OPINIONS OF SERIOUS MISCONDUCT PURSUANT TO SECTION 4(C)

REPORT ON THE OPERATION OF THE *CORRUPTION, CRIME AND MISCONDUCT ACT 2003*

Sections 199 and 201 of the *Corruption, Crime and Misconduct Act 2003* (WA)

9 September 2025

INDEX

		Page
1.	EXECUTIVE SUMMARY	3
2.	REVIEW OF THE COMMISSION’S PROCEDURES	4
4.	THE CCM ACT AND THE COMMISSION’S APPROACH	5
5.	THE STANDARD OF PROOF	7
6.	CONSTRUING SECTION 4(C)	9
7.	SOME INTERJURISDICTIONAL COMPARISON	10
8.	CONCLUSION AND RECOMMENDATION	11
9.	ANNEXURE A: SUBMISSION FROM THE COMMISSION	12

EXECUTIVE SUMMARY

1. This report is made pursuant to sections 199 of the *Corruption, Crime and Misconduct Act 2003* (WA) (CCM Act) and relates to my functions in sections 195(1)(aa) and 195(1)(c). The report's purpose is to draw the Parliament's attention to a contradiction in the CCM Act.

2. The CCM Act gives the Corruption and Crime Commission (Commission) a broad jurisdiction in dealing with serious misconduct[1] and wide powers in forming opinions on it.[2] There are several distinct bases for an opinion of serious misconduct. First, all police misconduct constitutes serious misconduct.[3] In addition, section 4(a)-(c) sets out definitions for three situations in which a public officer other than a police officer may engage in serious misconduct.

3. Section 4(a) provides that serious misconduct occurs when a public officer corruptly acts (or corruptly fails to act) in performing the functions of their office or employment. Section 4(b) refers to situations in which a public officer corruptly takes advantage of his or her office or employment to obtain a benefit for himself or herself or for another person or to cause a detriment to any person.

4. Section 4(c) differs in that it does not rely on an officer having acted corruptly. Instead, it provides that serious misconduct occurs when a public officer commits an offence punishable by two or more years' imprisonment whilst acting or purporting to act in his or her official capacity.

5. The definition in section 4(c) creates a difficulty for the Commission, because it is not a court and cannot perform a judicial function. Among other things, it cannot determine whether or not a person has committed a criminal offence.

6. To this end section 217A(2) of the CCM Act provides that the Commission cannot publish or report a finding that a person is guilty of, has committed, or is about to commit a criminal offence. Section 217A(3) provides, further, that a finding or opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

7. There is an obvious tension between sections 217A and 4(c), in that the Commission can form an opinion on the basis of its own satisfaction that a public officer 'commits' a criminal offence, despite the fact that it cannot find a person guilty of a crime or report that they have committed one. The CCM Act provides no guidance as to how this contradiction is to be resolved.

8. This report addresses the tension referred to above. Prior to tabling it, I provided the Commission with a copy in draft and invited its comments on the issues raised. The Commission's submission in response is attached as Annexure A.

---

[1] CCM Act, section 18.
[2] CCM Act, section 22.
[3] See the definitions of 'police misconduct', 'reviewable police action', and 'serious misconduct' in section 3 of the CCM Act.

REVIEW OF THE COMMISSION'S PROCEDURES

9. I recently had cause to reflect on this conundrum in reviewing the Commission's procedures pursuant to section 195(1)(c) of the CCM Act. Most such reviews originate in a complaint from a member of the public who has made a report of serious misconduct to the Commission and is unhappy that, having assessed the allegations made, it has decided not to investigate them.

10. However, I also receive complaints from individuals who have themselves been investigated by the Commission. These complainants seek my review of the procedures employed in conducting the investigation and, if relevant, reporting on the matter.

11. In this instance, I received a request from the former Ombudsman, Chris Field, regarding the Commission's *Report on the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman)* (Ombudsman Report) which was tabled on 8 October 2024. Mr Field sought my review of the procedures used by the Commission in conducting its investigation and forming opinions of serious misconduct in relation to him.

12. As stated above, my intent in tabling this report is to draw the Parliament's attention to a flaw in the CCM Act. Mr Field's complaint is not the subject of my report, and it is therefore unnecessary to go into detail regarding either the Ombudsman Report or Mr Field's submissions regarding it.

13. For present purposes, it is sufficient to note that the Commission was satisfied that actions taken by Mr Field would meet the requirements of the offence of fraudulent falsification of a record contrary to section 424 of the *Criminal Code* and formed opinions of serious misconduct on that basis.[4] I also acknowledge that Mr Field strenuously disputes the conclusions reached by the Commission.

