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Submission to the Parliamentary
Crime and Corruption Committee
Review of the operation of Section
329 of the *Crime and Corruption
Act 2001*

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Introduction and Background

The submission which follows is in response to the Parliamentary Crime and Corruption Committee's (Committee) invitation to comment on its review of s.329 of the *Crime and Corruption Act 2001* (CC Act).

Section 329 of the CC Act was substantially amended in 2014. At the time, a failure in administration at the CMC had led to a significant issue concerning documents relating to the Fitzgerald Inquiry. That event, and the reviews which followed it, resulted in significant changes to the functions and governance of the Crime and Corruption Commission (CCC). Despite this, as a result of over three years of rigorous adherence to the notification requirements imposed by s.329, the landscape has now changed. We trust today's Committee has confidence in the administration of the CCC.

The breadth of the current definition of improper conduct has achieved the intended purpose of focussing the minds of managers on the standard of conduct expected of Commission officers. At the same time, it has created an undoubted administrative burden on both the CCC and, we expect, the Committee. In our submission, the operation of s.329 would benefit from refinement.

As the circumstances giving rise to the current process have now passed into history, the CCC considers the overly burdensome notification regime could be streamlined without any detrimental effect on public confidence in the administration of the Commission.

Review Topic One - The definition of improper conduct

The 2014 amendments

Amendments to s.329 were effected with the passage of the *Crime and Misconduct and Other Legislation Amendment Bill 2014*. There were two significant amendments to the duty to notify improper conduct. The first was an obligation on the notifier to disregard the intention of the person engaging in the conduct when forming the relevant suspicion.

The second was an expansion of the definition of improper conduct by the inclusion of s.329(4)(d) and (e). These combined amendments now capture a wide variety of conduct which is defined to be 'improper' (2014 amendments in **bold**):

(4) *In this section—*

improper conduct, of a person, means—

- (a) *disgraceful or improper conduct in an official capacity; or*
- (b) *disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or*
- (c) *conduct that would, if the person were an officer in a unit of public administration, be corrupt conduct; or*
- (d) ***disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act; or***
- (e) ***failure to ensure—***
 - (i) ***a register kept by the commission under an Act is up to date and complete; or***

- (ii) all required documentation is on a file kept by the commission and correctly noted on a register kept by the commission under an Act; or
- (f) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately; or
- (g) noncompliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or
- (h) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.

(underlining added)

What were the statutory objectives of the amendments?

The amendments were one part of a suite of 2014 amendments.¹ They came during a period in which the government of the day conducted a number of extraordinary reviews of the CCC. A significant public inquiry also occurred. The government enacted a number of amendments to the CCC's governing legislation which diminished the Commission's functions and augmented oversight by external entities².

The 2014 amendments to s.329 were proposed alongside other changes to the CC Act, including changes which:

- significantly increased the threshold of what constitutes corrupt conduct;
- relegated the investigation of corruption to a secondary function;
- introduced a requirement that complaints about corruption be made by statutory declaration;
- removed the requirement that the Commission be comprised, in part, by women and those with a demonstrated interest in civil liberties;
- replaced references to 'Chairperson' with 'Chairman';
- limited the research function to activities approved by the Minister; and
- enlarged the oversight powers of the Parliamentary Commissioner.

Importantly, the amendments separated the former joint role of Chairperson/CEO and established a Chief Executive Officer position in its own right, responsible to the Commission for the administration of the organisation. This has had the associated benefit of freeing up the Chairperson to concentrate on day-to-day operational matters, and has placed the administration of the Commission in the hands of a highly experienced CEO.

