



PREVENTION in focus

Corruption in the Queensland public sector – it's not just about public servants

Legislation now recognises that people outside the public sector can exploit, adversely influence or corrupt public sector processes

What you should know


- In Queensland, the Crime and Corruption Commission (CCC) and public sector agencies use the legal definition of “corrupt conduct”¹ to assess whether allegations of corruption come within the jurisdiction of the CCC and determine what action should be taken.
- On 1 March 2019, a new definition of corrupt conduct came into effect. Among other things, the definition was broadened to capture behaviours that, while not technically within the public sector, could corrupt its functions.
- Previously focused on the conduct of public sector employees, the legislation now recognises that people outside the public sector can exploit, adversely influence or corrupt public sector processes, leading the community to lose confidence in government administration.

This publication aims to alert agency complaints managers, supervisors and senior staff to some of the behaviours that are now within the CCC’s jurisdiction and highlights the types of external influences and actions that could subvert their agency’s operations.

The publication also aims to help agencies assess corruption allegations according to the new definition of corrupt conduct. Using case studies, it steps through the assessment process and the associated consultation with the CCC. Further, it advises on action that can be taken to pursue corrupt conduct involving people both within and outside the public sector and to minimise risks and vulnerabilities.

¹ Section 15 of the *Crime and Corruption Act 2001*





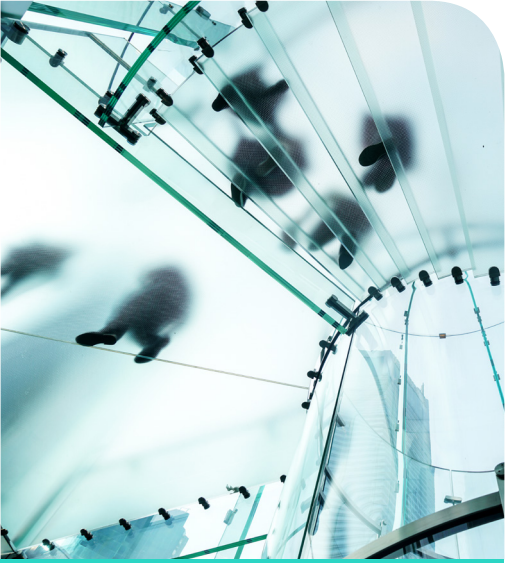
Who can now be investigated for corrupt conduct?

Previous investigations by agencies, the CCC and the Queensland Police Service (QPS) had identified various types of criminal activity that had affected the public sector. When changes were made to the *Crime and Corruption Act 2001*², a new section was added to the definition of “corrupt conduct” (section 15). The new section 15(2) specifies that the influence and actions of anyone in the community, “regardless of whether the person holds or held an appointment”, could be considered corrupt conduct if they, amongst other things, impair public confidence in public administration.



What does it mean to “impair public confidence”?

Public confidence in public institutions would be impaired when the public begins to question, or ceases to have trust in, the ability of government to deliver services efficiently, accountably and ethically. It may manifest in, for example, extensive and damaging media coverage, calls for the resignation of a senior public servant or minister, or the public choosing private-sector providers rather than State providers. Impairment of confidence is a question of fact and degree, and in general would focus attention on serious or systemic conduct rather than isolated incidents.



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Who has jurisdiction over members of the public?

The role of the CCC is to focus on the most serious or systemic corruption within public sector agencies. Under the new section 15(2), it can investigate corruption allegations made about members of the public, leading to them being charged with criminal offences.

However, public sector agencies have no jurisdiction over members of the public. If they suspect that people outside their agency are carrying out criminal activities impacting their operations such that section 15(2) is enlivened, they must notify the CCC. Depending on the CCC’s response, the agency may refer the matter to the QPS for criminal investigation or investigate the matter themselves.

² Changes to the Act were made progressively from November 2018, with the new definition of corrupt conduct coming into force on 1 March 2019. All references to legislation are to the *Crime and Corruption Act 2001*, unless otherwise specified.

What are the high-risk areas for corrupt conduct?

Some of the areas specifically identified by the new definition of corrupt conduct include tendering and procurement, licensing, resource and asset management, payments of public funds, and fraudulent appointments.

Section 15(2) of the *Crime and Corruption Act 2001*

- (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.

Case studies: Identifying, assessing and referring corrupt conduct to the CCC

Since the changes to the legislation came into effect, public sector agencies have been receiving and assessing a wider range of matters that, according to the new definition, must be referred to the CCC. They have also been contacting the CCC to seek guidance on the scope and interpretation of the new definition and what it encompasses.

