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Corruption offences

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1. Introduction

In recent years a number of high profile inquiries by the Independent Commission Against Corruption (ICAC) have resulted in findings that persons in public office – including Members of Parliament, council officers, and public servants – have engaged in corrupt conduct, and that consideration should be given to the prosecution of those persons for criminal offences. This e-brief begins with an outline of ICAC's role in investigating corruption. It then examines the main criminal offences in NSW that target corruption. Next, it refers to the recent ICAC findings in relation to the former Minister, Ian Macdonald. This paper also discusses past proposals to reform corruption offences in NSW and Australia. The final sections review corruption offences in other Australian States and note recent law reforms in the United Kingdom.

2. ICAC investigations

ICAC was established by the *Independent Commission Against Corruption Act 1988* (NSW). Under the Act, one of ICAC's main functions is to investigate any allegation or complaint, or any circumstances which imply that corrupt conduct may have occurred: s 13(1). Corrupt conduct is defined broadly; it relates to the honest and impartial exercise of official functions by a public official; and to the conduct of any person that adversely affects, or could adversely affect, the honest and impartial exercise of official functions by a public official: ss 8 and 9. ICAC is to conduct its investigations with a view to determining whether any corrupt conduct has occurred; and whether any laws, or practices and procedures, need to be changed: s 13(2).

Evidence: ICAC is not bound by the rules of evidence that apply in court proceedings and it can inform itself in such manner as it considers appropriate: s 17. In addition, witnesses cannot refuse to answer questions during a compulsory examination or public inquiry, and also cannot refuse to produce documents that they are asked to produce: s37. However, if a witness objects to answering questions or producing a document, his or her evidence is not admissible against him or her in any civil or criminal proceedings, unless those proceedings are for an offence under the ICAC Act (e.g. giving false or misleading

evidence during an inquiry): s 37. The Commissioner may declare that all answers given or documents produced by a will be regarded as having been given or produced on objection: s 38.

Findings and opinions: After an investigation, ICAC can make findings as to whether a person has engaged in corrupt conduct; and it can also form opinions as to whether advice of the Director of Public Prosecutions (DPP) should be sought in relation to the commencement of criminal proceedings against particular persons, or whether consideration should be given to taking other action against particular persons: s 13(3) and 13(5). It can also make recommendations for the taking of any other action: s 13(3).

ICAC is required to prepare a report in relation to matters which have involved a public inquiry: s 74. These reports are to be furnished to each House of Parliament. Section 74A(2) states that a report must include:

...in respect of each “affected” person [a person against whom substantial allegations have been made in the course of the investigation], a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- (a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,
- (b) the taking of action against the person for a specified disciplinary offence,
- (c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

ICAC is not authorised to include in a report a finding that a person has committed an offence; and nor is it authorised to make a recommendation that a person should be prosecuted for an offence: s 74B.

In determining whether a person has engaged in corrupt conduct, ICAC makes findings of fact based on the civil standard of proof (on the balance of probabilities) rather than the criminal standard of proof (beyond reasonable doubt). However, in applying the civil standard, ICAC takes into account the principle that the court should not lightly make a finding that a person has engaged in criminal or serious misconduct.¹

ICAC’s approach in deciding whether consideration should be given to obtaining the advice of the DPP with respect to the prosecution of a person for a criminal offence has been stated as follows:

In each case, the Commission first considers whether there is any evidence of a criminal offence...If there is evidence capable of constituting a criminal offence, the Commission assesses whether there is or is likely to be sufficient admissible evidence to warrant commencement of a prosecution for that offence. In undertaking this assessment, the Commission takes into account declarations made pursuant to s 38 of the ICAC Act.²

The broad range of criminal offences that might be considered in relation to a finding of corrupt conduct is indicated by the list of 25 offences in section 8(2) of the ICAC Act. These include official misconduct, bribery, fraud, election funding offences, perverting the course of justice, tax evasion, bankruptcy, illegal drug dealings, and homicide or violence.