The explanatory notes to the amendments to s.329 noted their purpose to be to increase 'transparency' and 'accountability'. The amendments followed the 2013 Inquiry³ by the former Parliamentary Crime and Misconduct Committee's (PCMC) and the associated report⁴ regarding a significant administrative error by the CMC in 2013. As a result of that error, a number of categories of potentially sensitive documents relating to the Fitzgerald Inquiry in the custody of the CCC at Queensland State Archives were made publicly accessible, and direct access to certain specific documents from those holdings was provided to some people. The

¹ See explanatory notes to the Bill

² Many of the amendments made during this period have since been wound back.

³ Parliamentary Crime and Corruption Committee's Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents.

⁴ PCMC Report No. 90, 2013.

circumstances which gave rise to the Inquiry also appear to have produced a lack of confidence in the CMC by the PCMC of the day.

The recommendations of the PCMC's report No 90 were implemented via a working group of government and Commission representatives which, we understand⁵, formulated the current expanded definition. The object of the amendments appears to have been to ensure 'transparency' and 'accountability' by significantly augmenting the existing Committee and Parliamentary Commissioner oversight of all but minor or trivial administrative failings of commission officers.

The amendments also enlarged the powers of the Parliamentary Commissioner by permitting 'own motion' investigations, without bipartisan approval of the Committee.

Other oversight arrangements

The improper conduct regime is but one of a number of oversight mechanisms applying to the CCC. In addition to the Committee's monitoring and review functions, and the now expanded role of the Parliamentary Commissioner (described in detail below), the CCC is overseen by the Commonwealth Ombudsman (Surveillance devices), the Public Interest Monitor (Telecommunications Interception and Surveillance devices) and the Public Interest Advocate (journalist information warrants).

Although the current regime for improper conduct imposes strict notification obligations, the Committee's oversight role is limited to monitoring, reviewing and reporting to the Legislative Assembly. It may issue legally binding guidelines on how the CCC operates.

What has been the effect of the 2014 amendments?

It can immediately be seen that the drafting of the current s.329 definition of improper conduct is extremely broad. It captures activities which are not uncommon in either the public or private sector, such as an inadvertent failure to follow a policy (which is a guide only) or mistakenly failing to complete a register of information.

Not only is the array of conduct expanded in the broadest way imaginable, but in forming a suspicion of improper conduct of a commission officer, the notifier must disregard the intention of the person in engaging in the conduct. Effectively removing any discretion in the notifier in this regard has resulted in every innocent or inadvertent mistake (other than the minor or trivial) becoming notifiable as improper conduct.

The very wide application of the definition of improper conduct has resulted in an immediate and significant increase in administrative processes for both the Commission and the Committee. Given the breadth of conduct captured by the definition that is hardly surprising. Prior to the amendments, s.329 was concerned with improper conduct that was characterised as 'disgraceful or improper' in an official or private capacity, or conduct that would amount to corrupt conduct. In other words, the overriding principle was to capture conduct which was unbecoming of an officer of the CCC.

In the CCC's view, by capturing in practice mainly low-level failures to adhere to policies, the current definition adds little in terms of oversight beyond the obvious premise that commission officers will make mistakes.

Further, the vast majority of the reporting obligations fall upon the CEO as notifier⁶. We are aware of no other public sector agency where such a role is so frequently called upon to personally deal with matters that are, in the main, inadvertent errors or low-level misconduct. The CEO's involvement should be limited to investigating and disciplining commission officers for conduct at the most serious end of the spectrum. Thankfully, such occasions are rare. Nevertheless, we estimate approximately 25% of the CEO's time is spent preparing and administering s.329 notifications and 30-40% of time is spent on preparation of recommendations by the Director, Integrity Services, a senior executive service position within the CCC.

⁵ Much of the corporate memory about the activities of this group has been lost as the CCC representatives on it have either passed away or are no longer employed by the CCC.

⁶ By virtue of the operation of s.329(1)

In its current form, the definition of improper conduct results in the imposition of obligations on the CEO and Director, Integrity Services that unfortunately can only be described as an inefficient application of public funds.

Are the objects of the amendments achieved in its current form?

