a covert operation
  - evidence gathered through a corruption investigation
- an intelligence report from a law enforcement agency
- a media report
- indirect sources of information about suspected corruption.

### **Knowingly**

There is evidence to show that the person was aware of facts that were reasonably apparent, and where it was not apparent, it could be necessary to assess on the known objective facts whether the conduct had been engaged in recklessly.

### **LG Act**

*Local Government Act 2009*

### **Matter**

An adverse finding made by an official body such as Parliament, a court or a tribunal that a person has, or may have, engaged in corruption.

### **Notification**

A communication given to the CCC about suspected corruption by, or on behalf of, a public official in accordance with sections 37, 38, 40 48A of the CC Act.

### **Police misconduct**

Means 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.

### **Public official**

Means—

- the ombudsman
- the chief executive officer of a UPA, including the commissioner of police
- or
- a person who constitutes a corporate entity that is a UPA.

### **Reasonable suspicion**

See chapter 2 for a discussion of what constitutes a reasonable suspicion.

**Recklessly**

Where there was an awareness by the person engaging in the conduct that there was a real and apparent risk of the breach of the trust placed in the person holding the appointment and that the person nevertheless without justification went through with the conduct.

It would be without justification for a person to ignore a risk that was real and apparent as opposed to one that was fanciful and speculative or without substance.

**Unit of public administration (UPA)**

- (1) Each of the following is a unit of public administration—
  - (a) the Legislative Assembly, and the parliamentary service;
  - (b) the Executive Council;
  - (c) a department;
  - (d) the police service;
  - (da) a local government;
  - (e) a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act;
  - (f) a noncorporate entity, established or maintained under an Act, that—
    - (i) is funded to any extent with State moneys; or
    - (ii) is financially assisted by the State;
  - (g) a State court, of whatever jurisdiction, and its registry and other administrative offices;
  - (h) another entity prescribed under a regulation.
- (2) However, none of the following is a unit of public administration—
  - (a) the commission;
  - (b) the parliamentary commissioner;
  - (c) the entity consisting of—
    - (i) the parliamentary commissioner; and
    - (ii) officers and employees of the parliamentary service assigned to the parliamentary commissioner; and
    - (iii) persons engaged to provide the parliamentary commissioner with services, information or advice;
  - (d) an entity declared by an Act not to be a unit of public administration.

**Would, if proved**

See chapter 1 for a discussion of how “would, if proved” affects the threshold applicable to corrupt conduct.

## Relevant legislation

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### **Section 4 (Act's purposes)**

The main purposes of the Crime and Corruption Act 2001 (CC Act) are to:

- combat and reduce the incidence of major crime
- reduce the incidence of corruption in the public sector.

### **Section 15 (Meaning of corrupt conduct)**

Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
  - a unit of public administration (UPA)
  - or
  - an individual person holding an appointment in a UPA
- results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above in a way that—
  - is not honest or is not impartial
  - involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly
  - 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
- is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person
- would, 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 a holder of an appointment.

### **Section 33 (Commission's corruption function)**

The CCC has the function (the corruption function) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.

### **Section 34 (Principles for performing corruption function)**

It is the Parliament's intention that the commission apply the following principles when performing its corruption function—

- cooperation — the commission and UPAs should work cooperatively to deal with corruption
- devolution — subject to the other principles and the capacity of the UPA, action to deal with corruption in a UPA should generally happen within the UPA
- public interest—
  - the commission has an overriding responsibility to promote public confidence in the way corruption within a UPA is dealt with

- the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to—
  - o the capacity of, and resources available to, a UPA to effectively deal with the corruption
  - o the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a UPA
  - o any likely increase in public confidence in having the corruption dealt with by the commission directly.

### **Section 35 (How commission performs its corruption function)**

1. Without limiting how the commission may perform its corruption function, it performs its corruption function by doing 1 or more of the following things—
  - expeditiously assessing complaints about, or information or matters involving, corruption made or notified to it
  - referring complaints about corruption within a UPA to a relevant public official to be dealt with
  - performing its monitoring role for corruption as provided for under sections 47(1) and 48(1)
  - dealing with complaints about corrupt conduct by itself or in cooperation with a UPA
  - investigating and otherwise dealing with, on its own initiative, the incidence, or particular cases, of corruption throughout the state
  - assuming responsibility for, and completing, an investigation, by itself or in cooperation with a UPA, if the commission considers that action to be appropriate having regard to the principles set out in section 34
  - when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—
    - the prosecution of persons for offences
    - or
    - disciplinary proceedings against persons
  - assessing the appropriateness of systems and procedures adopted by a UPA for dealing with complaints about corruption
  - providing advice and recommendations to a UPA about dealing with complaints about corruption in an appropriate way.
2. In performing its corruption function in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.
3. In performing its corruption function, the commission must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a UPA.

### **Section 38 (Duty to notify commission of corrupt conduct)**

1. This section applies if a public official reasonably suspects that a complaint, or information or matter, involves, or may involve, corrupt conduct.
2. The public official must notify the commission of the complaint, subject to section 40.