Prosecutions: The DPP assesses cases under its prosecution guidelines.³ The overriding question is whether it is in the public interest to proceed with a prosecution. As part of this assessment, the DPP considers whether the admissible evidence is capable of establishing each element of an offence; and whether there is a reasonable prospect of conviction by a jury. Several recent articles have discussed evidentiary issues and delays associated with prosecutions in cases referred by ICAC to the DPP.⁴

3. Common law offences

The main common law offences directed at corruption are extortion, bribery and misconduct in public office. Unlike statutory offences, common law offences do not have maximum penalties (the penalties are “at large”). However, when sentencing for common law offences, the court has regard to any corresponding statutory offence as a reference point.⁵

Extortion: The common law offence of extortion dates back to around the 13th century in England.⁶ The offence was stated as, “the taking by any officer, under colour of his or her office, of any money or valuable thing when that is not due at all, or is more than is due or is not yet due”. It arose in the context of a system where “public services commonly were provided on a fee for service basis, the fees paid often enough providing the lawful income of the official who rendered this service”. The introduction in the 19th century of a system of official remuneration based on salary rather than fee, and expansion of the common law offence of bribery to all public officials, led to the demise of the extortion offence. It was abolished in England in 1968. It remains an offence in NSW but has fallen into disuse.

Bribery: By the early 17th century, the courts recognised an offence of bribery, which was only applicable to judicial officers.⁷ In the 18th century, the offence was extended to public officials in general. This was recognised by the NSW Supreme Court in a decision in 1875 (the case involved a bribe being paid to a Member of Parliament, and the Member was considered to be a “public official”).⁸ In a 1992 decision, the NSW Court of Appeal approved the following statement of the common law offence of bribery, which appeared in the 1964 edition of *Russell on Crime*:

...the receiving or offering of an undue reward by or to any person in a public office, in order to influence that person's behaviour in that office, and to incline that person to act contrary to accepted rules of honesty and integrity...⁹

The Court of Appeal explained that:

The evil to which the common law is directed is that of public officers being bought to act other than honestly and impartially in the performance of functions within the ambit of their office. Essentially the evil is a corrupt arrangement between the person holding office and the recipient of his favour.¹⁰

The Judicial Information Research System (JIRS) sentencing statistics do not refer to any cases between 2006 and 2012 in which a person was sentenced for common law bribery as the principal offence.¹¹ Prosecutions for the corrupt commission offences in the *Crimes Act 1900* appear to be more common (discussed further below).

Misconduct in public office: In 1978, Finn outlined the history of the common law offence of misconduct in office as follows:

By at least the middle of the eighteenth century the common law had evolved a general, though ill-defined offence variously described as “official misconduct”, “breach of official trust”, or “misbehaviour in public office”. To this day the precise metes and bounds of this offence remain uncertain. Indeed, there has been - and still is - a tendency to regard “official misconduct” as a series of specific but interrelated offences such as oppression, neglect of duty, abuse of official power, fraud in office, etc. As a general offence it is, none the less, still recognised and applied as part of the common law of England...[I]n common law jurisdictions in Australia its existence has been acknowledged – though it has rarely been invoked.¹²

It is clear from recent decisions in Victoria and NSW, that the offence remains part of the common law in Australia. The Victorian Court of Appeal outlined the elements of this offence as follows:

- (1) a public official;
- (2) in the course of or connected to his public office;
- (3) wilfully misconduct himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (4) without reasonable excuse or justification; and
- (5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.¹³

The JIRS sentencing statistics identify 4 sentencing cases between January 2006 and December 2012 where this was the principal offence. In one case, a fine was imposed on the offender. In the other three cases, the offender was sentenced to a term of imprisonment, ranging from 2.5 years to 4.5 years. There was one further case where the principal offence was accessory before the fact to the offence of misconduct in public office, and this resulted in a sentence of imprisonment for 18 months.¹⁴

