

Legislation update for government agencies

Important changes to the definition of “corrupt conduct” have commenced this month

March 2019

The *Crime and Corruption Act 2001* (the *CC Act*) has been amended, effective from 1 March 2019, to significantly expand the meaning of “corrupt conduct” under that Act. The principal changes are as follows:

- The removal of the previous requirement that the conduct in question was engaged in for the purpose of providing a benefit, or causing a detriment, to someone;
- The removal of a list of offences previously included in the definition as offences that could be corrupt conduct.

Most importantly, the *CC Act* now includes a new limb to the definition of corrupt conduct which captures criminal or disciplinary conduct said to impair, or possibly impair, public confidence in public administration. The definition requires that conduct is to involve (or possibly involve) one of a number of particular types of offending behaviour, namely:

- Collusive tendering;
- Fraud relating to certain licences or permits;
- Dishonestly obtaining a benefit from the payment or application of public funds;
- Tax evasion, and
- Fraudulent behaviour regarding an appointment.

Importantly, the definition makes clear that both public officials and private citizens are captured by this expanded definition.

One further amendment is vitally important for public sector officials. A new section (section 40A) of the Act provides that **public officials must now keep a record of any decision not to refer alleged corrupt conduct to the CCC**. That record must include the details of the information, and the evidence relied upon, in deciding not to report, and is reviewable by the Crime and Corruption Commission.

Given the positive obligation upon public sector officials to report corrupt conduct (section 38 CC Act), this new obligation to record one's reasons for not reporting is an important new responsibility cast upon public officials.

Government agencies should take urgent steps to ensure appropriate policies and mechanisms are in place to properly and securely record the decisions now required to be noted by section 40A.

For further inquiries or assistance, please contact Glen Cranny, Managing Director, Gilshenan & Luton Legal Practice on 3361 0240 or gcranny@gnl.com.au