14. Having read the submissions advanced on Mr Field's behalf as well as the relevant documents from the investigation, I was ultimately satisfied that the Commission's procedures had been appropriate, and I found no material errors or omissions.

15. Notwithstanding Mr Field's disagreement with the Commission's opinions of serious misconduct, they were in my view within the scope of the Commission's powers, open on the body of evidence marshalled by it and had not been lightly formed. As such, I had no basis to recommend that the Commission reconsider the matter, and I concluded my review.

16. This was the first complaint I had received which required me to engage with section 4(c) in the context of section 217A and in the course of considering Mr Field's submissions I found myself dissatisfied by the CCM Act's lack of clarity on the way in which these sections interact. My role is not analogous to that of a court of appeal, and I cannot determine the correct interpretation of the

[4] Ombudsman Report, [563].

CCM Act. However, I resolved to consider this matter further and report to the Parliament on it.

THE CCM ACT AND THE COMMISSION'S APPROACH

17. From its earliest days, with one hand the CCM Act prevented the Commission from reporting that a person had committed a criminal offence, while the other hand conferred on it the power to form an opinion of serious misconduct on that very basis. The ensuing problem has lain largely dormant ever since.

18. In the second reading speech for the Corruption and Crime Commission Bill 2003, the then Attorney General noted that the Bill contained a clause forbidding the Commission from making a finding or forming an opinion that a person had committed, was committing or was about to commit a criminal offence. This was said to be 'consistent with the position that it is for the prosecuting authorities and the courts to deal with these matters'.[5]

19. Subsequently, when the Bill was debated, there was discussion of the breadth of section 4(c), which included *any* offence attracting a sentence of two years or more instead of limiting its scope to specific categories of offences.[6] However, there does not appear to have been discussion of the meaning of the word 'commits' in section 4(c), nor of any conflict between that definition and the Commission's inability to form an opinion as to the commission of an offence.

20. Originally, the Commission interpreted section 4(c) as referring to situations in which a public officer had either admitted to committing a criminal offence or had been convicted of one. For instance, in a 2010 report the Commission stated:

> … the CCC Act prohibits the Commission from publishing or reporting a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence. Accordingly, the Commission must not publish or report an opinion that a person has engaged in misconduct of a kind described in section 4(c) unless they have been convicted (or at least pleaded guilty) to the relevant offences. In such a case the Commission would be reporting a fact, not its opinion, as to that.[7]

21. As a practical matter, it is unclear what purpose an opinion of serious misconduct would serve in circumstances where a public officer had already been convicted of a serious criminal offence. Nevertheless, this earlier approach allowed the Commission to form opinions under section 4(c) and report on them without contravening the proscription in what was then section 23(1) and is now section 217A(2).

22. As is clear from the Ombudsman Report, the Commission's position on the interpretation of section 4(c) of the CCM Act has changed since 2010. In due

---

[5] J. McGinty MLA, Legislative Assembly, *Hansard,* 15 May 2003, p. 7864.

[6] J. McGinty MLA, Legislative Assembly, *Hansard,* 5 June 2003, p. 8294. See also, by contrast, the now-repealed *Anti-Corruption Commission Act 1988* (WA) section 13.

[7] *Report on the investigation of alleged public sector misconduct by employees of the Department for Planning and Infrastructure in relation to the Inspection, licensing and registration of motor vehicles*, tabled on 16 September 2010, [80].

course, I wrote to the Commission to ask the basis on which it had changed its view on this issue.

23. The Commission advised that it had changed its approach ten years previously. It quoted a report tabled in 2015, in which the Commission had formed opinions of serious misconduct on the basis of section 4(c). The 2015 report stated:

> Section 23(2)[8] allows the Commission to publish or report a finding or an opinion that the relevant conduct constitutes misconduct under s. 4(c) of the CCC Act without the person having been convicted of an offence punishable by two or more years' imprisonment. Whether a criminal offence has been committed can only be determined by a court and the elements of the offence must be proved beyond reasonable doubt. The Commission is not a court, does not make legally binding determinations, and may form an opinion as to misconduct on the balance of probabilities. The Commission, in expressing and reporting an opinion that the misconduct constitutes serious misconduct under s. 4(c) of the CCC Act, is expressing and reporting an opinion that facts, if proved beyond a reasonable doubt in a court, could satisfy the elements of an offence, not that a particular person has committed an offence. [9]

24. The Commission advised that since 2015, its approach on section 4(c) of the CCM Act has been as follows:

- the Commission always turns its mind to section 217A and is cautious in the form of words used when reporting its opinions;
- Commission reports use the word 'opinion' rather than 'finding' and reports often point out that opinions are formed to a civil standard of proof citing relevant case law;
- the Commission is acutely aware that its opinions and recommendations are not determinate and is careful not to present them as such; and
- the fundamental question the Commission poses when considering the exercise of discretion to identify particular persons in a Parliamentary report is whether or not it is in the public interest to do so.