Case example: In 2008, ICAC made a corrupt conduct finding against a RailCorp employee, and he was subsequently charged with several offences including misconduct in public office. The circumstances were that the employee had set up a business in partnership with another person for the purpose of tendering for maintenance work with RailCorp; and he had concealed from RailCorp his involvement in the business. The business was awarded the tender and performed work for RailCorp between 2003 and 2007. As a result, the employee made a profit of \$1.3 million. The employee pleaded guilty to the offence of misconduct in public office and, in respect of this offence, the Court sentenced him to imprisonment for four years including a non-parole period of three years. He appealed against this sentence but the appeal was dismissed. See [Blackstock v The Queen](#) [2013] NSWCCA 172.

4. Statutory offences

Corrupt commissions: The main statutory offences targeting corruption are the corrupt commission offences in Part 4A of the *Crimes Act 1900* (NSW). The history of the offences has been stated as follows:

The secret commissions offences [were] essentially an attempt to create a bribery offence for corruption in the *private* sector. The common law did not have secret commissions offences. They are a product of the turn of the twentieth century scandals in Australia and England about the extent of corrupt behaviour in the private sector. The Commonwealth enacted the *Secret Commissions Act 1905*...[S]imilar but not identical legislation was enacted in all Australian States in the next few years.¹⁵

The same report noted that these offences were not limited to the private sector and that an employee in the public sector could be convicted of both receiving a bribe and receiving a secret commission.¹⁶ However, two points of difference were noted. First, bribery only applied to “public officials”, whereas secret commissions applied to non-officials who fell within the definition of “agent”. Secondly, in the case of bribery, the offer or receipt of the bribe must ordinarily be made before the relevant conduct; whereas secret commissions also applied to rewards for acts previously done.

In NSW, the offences were originally enacted in the *Secret Commissions Prohibition Act 1919*. In 1987, this Act was repealed and the offences were incorporated into a new Part 4A of the *Crimes Act 1900*. The offences were enacted in a similar form, although an attempt was made to simplify and clarify them, and the maximum penalties were increased.¹⁷ All offences now carry a maximum penalty of 7 years imprisonment. In addition, note that a person convicted of an offence can be ordered to repay the amount of any benefit received or given by the person: s 249G.

Some of the offences in Part 4A use the terms “agent” and “principal” and section 249A(c) states that agent includes “any person serving under the Crown (which is referred to in this Part as the person’s principal)”. This would include Ministers of the Crown but would not otherwise include a Member of Parliament.¹⁸ Section 249A(e) states that agent includes a councillor within the meaning of the Local Government Act (and a reference to the agent’s principal is a reference to the local council).

Section 249B creates offences in relation to corrupt commissions or rewards. Subsection (1) makes it an offence:

If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:

- (a) as an inducement or reward for or otherwise on account of:
 - (i) doing or not doing something, or having done or not having done something, or
 - (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,in relation to the affairs or business of the agent’s principal, or
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent’s principal

Similarly, subsection (2) makes it an offence for a person to corruptly give or offer to give to any agent, or to any other person with the consent or at the request of any agent, any benefit, where (a) or (b) above applies.

Section 249C makes it an offence if an agent makes a statement, or uses a document, which contains anything false or misleading in any material respect with intent to defraud the agent's principal.

Section 249D creates offences in relation to corrupt inducements for advice (this section does not use the terms "principal" and "agent" and would therefore apply to Members of Parliament). Subsection (1) provides:

If a person corruptly gives a benefit to another person for giving advice to a third person, being advice which the person giving the benefit intends will influence the third person:

- (a) to enter into a contract with the person who gives the benefit, or
- (b) to appoint the person who gives the benefit to any office,

and, at the time the benefit is given, the person who gives the benefit intends the giving of the benefit not be made known to the person advised, the person who gives the benefit is liable to imprisonment for 7 years.