Since it was amended in 2014, the highly prescriptive language of s.329 has resulted in an acute awareness throughout the organisation of the notification regime. Self-reporting of possible improper conduct (as defined) is now not uncommon. There is now a high awareness of the effect of s.329 amongst middle and senior managers, and the obligation on all commission officers to report possible improper conduct permeates everyday thinking. It is safe to assume that s.329 is one section of the CC Act of which each and every commission officer is acutely aware.

When viewed in this light it could be readily observed that the objects of the 2014 amendments to the definition of improper conduct have been achieved. The introduction of a Chief Executive Officer with responsibility to the Commission to oversee the effective administration of the organisation means there is now significant and effective administrative oversight. This is an advantage that was not enjoyed by the Commission prior to 2014.

The Commission perceives from its interactions with the Committee that there is currently a high level of confidence in its administrative management. The Commission also trusts that in the three years since the introduction of the amended s.329 regime, its strict adherence to the provision and the related Protocol has achieved the stated policy objective of improving public confidence in the commission by encouraging adherence to the highest standards of administrative practice. Every endeavour has been made to ensure the Commission's administration is as transparent as possible to the Committee.

Refinement of the current regime

The types of conduct now considered to be 'improper' are set out above. They span a wide range of conduct. Everything from the intentional misuse of power (which would be captured in any event by another category, corrupt conduct) to an inadvertent failure to follow a policy, is notifiable.

In the CCC's submission the breadth of conduct required to be notified would benefit from refinement. The CCC recognises that public confidence in its functions and activities will only be maintained if it addresses, and is seen to address, true misconduct by its officers. The same premise applies to the Committee in discharging its oversight function. However, there appears to be no legitimate purpose served by diverting such a significant quantity of scarce resources – in both organisations – toward the repetitive notification of the inevitable inadvertent low-level breaches of policy which occur on a not infrequent basis in any public or private enterprise. Policies are a statement of purpose which highlight broad guidelines on action to be taken to achieve that purpose. Given this, there remains capacity for policies to be flexibly applied in certain circumstances subject to appropriate authorisation.

The CCC recognises there are good reasons to retain certain types of conduct within the definition. Conduct such as the deliberate and unauthorised disclosure of confidential information or exercise of power, particularly where there is an abuse of power, would on any view require a level of investigation and potentially consideration of disciplinary or criminal proceedings. Fortunately such instances are rare, but can happen. These behaviours are justifiably matters which the CCC would take seriously, and should clearly be notified to the PCCC without delay to ensure an agreed approach is adopted.

Inadvertent behaviour

Although there is good reason to hold the conduct of commission officers to high account, the CCC will never be free from human error, and in this respect it is no different to any other part of the public or private sector. Mistakes are an inevitable part of the human condition. Such errors will continue to be made notwithstanding statutory regimes mandating them as reportable.

Inevitably, many of the notifications made under the present regime relate to matters which were unintentional or inadvertent. In the wider public sector they would be dealt with summarily and effectively with timely managerial intervention and guidance.

In the CCC's submission, inadvertent and isolated failures to follow policies, keep registers or file documents could be excised from the current definition without any detrimental effect on public confidence in the CCC's administration.

Further, in the Commission's submission, more serious matters involving inadvertent unauthorised exercise of powers (which can vary greatly in their significance given the vast array of powers exercised) or an inadvertent misuse of confidential information could be viewed in one of two ways, depending on the circumstances. The matter may be serious enough to warrant investigation and potentially a formal disciplinary or criminal process. On the other hand, it may be an isolated incident or a matter of such little moment that a formal investigation is not required and the matter can be dealt with by internal processes. In such cases, where behaviour is inadvertent, the CCC considers the most efficient manner to deal with it is to permit the CEO to have a discretion to notify the Committee in the case of the minor matters, but an obligation to notify where further investigation is to be undertaken.