25. Finally, the Commission's letter to me quoted a 2008 Supreme Court decision which I had already considered during my review. This was *Cox v CCC*, in which the then Chief Justice observed:

> The Commission does not perform the function of making binding adjudications or determinations of right. It is neither a court nor an administrative body or tribunal in the usual sense of those expressions. In the performance of the misconduct function it is an investigative agency. After conducting investigations, its role is limited to making assessments, expressing opinions and putting forward recommendations as to the steps which should be taken by others. In characterising the findings made by the Commission as 'assessments' and 'opinions' it is clear that the legislature intended that the conclusions of the Commission should not be regarded as determinative or binding in any subsequent proceedings.

[8] Now section 217A(3) of the CCM Act.

[9] *Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth*, tabled on 5 October 2015, [205].

> …It follows from the nature of the function performed by the Commission, and the fact that its findings and conclusions have no operative legal effect, that the published reports of the Commission should not be scrutinised by a court undertaking judicial review as if they were the reasons for decision of a court, administrative body or tribunal making decisions with determinative effect.[10]

26. This related to an opinion pursuant to section 4(d), which is now (following amendments made in 2015) defined as minor misconduct. As such, *Cox* has no direct bearing on the Commission's ability to form opinions of serious misconduct pursuant to section 4(c). Nevertheless, the comments above remain apposite. In forming an opinion, the Commission is acting as an investigative body. It is not delivering a verdict or handing down a determination, and its published reports are 'not to be construed minutely and finely with an eye keenly attuned to the perception of error'.[11]

27. The interplay between sections 4(c) and 217A has reportedly 'been difficult to navigate'[12] and the Commission's solution seeks to thread the needle. However, its approach sits somewhat uneasily against the text of section 4(c).

28. As noted above, the 2015 report referred to by the Commission asserted that in reporting an opinion of serious misconduct pursuant to section 4(c), it was in fact 'reporting an opinion that facts, if proved beyond a reasonable doubt in a court, could satisfy the elements of an offence, not that a particular person has committed an offence'. [13]

29. It is difficult to reconcile that claim with the section's clear statement that serious misconduct occurs when a particular person 'commits an offence punishable by 2 or more years' imprisonment'.

THE STANDARD OF PROOF

30. As in the case of courts exercising civil jurisdiction, the Commission is not required to be satisfied of a state of affairs beyond a reasonable doubt. Instead, its findings and opinions are made on the balance of probabilities. This is not a matter of simply determining whether a disputed fact is likelier than not. The *Briginshaw* principle dictates that the task of applying the civil proof standard will depend on the gravity of an allegation. That is, the more serious the allegation, the more compelling must be the evidence relied upon.

31. Being cognisant of the consequences that flow from a finding of serious misconduct, the Commission explicitly adopts this principle in forming its opinions. For example, in the Ombudsman Report, the Commission observed:

> When the Commission forms an opinion of serious misconduct, it does so mindful of the seriousness of such an opinion and its effect on the reputation of a person. Although there is no legal consequence of an opinion of serious

[10] *Cox v CCC* [2008] WASCA 199 at [45] and [46] per Martin CJ.
[11] *Cox* per Martin CJ at [46], citing *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280, 287.
[12] Commission, *Reflections and Recommendations on Corruption,* 18 June 2025, [127].
[13] Lord Mayor of the City of Perth Report, [205].

> misconduct, the Commission adopts the principles outlined in *Briginshaw v Briginshaw* (1938) 60 CLR 336 when deciding whether the information and evidence it has gathered reaches the level of serious misconduct. The Commission then further considers whether an opinion of serious misconduct is necessary in the public interest.[14]

32. The Commission's position in forming an opinion on the basis of section 4(c) in the absence of a pre-existing conviction may not be a comfortable one, but it is not unique. There are several situations in which a court must make findings on the balance of probabilities that are of obvious relevance to potential criminal offences.