Subsection (2) creates a similar offence for corruptly receiving a benefit for giving advice to another person which is likely to influence the other person to do one of the two things listed above, and where the person who receives the benefit intends the giving of the benefit not to be made known to the person to be advised. Subsection (4) creates a similar offence for corruptly offering or soliciting a benefit for the giving of advice by one person to another, intending the advice to influence the person advised to enter into a contract with anyone or to appoint anyone to any office, and intending that the benefit not be made known to the person advised.

The JIRS sentencing statistics identify 14 cases between 2006 and 2012 where section 249B(1) was the principal offence.¹⁹ It is not known how many of these involved a public official. In six cases, the offender was sentenced to a term of imprisonment, ranging from 1 year to 3 years. In three others, the penalties included: home detention for 6 months; periodic detention for 15 months, and an intensive correction order. In five cases, the offender received a suspended sentence. There was also one case of aiding and abetting a s249B(1) offence, which resulted in the offender being sentenced to home detention for 1.5 years.

Case example: In 2002, ICAC made corrupt conduct findings against two Rockdale Council councillors and other persons. The councillors were charged with s 249B and other offences (other persons were also charged). The circumstances were that one of the councillors (S) told a developer that he would get a development application through council in return for the payment of \$250,000. S then agreed with a fellow councillor (M) to pay that councillor \$70,000 in return for supporting the application and obtaining the support of fellow councillors. S pleaded guilty (and assisted authorities) and he received a sentence of three years imprisonment to be served by way of periodic detention. M pleaded not guilty and, in respect of the s 249B offences, was sentenced to three years imprisonment. M appealed but his appeal was dismissed: [McCormick v R](#) [2007] NSWCCA 78

Other statutory offences: The *Crimes Act* contains a range of other offences that are also relevant to corruption: e.g. fraud, embezzlement, and perverting the course of justice. Other Acts also contain offences targeting corruption: e.g. there is an offence of bribery involving police officers in the *Police Act 1990* (s 200); and there are a number of electoral offences in the *Election Funding, Expenditure and Disclosures Act 1981*.

5. Recent ICAC inquiry

On 31 July 2013, ICAC released its report on Operation Jasper, which found that the former Minister for Primary Industries, Ian Macdonald, the former Member of Parliament, Edward Obeid Senior, and his son Moses Obeid, engaged in corrupt conduct in connection with the grant of coal exploration licences in the Bylong Valley.²⁰ This involved agreements between these persons for Mr Macdonald to act contrary to his public duty as Minister by: (i) arranging for the creation of the Mount Penny tenement for the purpose of benefiting the Obeids; and (ii) providing the Obeids with confidential information for the purpose of benefiting them. Other persons were also found to have engaged in corrupt conduct.

ICAC recommended that the advice of the DPP be sought for:

- the prosecution of Mr Macdonald for the common law offences of conspiracy to defraud or misconduct in public office; and
- the prosecution of Edward Obeid Senior and Moses Obeid for the common law offences of conspiracy to defraud, or aiding and abetting or conspiracy to commit misconduct in public office; and
- the prosecution of other persons for fraud.

The report did not refer to the common law offence of bribery or the corrupt commission offences. This was because no finding was made that Mr Macdonald solicited, received, or was offered, a benefit from the Obeids. The report stated that the common law offence of conspiracy to defraud:

...encompasses an agreement by fraudulent means to cause a public official to act contrary to his or her public duty even where no economic loss has occurred. In such cases it is sufficient to show that there was an intention to enter into an agreement to use dishonest means to influence the exercise of a public duty for the purpose of obtaining an advantage.²¹

There is a question, however, as to whether this category of conspiracy to defraud applies where a public official who is being, or has been, induced to act contrary to his or her public duty is himself part of the conspiracy. This category of the offence arose out of cases where the public official was the intended victim of the conspiracy, and statements in a number of decisions frame the offence in this way.²² The phrase “causing a public official to act contrary to his or her public duty” seems not to have been referring to an official knowingly breaching a public duty, but rather to him or her being deceived into doing something that he or she would not have done.²³ It is possible that another category of conspiracy to defraud, or another type of criminal conspiracy, may apply in the Macdonald case.²⁴