In the CCC's view, in light of the goodwill that exists between the Committee and the CCC, the version of s.329 immediately prior to amendment in 2014 would adequately address the need for transparency and accountability, and should be adopted, with a suitable Protocol to meet specific requirements of the Committee and the Commissioner.

Comparative jurisdictions

We have undertaken an examination of the law applicable to officers of other law enforcement and integrity agencies.

Only the Commonwealth legislation imposes a general obligation on the anti-corruption agency to notify an external person or entity about improper conduct of an officer. The Western Australian obligation applies where the CCC receives an allegation that concerns, or may concern, an officer of the Commission and the Victorian obligation applies where a complaint is received by the Independent Broad-based Anti-corruption Commission (IBAC) that involves the conduct of an IBAC officer. The legislation in Tasmania, South Australia and New South Wales does not impose any notification obligations.

The definition of an 'Australian Commission for Law Enforcement Integrity (ACLEI) corruption issue' in the Commonwealth legislation extends to conduct that 'will, or may at any time in the future' be engaged in.

The equivalent definitions of 'improper conduct' are narrower than the definition in s.329(4) of the CC Act; for example, there are no references to 'disgraceful or improper conduct in a private capacity' (paragraph b), or to non-compliance with a policy (paragraph g) or to inadvertently doing an act (paragraphs f & g).

The legislation in all jurisdictions except Tasmania provides for an independent person or agency to receive complaints about the conduct of agency officers (similar to s.295 CC Act) even though some of this legislation does not also impose notification obligations on the agency itself.

Some further notes on the comparative provisions are attached for your information (**Appendix A**).

Review topic two – Protocols Governing Reporting of Improper Conduct Complaints against Officer of the CCC

The Protocols governing the reporting of improper conduct complaints against officers of the Crime and Corruption Commission (September 2014) were developed to assist with some practical aspects regarding the improper conduct referral regime. The Protocol is not a Guideline under s.296 CC Act.

The CCC considers the Protocol could benefit from refinement in the following ways:

Delay

The Protocol provides:

A. Receipt and Notification of a complaint/information of possible improper conduct

2.A.f. When notifying the Parliamentary Committee and Parliamentary Commissioner under 2A(e), above, the Notifier will advise the Parliamentary Committee and the Parliamentary Commissioner of any steps which have been, are being or are proposed to be taken, **in order to preserve evidence or to obtain evidence that would not otherwise be obtainable without immediate action or to preserve the integrity of the commission's operations.**

...

B. Taking action and consideration of a notification made

2.B.a. **With the exception of action taken under 2A(f), above, no further action shall be taken in respect of a matter which has been referred to the Parliamentary Committee and Parliamentary Commissioner under 2A(a), above, until such time as a response is received from the Parliamentary Committee and/or the Parliamentary Commissioner, in accordance with their agreed protocols. The advice from the Parliamentary Committee or Parliamentary Commissioner will direct how the matter is to be dealt with.'**

In practice, the difficulty with the operation of this requirement is the fact that except for the preservative actions set out in para 2.A.f, no action may be taken to address the merits of the issue until the Committee has been notified and they have responded. Such an approach results in a delay in dealing with what would generally otherwise be a straightforward internal administrative matter and which may also impact on the health of the subject officer in circumstances where they are aware of the notification of the alleged conduct.

Further, the Protocol proceeds on the basis that the Committee or the Commissioner '*...will direct how the matter is to be dealt with....'* The Committee will routinely make recommendations as to how to deal with particular conduct notified to it under s.329. During the currency of the Protocol the CCC has, in good faith, given careful consideration to suggestions and recommendations made by the Committee or Commissioner. However, although the CCC would not lightly depart from an expressed view of the Committee on a particular matter, the CC Act does not require the CCC or its CEO to accept or follow Committee recommendations or directions concerning the taking of particular steps, including disciplinary steps, against commission officers following improper conduct notification. The Commission, through the CEO, is ultimately responsible for the effective administration of the Commission.

