

## **Appendix 5**

### **Definition of corruption in the *Independent Commission Against Corruption Act 1998 No. 35 (NSW)***

#### **7 Corrupt conduct**

- 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.
- 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).
- 3) Conduct comprising such a conspiracy or attempt is not 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.

#### **8 General nature of corrupt conduct**

- 1) Corrupt conduct is:
  - 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
  - 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
  - c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
  - 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.
- 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:

- a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- b) bribery,
- c) blackmail,
- d) obtaining or offering secret commissions,
- e) fraud,
- f) theft,
- g) perverting the course of justice,
- h) embezzlement,
- i) election bribery,
- j) election funding offences,
- k) election fraud,
- l) treating,
- m) tax evasion,
- n) revenue evasion,
- o) currency violations,
- p) illegal drug dealings,
- q) illegal gambling,
- r) obtaining financial benefit by vice engaged in by others,
- s) bankruptcy and company violations,
- t) harbouring criminals,
- u) forgery,
- v) treason or other offences against the Sovereign,
- w) homicide or violence,
- x) matters of the same or a similar nature to any listed above,

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- y) any conspiracy or attempt in relation to any of the above.
- 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.
- 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.
- 5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
- a) matters arising in the State or matters arising under the law of the State, or
  - b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- 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.

## **9 Limitation on nature of corrupt conduct**

- 1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:
- a) a criminal offence, or
  - b) a disciplinary offence, or
  - c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
  - 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.
- 2) It does not matter that 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.
- 3) For the purposes of this section:

***applicable code of conduct*** means, in relation to:

- a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or

- 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.

*criminal offence* means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

*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.

- 4) Subject to subsection (5), conduct of a Minister of the 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.
- 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.
- 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.