6. Previous reform proposals

NSW: In December 1992, the Fahey Government released a discussion paper on proposed reforms to the offences of bribery and extortion.²⁵ The paper outlined several reasons for reviewing these offences including:

- the offences were developed centuries ago in the context of a very different system of public administration;
- they were uncertain in their scope and content; this made the role of the newly established ICAC more difficult;
- other Australian jurisdictions had recently reviewed these offences;
- a recent paper by Professor Paul Finn reviewed these offences, as part of an “Integrity in Government” project.²⁶

The discussion paper proposed replacing the offences of bribery and extortion with new statutory offences (an exposure bill was attached). The statutory bribery offence aimed to clearly outline the *mens rea* (state of mind) elements of this offence, both in relation to the person offering the reward, and the public official receiving the reward.²⁷ It also sought to clarify a number of other uncertainties: for example, to make it clear that the offering or receipt of a general bribe, where there is no specific matter which the bribe is intended to influence, would be an offence.²⁸

The discussion paper did not examine the common law offence of misconduct in public office but indicated that it should possibly also be replaced by a statutory offence.²⁹ The paper also noted that Professor Finn had suggested that it was important for democratic processes that corruption laws should, at least in some way, distinguish between elected and non-elected officials.³⁰ The paper noted that the exposure bill did not make any distinction but indicated that, because of the way the offences had been formulated, this was unlikely to be an issue.³¹

These proposals were not taken forward. In 1994, the Attorney-General, John Hannaford, explained that this was because the Standing Committee of Attorneys-General (SCAG) was considering uniform bribery and corruption laws, and would soon be releasing a discussion paper.³²

National: As part of its agenda to develop a national model criminal code, in 1995, SCAG released a report on theft, fraud, bribery and related offences.³³ The report contained model code provisions for a number of bribery and related offences including:

- bribery (with a maximum penalty of 10 years imprisonment);
- giving or receiving other corrupting benefits (5 years imprisonment), which would replace the secret commissions offences; and
- abuse of public office (5 years imprisonment).

The model provisions did not include an offence of extortion, with the Committee taking the view that it would be covered by these other offences. The Commonwealth is the only jurisdiction to have enacted new bribery and related offences based on the model provisions.³⁴

7. Other Australian States

The corruption offences in the other States are discussed in two groups: (1) the other “common law” States (Victoria and South Australia), in which the common law remained an important source of criminal law for at least part of the 20th century, and where some common law offences still exist; and (2) States that adopted a Criminal Code: Queensland adopted its Code in 1899, Western Australia in 1902, and Tasmania in 1924.

Common law States: The position in Victoria is similar to that in NSW. It largely relies on common law offences but also has statutory secret commission offences (which carry a maximum penalty of ten years imprisonment).³⁵ In contrast to NSW, Victoria has abolished the common law offence of extortion. In addition, the maximum penalties for the common law offences of bribery of a public official, and misconduct in public office are set out in the *Crimes Act 1958* (ten years imprisonment).³⁶

South Australia has taken a different approach, enacting statutory corruption offences in 1992. The Government noted that the criminal law in relation to corruption in public office “was in a woeful state”.³⁷ The new offences included: bribery and corruption of public officers; extortion by public officers; abuse of public office, and offences relating to the appointment of persons to public office.³⁸ The maximum penalty for bribery and corruption was increased to ten years imprisonment, and the maximum penalty for abuse of public office was increased to the same level in the case of an aggravated offence.³⁹ The maximum penalty for extortion is seven years imprisonment, and for the appointment offence, four years. South Australia has also statutory secret commission offences, which have a maximum penalty of seven years imprisonment.⁴⁰

Criminal Code States: The Criminal Codes in Western Australia, Queensland and Tasmania all contain a number of offences relating to corruption.⁴¹ The Queensland and Tasmanian provisions are largely the same as when they were first enacted. On the other hand, in Western Australia, the Code provisions were replaced in 1988, coinciding with steps to establish an Anti-Corruption Commission.⁴² There are a number of similarities and differences in the offences in the three States.