The CCC's submission is that the efficient management of internal administrative matters is being hampered by the current Protocol. It is possible, if not likely, that matters may well be significantly expedited if the Protocol was altered to remove the requirement to await the Committee's approval to proceed.

Delegation by Notifier

As mentioned above the CEO is the specified notifier under s.329(1) CC Act for all improper conduct of commission officers other than the Chairperson or a Commissioner.

All the CEO's functions and powers are delegable to a suitably qualified commission officer under s.269(3) CC Act. Therefore, as the notification of improper conduct is a function of the CEO's role under s.329(1), it may be delegated.

However, the Protocol effectively prevents this. Section 1 (Introduction) provides that if the conduct in question is an officer of the [CCC], the notifier is the CEO.

Significantly better use of our resources would result in modification of this requirement, so that other suitably qualified officers of the CCC could be notifiers for the purposes of s.329(1).

Summary

The current form of section 329 CC Act developed out of a tumultuous time in Queensland politics, during which the government of the day appeared to experience a crisis of confidence in the CMC.

The requirement imposed by s.329 is unprecedented in the Australian public sector. It causes delay in addressing relatively minor matters which could be quickly dealt with internally. The process is time-intensive for several of the most senior staff of the CCC. It diverts significant resources from the CCC's core functions.

We perceive the Committee to have confidence in the management of the CCC, and in particular the management of conduct which meets the existing definition of improper conduct. In light of this the burdensome obligations of s.329 could be refined in the manner suggested above with no detriment to transparency and accountability. In the CCC's view, in light of the goodwill that exists between the Committee and the CCC, the version of s.329 immediately prior to amendment in 2014 would adequately address the need for transparency and accountability, and should be adopted, with a suitable Protocol to meet specific requirements of the Committee and the Commissioner.

The CCC appreciates the input of the Committee into the process of notification, assessment and management of 'improper conduct'. We also appreciate the Committee's recent expressions of confidence in the CCC which underscore the professional and arms' length approach which has been taken to date.

We anticipate the current situation created by the onerous definition of improper conduct to be as great an administrative burden on the Committee in managing the notifications, as it is on the CCC in making them. The CCC is confident that by implementing the above suggestions the required transparency and accountability can be maintained while reducing the administrative burden on both the CCC and the Committee.

APPENDIX A

Complaints involving the conduct of anti-corruption agency staff – legislative provisions in other jurisdictions

Victoria: Independent Broad-based Anti-corruption Commission (IBAC)

- There is no equivalent obligation on IBAC to notify the Victorian Inspectorate (VI) or the IBAC Parliamentary Committee
- Under s.43 *Victorian Inspectorate Act 2011* (VI Act), a person may complain to the VI about the conduct of the IBAC/IBAC personnel
- There are obligations under ss.71 and 73 *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) to notify the VI about a complaint received by IBAC that involves conduct of an IBAC officer; and to refer a complaint to the VI if it is more appropriate for the VI to investigate the complaint
- An IBAC Parliamentary Committee is established under the *Parliamentary Committees Act 2003* – its functions are set out in s.12A. There is no mention of any ‘complaint function’ and a number of functions are specifically excluded (e.g. review of decisions made by VI)

43 Complaints (VI Act)

(1) A person may make a complaint to the Victorian Inspectorate about the conduct of the IBAC or IBAC personnel in respect of the—

- (a) performance or exercise; or
- (b) failure to perform or exercise; or
- (c) purported performance or purported exercise—

by the IBAC or IBAC personnel of the duties, functions or powers conferred on the IBAC or IBAC personnel in relation to any matter.

(2) Without limiting the generality of subsection (1), a complaint may be made on the basis that specified conduct of the IBAC or IBAC personnel was—

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or
- (d) an abuse of power; or
- (e) otherwise improper.