The following case studies highlight:

- How public sector operations can be targeted by people both within and outside agencies (for example, by an external service provider working with an internal enabler).
- How agencies assess matters to determine whether the actions of an external person could be considered corrupt conduct, and what action should be taken in that event.



The definition of corrupt conduct now applies equally to a supplier intending to defraud an agency and an employee who enables it.



Case study 1



The CCC was contacted by an agency who had concerns about one of its employees. The employee had engaged an external supplier, with whom they had a long and ongoing personal relationship, to provide and deliver materials. The engagement was outside the agency's procurement and contract processes, and had involved manipulating approval processes and falsifying quotes. The employee's alleged actions resulted in the supplier being paid more than \$250,000, although monitoring with surveillance cameras found no evidence that any material had been ever delivered to the site in question or to any of the agency's other sites.

It was clear that the conduct of the employee reached the threshold of corrupt conduct as defined in section 15(1) of the CC Act.

The question then was whether the conduct of the supplier met the threshold of corrupt conduct under the new definition (section 15[2]).

1. The conduct involved a significant dollar value and it occurred over an extended period of time. It was targeted and sophisticated, particularly as it was not detected via internal audit or review processes.
2. It involved a supplier dishonestly obtaining a benefit from the payment of public funds — first, in relation to the fraudulent tender process and second, due to the supplier's apparent lack of intent to provide the service for which they were being paid.
3. The actions of the supplier would, if proved, be a criminal offence.

As public sector agencies cannot investigate members of the public, the CCC requested that the agency refer the supplier to the QPS for criminal investigation. The CCC assessed the matter as reaching the threshold of corrupt conduct as defined in sections 15(1) and (2). Noting the actions taken by the agency in response to the issue, the CCC determined to refer the investigation in relation to the employee to the agency subject to monitoring and reviewing the final investigation. The investigation is ongoing.

Corrupt conduct now covers external scams or frauds targeting public sector agencies.



As shown in **case study 2**, there are a number of corruption prevention opportunities that can be identified and acted upon once an agency becomes aware of an allegation that may fall within section 15(2).

Case study 2



A private business contacted a government agency because of concerns about the authenticity of an email that it had received, purportedly from an employee of that agency, stating that a loan repayment was due.

The email advised that the payment could not be made to the agency's usual bank account due to audit issues and suggested an alternative bank account or payment method could be provided. The business suspected that its email account had been breached, allowing access to previous emails between it and the agency.

The agency reviewed its IT system to identify whether its security had been breached, but it had not. From there, the agency contacted the CCC to confirm whether the conduct would meet the definition of corrupt conduct under the new section 15(2).

The CCC determined that it did, taking into account the following:

- the attempted fraud was for \$1,000,000, which had the potential to impair public confidence
- the scam itself was sophisticated and targeted
- the fraud itself, if effected, would clearly amount to a criminal offence
- the conduct would have resulted in the payment of public funds (the loan repayment) dishonestly to the benefit of the person running the scam.

After consulting the CCC, the agency formally notified the CCC of the alleged conduct and provided supporting documentation.

The agency advised that as the email had not been sent by one of their employees, they had no jurisdiction to investigate the matter. However, they advised that they had contacted the QPS to report the alleged fraud, and that the QPS had asked for the matter to be reported via the Australian Cybercrime Online Report Network (ACORN). The agency issued a warning on its website to create awareness of the attempted fraud against it.

Noting the actions taken by the agency in response to the issue, the CCC determined to refer it to the agency with no further advice required. The agency had taken appropriate action which meant the matter did not require CCC oversight.



Conclusion

With the broader definition of corrupt conduct now in force, agencies should consider taking any or all of the following actions as part of the assessment process.

- If unsure about any specific application of the new definition, they should not hesitate to contact the CCC or notify it of the relevant matter.
- They may wish to raise awareness within their agencies of the types of conduct that they are identifying as corrupt conduct under section 15(2) and that now come within the jurisdiction of the CCC.
- Once an agency becomes aware of an allegation that may fall within section 15(2), they should consider or seek guidance on appropriate corruption prevention mechanisms.
- Complaints that may not necessarily be actioned by the CCC may still, over time, form a picture that prompts closer examination via corruption audits or public hearings.
- The new section 15(2) provides the CCC with a greater ability to proactively investigate corruption enablers within agencies, including poor (or non-existent) policies and procedures and poor governance.

Acknowledgements

The CCC would like to thank the agencies who shared their case studies and questions with us for the benefit of other agencies.

More information

- A recent factsheet on the [new definition of corrupt conduct](#) details the most significant changes to sections 15(1) and (2).
- Other papers in the [Prevention in Focus series](#) highlight risks in procurement, conflicts of interest and recruitment which may be relevant.