The Western Australian Code has a general bribery offence, whereas the Codes in Queensland and Tasmania have a similar “corruption” offence.⁴³ The Codes in all three States also have specific bribery offences in relation to Members of Parliament.⁴⁴ In Western Australia and Queensland, the maximum penalty for bribery is seven years imprisonment (14 years in the case of a Minister in Queensland). In Tasmania, all Code offences have a maximum penalty of 21 years imprisonment. The Codes in Queensland and Tasmania also have an extortion offence, whereas the Western Australian Code does not have this offence.⁴⁵ In Queensland, the maximum penalty for extortion is three years imprisonment.

The Western Australian Code has a broad “corruption” offence, which has a maximum penalty of seven years imprisonment. It states:

Any public officer who, without lawful authority or a reasonable excuse —

- (a) acts upon any knowledge or information obtained by reason of his office or employment; or
- (b) acts in any matter, in the performance or discharge of the functions of his office or employment, in relation to which he has, directly or indirectly, any pecuniary interest; or
- (c) acts corruptly in the performance or discharge of the functions of his office or employment,

so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime and is liable to imprisonment for 7 years.⁴⁶

The Queensland Code contains the offence of “abuse of office”, which has a maximum penalty of three years imprisonment; and (since 2009) also has a separate offence of “misconduct in relation to public office”, which has a maximum penalty of seven years imprisonment. The Tasmanian Code does not have a similar broad-based offence.⁴⁷

The Code chapters dealing with corruption and abuse of office also contain some other specific offences. The Codes in two States contain offences relating to public officers who hold a personal interest in Government contracts.⁴⁸ Similarly, the Codes in two States have an offence for corruptly asking for or receiving a benefit in relation to the appointment of a person as a public officer.⁴⁹ All three States have one or more offences that involve the falsification of records by public officials.⁵⁰

All three States also have secret commission offences. In Queensland, it is clear that these offences apply to the public sector as well as the private sector, and in the other two States, this would appear to be the case. In Queensland and Western Australia, the maximum penalty for these offences is seven years imprisonment.⁵¹

8. United Kingdom

The *Bribery Act 2010* replaced the common law offence of bribery, as well as offences under the *Prevention of Corruption Acts 1899 to 1916*. Developing these reforms took a long time, dating back to a 1995 report by the Committee on Standards in Public Life.⁵² When introducing the *Bribery Bill*, the Lord Chancellor outlined the need for reform as follows:

The law has never previously been consolidated, and contains inconsistencies of both language and concept. The result is a body of law that is outdated, complex and, in some respects, uncertain in its effect...⁵³

Nicholls notes some key features of the 2010 Act:

The Act abandons the requirements of an agent/principal relationship and the provision that to be guilty of an offence a person must act ‘corruptly’, and replaces them with a model based on an intention to induce a person to perform a function or activity improperly.⁵⁴

A function is performed improperly “if it is performed in breach of an expectation of good faith, impartiality, or is in breach of trust”.⁵⁵ In deciding what is expected of a person performing a function or activity, the test is what a reasonable person in the UK would expect”. The new bribery offences carry a maximum penalty of ten years imprisonment.

Corruption offences

The Act did not repeal the common law offence of misconduct in public office.⁵⁶ In its 2008 report, the Law Commission considered that this offence and the proposed new offence of bribery would overlap but would be complementary.⁵⁷ The Law Commission currently has a project to simplify, clarify, and codify this common law offence.⁵⁸

9. Conclusion

Some of the main corruption offences in NSW are common law offences. These offences have a long history but remain somewhat uncertain in their content and scope, and do not appear to be used often. In 1992, there were proposals in NSW to clarify and codify the offences of bribery and extortion but reforms were not enacted. Model Code provisions were produced in 1995 but these have only been implemented by the Commonwealth.