71 IBAC to disclose to VI (IBAC Act)

The IBAC must notify the Victorian Inspectorate of any complaint or notification to the IBAC if that complaint or notification involves conduct of—

- (a) the IBAC; or
- (b) any person who is, or was at the time of the conduct, an IBAC Officer.

73 Referral of complaint to another body (IBAC Act)

(1) The IBAC must refer to a person or body specified in subsection (2) a complaint or notification to the IBAC if, at any time, the IBAC considers that—

(a) the subject matter of the complaint or notification is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and

(b) it would be more appropriate for the complaint or notification to be investigated by that person or body rather than by the IBAC.

(2) For the purposes of subsection (1) and subject to subsection (3), the following persons and bodies are specified—

...

(d) the Victorian Inspectorate ...

New South Wales: Independent Commission Against Corruption (ICAC)

- There is no equivalent obligation on ICAC to notify the ICAC Inspector or the ICAC Parliamentary Committee
- Under s.57B *Independent Commission Against Corruption Act 1988* (ICAC Act), the Inspector's functions include:
 - dealing with complaints of abuse of power, impropriety and other forms of misconduct on the part of ICAC officers
 - dealing with conduct amounting to maladministration (including delay in the conduct of investigations and unreasonable invasions of privacy) by ICAC officers (see below for meaning of 'maladministration')

These functions may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

Note also s.111D ICAC Act which says that a public official within the meaning of the *Public Interest Disclosures Act 1994* may make a complaint to the Inspector.

s.57B(4)

For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

(a) contrary to law, or

(b) unreasonable, unjust, oppressive or improperly discriminatory, or

(c) based wholly or partly on improper motives.

- There is nothing specific in s.64 ICAC Act (Parliamentary Committee functions) about dealing with complaints although subsection (2) makes it clear the Committee has no power to 'investigate a matter relating to particular conduct'

South Australia: Independent Commissioner Against Corruption (ICAC SA)

- There is no equivalent obligation on ICAC SA to notify the ICAC SA Reviewer or the ICAC SA Parliamentary Committee
- Section 46 *Independent Commissioner Against Corruption Act 2012* (ICAC Act SA) requires reviews of ICAC SA to be conducted in accordance with schedule 4 of the Act – Section 2 Schedule 4 requires a reviewer to be appointed to:
 - conduct annual reviews examining the operations of the Commissioner and the Office during each financial year; and
 - conduct reviews relating to relevant complaints received by the reviewer

Section 3 schedule 4 prescribes what the reviewer should consider during a review.

3—Reviews

(1) Without limiting the matters that may be the subject of a review, the reviewer—

(a) must, in the case of an annual review, consider the following in relation to the financial year to which the review relates:

(i) whether the powers under this Act were exercised in an appropriate manner, including—

(A) whether there was any evidence of—

- maladministration in public administration on the part of the Commissioner or employees of the Commissioner or of the Office; or
- unreasonable delay in the conduct of investigations under this Act; or
- unreasonable invasions of privacy by the Commissioner or employees of the Commissioner or of the Office; and

(B) whether undue prejudice to the reputation of any person was caused;

(ii) whether the practices and procedures of the Commissioner and the Office were effective and efficient;

(iii) whether the operations made an appreciable difference to the prevention or minimisation of corruption, misconduct and maladministration in public administration; and

(b) may examine any particular exercises of power by the Commissioner or the Office; and

...

- Note that prior to the insertion of schedule 4 (which commenced 07/17) there were no provisions that specifically dealt with the making of complaints to the reviewer – this issue was flagged by the reviewer in each of his first three annual reviews (see particularly pp. 22-23 of the 2013-14 report which commented on the position in other jurisdictions.
- There is nothing specific in s.150 *Parliamentary Committees Act 1991* (Functions of Committee) about dealing with complaints – although subsection (3) makes it clear the Committee has no power to ‘investigate a matter relating to particular conduct’

Western Australia: Corruption and Crime Commission (CCC WA)

Western Australia has the most comprehensive set of provisions of the other states. Part 13 (ss.188-216) of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) establishes the Office of the Parliamentary Inspector of the CCC WA with functions which include (s.195(1)):

- to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State
- to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector
- to audit any operation carried out pursuant to the powers conferred or made available by this Act

These functions may be exercised on the Inspector's own initiative; at the request of the Minister; in response to a matter reported to the Inspector; or in response to a reference by either House of Parliament, the Joint Standing Committee on the CCC or the CCC (s.195(2)).