### **Section 40 (Commission may issue directions about notifications)**

1. The commission may issue directions about the following—
  - the kinds of complaints a public official must notify, or need not notify, the commission of under section 37 or 38
  - how and when a public official must notify the commission of complaints under section 37 or 38.

2. Before issuing a direction, the commission must consult with, and consider the views of—
  - the relevant public official
  - if the direction relates to the chief executive officer of a department or a public service office within the meaning of the *Public Service Act 2008*—the public service commission.
- ...
4. A public official must comply with a direction given under subsection (1).

#### **Section 43 (Responsibility of public officials, other than the commissioner of police)**

A public official, other than the commissioner of police, has a responsibility to deal with a complaint about, or information or matter involving, corrupt conduct that is referred to it by the commission.

#### **Section 44 (Dealing with complaints—public officials other than the commissioner of police)**

1. This section does not apply to the police service.
2. A public official must deal with a complaint about, or information or matter involving, corrupt conduct in the way the public official considers most appropriate, subject to the commission's monitoring role.
3. If the public official is satisfied that—
  - a complaint—
    - is frivolous or vexatious
    - or
    - lacks substance or credibility
    - or
  - dealing with the complaint would be an unjustifiable use of resources

the public official may take no action or discontinue action taken to deal with the complaint.
4. A public official may, in an appropriate case, ask the commission to deal with a complaint in cooperation with the public official.
5. If a person makes a complaint that is dealt with by the public official, the public official must give the person a response stating—
  - if no action is taken on the complaint by the public official or action taken to deal with the complaint is discontinued by the public official—the reason for not taking action or discontinuing the action
  - or
  - if action is taken on the complaint by the public official—
    - the action taken
    - the reason the public official considers the action to be appropriate in the circumstances
    - any results of the action that are known at the time of the response.
6. However, the public official is not required to give a response to the person—
  - if the person has not given his or her name and address or does not require a response
  - if the response would disclose information the disclosure of which would be contrary to the public interest.

#### **Section 45(1) (Responsibility of commission)**

The commission has primary responsibility for dealing with complaints about, or information or matter involving, corrupt conduct.

**Section 46 (dealing with complaints—commission)**

1. The commission deals with a complaint about, or information or matter involving, corruption by—
  - expeditiously assessing each complaint about corruption made or notified to it, or otherwise coming to its attention
  - taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.
2. The commission may take the following action—
  - deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with
  - refer a complaint about corrupt conduct to a relevant public official to be dealt with by the public official or in cooperation with the commission, subject to the commission’s monitoring role
  - refer a complaint about corrupt conduct of a person holding an appointment in a UPA that may involve criminal activity to the commissioner of police to be dealt with
- ...
- if a public official asks the commission to deal with a complaint or to deal with a complaint in cooperation with the public official—
  - deal with the complaint
  - deal with the complaint in cooperation with the public official
  - or
  - advise the public official that the commission considers that it is appropriate that the public official continue to deal with the complaint, subject to the commission’s monitoring role
- if the commission is satisfied that—
  - the complaint—
    - is frivolous or vexatious
    - lacks substance or credibility
    - is not made in good faith
    - is made primarily for a mischievous purpose
    - or
    - is made recklessly or maliciously
  - dealing with the complaint
    - would not be in the public interest
    - or
    - would be an unjustifiable use of resources
    - or
  - the subject matter of the complaint—
    - is not within the commission’s functions
    - or
    - has been dealt with by another entity

take no action or discontinue action.

3. For taking action, or action taken, under subsection (2) for a complaint, the commission may require a public official to provide stated information about the complaint in the way and at the times the commission directs.
4. A public official must comply with a requirement made under subsection (3).
- ...
7. Nothing in this part limits the commission from providing information about the conduct of a person to a public official for use in the proper performance of the public official's functions.

#### **Section 48 (Commission's monitoring role for corrupt conduct)**

1. The commission may, having regard to the principles stated in section 34—
  - issue advisory guidelines for the conduct of investigations by public officials into corrupt conduct
  - review or audit the way a public official has dealt with official misconduct, in relation to either a particular complaint or a class of complaint
  - require a public official—
    - to report to the commission about an investigation into corrupt conduct in the way and at the times the commission directs
    - or
    - to undertake the further investigation into corrupt conduct that the commission directs
    - or
  - assume responsibility for and complete an investigation by a public official into corrupt conduct.
2. The public official must—
  - give the commission reasonable help to undertake a review or audit or to assume responsibility for an investigation
  - comply with a requirement made under subsection (1).
3. If the commission assumes responsibility for an investigation, the public official must stop his or her investigation or any other action that may impede the investigation if directed to do so by the commission.

#### **Section 48A (Policy about how complaints involving public officials are to be dealt with)**

1. A public official must, in consultation with the chairman, prepare a policy about how the UPA for which the official is responsible will deal with a complaint that involves or may involve corruption of the public official.
2. The policy may nominate a person other than the public official to notify the commission under section 38, and to deal with the complaint under subdivision 2, on behalf of the public official.
3. If the policy includes a nomination mentioned in subsection (2), this Act applies as if a reference about notifying or dealing with the complaint to the public official were a reference to the nominated person.