The statutory corrupt commission offences appear to be prosecuted more often but they were designed primarily to deal with corruption in the private sector. Another issue with these offences is that some of them do not apply to a Member of Parliament. A further issue arising out of the recent ICAC report is that these offences do not apply in a situation where a public official improperly takes action for the benefit of another person without the official having solicited, received, or been offered a benefit.

Other States have similar types of corruption offences to NSW but, except in Victoria, these offences have all been codified. In all other States, almost all of the main corruption offences carry a maximum penalty of either seven or ten years imprisonment. The new Bribery Act in the United Kingdom adopted a different model to the corrupt commission offences in NSW; and its offences carry a maximum penalty of ten years imprisonment.

¹ ICAC, *Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and others*, July 2013, p160 (Appendix 2)

² ICAC, note 1, p154

³ Office of Director of Public Prosecutions, *Prosecution Guidelines*, 2007, p8

⁴ See K Walsh, 'Cowardry raises doubts over successful prosecutions', *AFR*, 1 August 2013, p11, 53; and A Boxsell, 'How ICAC and criminal evidence differ', *AFR*, 8 February 2013, p36, 53; and J Cripps 'ICAC should stick to charter', *Australian*, 30 August 2013

⁵ See *Jaturawong v R* [2011] NSWCCA 168 at [5]

⁶ P Finn, *Abuse of Official Trust: Conflict of Interest and Related Matters*, Integrity in Government Project, Second Report, Australian National University, 1993, Appendix 1. The summary of extortion in this e-brief is taken from Finn.

⁷ P Finn, note 6, p19. The historical note on bribery in this e-brief is taken from Finn.

⁸ *R v White* (1875) S.C.R (NSW) 322

⁹ *R v Allen* (1992) 27 NSWLR 398 at 402; and see also *R v Glynn* (1994) 33 NSWLR 139

¹⁰ *R v Glynn* (1994) 33 NSWLR 139 at 144

¹¹ Judicial Commission of NSW, *Judicial Information Research System – Sentencing Statistics*, [Online – subscription required to access]

¹² P Finn, 'Official Misconduct', [1978] 2 *Criminal Law Journal* 307

¹³ *R v Quach* [2010] VSCA 106. See also *Blackstock v The Queen* [2013] NSWCCA 172

¹⁴ See *Jaturawong v R* [2011] NSWCCA 168

¹⁵ Model Criminal Code Officers Committee (MCCOC) of the Standing Committee of Attorneys-General (SCAG), *Chapter 3 – Theft, Fraud, Bribery and Related Offences*, Final Report, December 1995, p267

¹⁶ MCCOC, note 15, p267

¹⁷ T Sheahan, *NSW Parliamentary Debates (LA)*, 26 May 1987, p12,407

¹⁸ See *Sneddon v New South Wales* [2012] NSWCA 351

¹⁹ Judicial Commission of NSW, *Judicial Information Research System – Sentencing Statistics*, [Online – subscription required to access]

²⁰ ICAC, note 1. See also ICAC, *Investigation into the conduct of Ian Macdonald, Ronald Medich and others*, July 2013; and ICAC, *Investigation into the Conduct of Ian Macdonald, John Maitland and others*, August 2013