According to decisions of the Parliamentary Inspector that are available online (<http://www.piccc.wa.gov.au>; see the Burke and Lynch decisions for two decisions that are particularly relevant and recent), the general definition of 'misconduct' in section 4 of the CCM Act applies to s.195. That definition says:

4. Term used: misconduct

Misconduct occurs if —

(a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or

(b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or

(c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or

(d) a public officer engages in conduct that —

(i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or

(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or

(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or

(iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person, and constitutes or could constitute —

[(v) deleted]

(vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

The provision that best equates with s.329 CC Act is s.196(4) CCM Act which says:

196(4)

The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.

The powers set out in s.196(1)-(9) are comprehensive. They include the power to remove a matter from the CCC (subsection 5) and to annul a determination made by the CCC (subsection 7).

There are no relevant provisions regarding the Joint Standing Committee: see s.216A CCM Act and information available at <http://parliament.wa.gov.au> regarding the functions of this committee.

Tasmania: Integrity Commission

There is no equivalent of s.329 CC Act.

The functions of the Joint Standing Committee on Integrity (established under s.23 *Integrity Commission Act 2009*), set out in s.24, do not specifically mention a complaints function. The most relevant function says:

24. Functions and powers of Joint Committee

(1) The Joint Committee has the following functions:

(a) to monitor and review the performance of the functions of an integrity entity;

...

Commonwealth: Australian Commission for Law Enforcement Integrity (ACLEI)

Like the Western Australian legislation, the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act) contains a comprehensive set of provisions for dealing with complaints against staff from the ACLEI: see Part 12—Dealing with ACLEI corruption issues (ss.153-174). The key provisions are as follows:

The obligation on the ACLEI to notify is found in s.153 – the obligation is imposed on the Integrity Commissioner where he/she 'becomes aware of an ACLEI corruption issue that relates to the conduct of another person who is, or has been, a staff member of ACLEI'. Section 153 requires the Commissioner to notify the Minister. Subsection (2) deals with the situation where the conduct involves the Commissioner. Failure to comply is a criminal offence with a penalty of 6 months imprisonment (s.174).

Section 154 makes it clear that a non-staff member may also make a complaint to the Minister about an ACLEI corruption issue. Section 156 sets out how the Minister deals with a notification, e.g. refer to the Commissioner for investigation 'in-house', authorise a person to conduct a 'special investigation of the ACLEI corruption issue' under Division 4 of Part 12 of the Act ...

For the definitions of 'ACLEI corruption issue' and 'corrupt conduct' see the box below:

8 Meaning of ACLEI corruption issue

(1) For the purposes of this Act, an ACLEI corruption issue is an issue whether a person who is, or has been, a staff member of ACLEI:

(a) has, or may have, engaged in corrupt conduct; or

(b) is, or may be, engaging in corrupt conduct; or

(c) will, or may at any time in the future, engage in corrupt conduct.

(2) To avoid doubt, an allegation, or information, may raise an ACLEI corruption issue even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.

6 Meaning of engages in corrupt conduct

...

Staff members of ACLEI

(3) For the purpose of this Act, a staff member of ACLEI engages in corrupt conduct if the staff member, while a staff member of ACLEI, engages in:

(a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of ACLEI; or

(b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or

(c) conduct that, having regard to the duties and powers of the staff member as a staff member of ACLEI, involves, or is engaged in for the purpose of, corruption of any other kind.



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