- ²¹ ICAC, note 1, p145
- ²² See *Scott v Metropolitan Police Commissioner* [1975] AC 819 at 839, 841; *Welham v Director of Public Prosecutions* [1961] AC 103 at 124-125; *Connor v Sankey* [1976] 2 NSWLR 570 at 597 to 599; *Wills v Petroulias* (2003) 58 NSWLR 598 at [19]; and *Peters v The Queen* (1998) 192 CLR 493 at 525 (per McHugh J).
- ²³ See *Welham v Director of Public Prosecutions* [1961] AC 103 at 124-125
- ²⁴ In *R v Boston* (1923) 33 CLR 387, a charge against a public official for criminal conspiracy was upheld. But note that conspiracy to effect a public mischief may no longer be part of the common law: see *R v Freeman* [1985] 3 NSWLR 303 at 307. It is worth noting here that the Commonwealth Criminal Code has a statutory offence of conspiracy to defraud the Commonwealth in addition to the offence of conspiring to defraud a public official: see s 135.4
- ²⁵ NSW Government, *Reform of the Criminal Law Relating to Official Corruption: Bribery and Extortion – Discussion Paper and Exposure Bill*, December 1992
- ²⁶ NSW Government, note 25, p2
- ²⁷ NSW Government, note 25, p26ff
- ²⁸ NSW Government, note 25, p33ff
- ²⁹ NSW Government, note 25, p40
- ³⁰ NSW Government, note 25, p41
- ³¹ NSW Government, note 25, p41
- ³² J Hannaford, *NSW Parliamentary Debates (LA)*, [14 April 1994](#)
- ³³ MCCOC, note 15
- ³⁴ *Criminal Code Amendment (Theft, Fraud and Bribery) Act 2000* (Cth)
- ³⁵ *Crimes Act 1958* (Vic), ss 175-180
- ³⁶ *Crimes Act 1958* (Vic), s 320
- ³⁷ RJ Gregory, *SA Parliamentary Debates (LA)*, 8 April 1992, p4,044
- ³⁸ *Statutes Amendment and Repeal (Public Offences) Act 1992* (SA)
- ³⁹ *Statutes Amendment (Serious and Organised Crime) Act 2012* (SA)
- ⁴⁰ *Criminal Law Consolidation Act 1935* (SA), Pt 6
- ⁴¹ *Criminal Code* (WA), ss60-61 and Pt III, ChXIII; *Criminal Code* (Qld), ss 59-60 and Pt 3, Chapter 13; *Criminal Code* (Tas), ss70-71 and Pt II, ChIX
- ⁴² *Criminal Law Amendment Act 1988* (WA)
- ⁴³ *Criminal Code* (WA), s82; *Criminal Code* (Qld), s87, *Criminal Code* (Tas), s83
- ⁴⁴ *Criminal Code* (WA),ss60-61; *Criminal Code* (Qld),ss59-60; *Criminal Code* (Tas),ss70-71
- ⁴⁵ *Criminal Code* (Qld), s88; *Criminal Code* (Tas), s84
- ⁴⁶ *Criminal Code* (WA), s837
- ⁴⁷ *Criminal Code* (WA), ss83; *Criminal Code* (Qld), ss92, 92A;
- ⁴⁸ *Criminal Code* (Qld), s89; *Criminal Code* (Tas), s85
- ⁴⁹ *Criminal Code* (WA), s88; *Criminal Code* (Tas), s111
- ⁵⁰ *Criminal Code* (WA), s 85; *Criminal Code* (Qld), ss91, 94; *Criminal Code* (Tas), s87
- ⁵¹ *Criminal Code* (WA), Pt VI, Ch LV; *Criminal Code* (Qld), Pt 6, Ch 42A; *Criminal Code* (Tas), s 266
- ⁵² This led to a 1998 Law Commission report, and a 2003 Draft Corruption Bill. After further consultation, and another Law Commission Report in 2008, the Government finally introduced the *Bribery Bill* into Parliament in 2009. See C Nicholls QC et al, *Corruption and Misuse of Public Office*, Oxford University Press, 2nd edition, 2011, Ch3
- ⁵³ J Straw, *UK Parliamentary Debates (HC)*, [3 March 2010](#)
- ⁵⁴ C Nicholls, note 52, p69-70
- ⁵⁵ C Nicholls, note 52, p69-70
- ⁵⁶ Recent cases in the UK involving this offence are discussed in C Nicholls, note 52, Ch6
- ⁵⁷ Law Commission, [Reforming Bribery](#), November 2008, p180
- ⁵⁸ Law Commission, [Misconduct in public office](#), [Online]

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