33. For example, in investigating a reportable death, the Coroner must find, if possible, how the death occurred and the cause of death[15] and may comment on any matter connected with it including public health or safety or the administration of justice.[16] However, he or she must not 'frame a finding or comment in such a way as to…suggest that any person is guilty of any offence'.[17]

34. On other occasions, courts must make findings relating to serious criminal offences in a civil context. A recent example was *Lehrmann v Network Ten Pty Limited* [2024] FCA 369, which is currently subject to an appeal. In that matter, an unsuccessful defamation action, the respondents raised a defence of justification.[18] As a result, the Federal Court had to determine whether the respondents' imputations that the plaintiff had committed a sexual assault were 'substantially true'.

35. The respondents had to prove that each imputation made was 'true in substance or not materially different from the truth', with the presiding judge, Justice Lee, commenting that it was 'sufficient if the "sting" or gravamen of an imputation is substantially true'.[19] No doubt this was a difficult task, with the court required to 'eschew inexact proofs, indefinite testimony, or indirect inferences'.[20]

36. Ultimately, Justice Lee 'reached a state of actual persuasion on the balance of probabilities' that the plaintiff had committed a sexual assault.[21] However, the judgment emphasised:

> I hasten to stress; this is a finding on the balance of probabilities. This finding should not be misconstrued or mischaracterised as a finding that I can exclude all reasonable hypotheses consistent with innocence. As I have explained, there is a substantive difference between the criminal standard of proof and the civil standard of proof and, as the tribunal of fact, I have only to be reasonably satisfied that Mr Lehrmann has acted as I have found, and I am not obliged to

---

[14] Ombudsman Report, [33].
[15] *Coroners Act 1996* (WA), sections 25(1)(b) and (c).
[16] *Coroners Act 1996* (WA), section 25(2).
[17] *Coroners Act 1996* (WA), section 25(5).
[18] *Defamation Act 2005* (NSW), section 25.
[19] *Lehrmann v Network Ten Pty Limited* [2024] FCA 369, per Lee J at [561].
[20] Ibid at [586].
[21] Ibid. See also See also Dixon CJ in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361.

reach that degree of certainty necessary to support conviction upon a criminal charge.[22]

37. This case demonstrates that it is not unknown for bodies other than criminal courts to make findings as to the commission of a criminal offence. The question is whether the Western Australian Parliament intended to give the Commission the power to form an opinion of serious misconduct on that basis.

CONSTRUING SECTION 4(C)

38. The task of construing a piece of legislation begins and ends with the text itself[23] but section 4(c) is unhelpfully ambiguous. The word 'commits' could refer to a public officer engaging in actions that, if later proven in court, would constitute a criminal offence. Alternatively, it could relate to situations in which a public officer's offending had already been conclusively determined.

39. Certainly, it could be argued that if the Parliament had intended section 4(c) to apply only in circumstances where a public officer had been *convicted* of a criminal offence, it could have said as much in the CCM Act.

40. However, by the same token, if the Parliament had intended to provide that an opinion of serious misconduct could be formed on the basis of an administrative finding as to the elements of an offence, that could equally have been made clear. There is no reference in section 4(c), or anywhere else in the CCM Act, to the Commission forming an opinion on the basis of its satisfaction on the balance of probabilities of facts that would, if proven, constitute an offence.

41. There is no case law directly on point. However, the 2015 case of *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* has some relevance. In that case, the High Court clarified that 'it is not offensive to principle that an administrative body is empowered to determine whether a person has engaged in conduct that constitutes a criminal offence as a step in the decision to take disciplinary or other action'.[24]

42. That decision was made in the context of regulatory legislation, with the Court noting that, for example, there was 'no reason to suppose that a Commonwealth public housing authority might lack the capacity to terminate a lease on the ground of the tenant's use of the premises for an unlawful purpose notwithstanding that the tenant has not been convicted of an offence arising out of that unlawful use'.[25]

43. Relevantly, the Court also rejected the argument that the phrase 'the commission of an offence' in the *Broadcasting Services Act 1992* (Cth) should be interpreted narrowly, to refer only to situations in which a conviction had taken place. A majority joint decision concluded:

---

[22] *Lehrmann v Network Ten Pty Limited* [2024] FCA 369, per Lee J at [621].
[23] *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* [2012] HCA 55 at [39].
[24] *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* [2015] HCA 7 per French CJ, Hayne, Kiefel, Bell and Keane JJ at [33].
[25] Ibid.

> As a matter of ordinary English, the phrase "the commission of an offence" is to be distinguished from the phrase "conviction for an offence". The former refers to the fact of the commission of the offence and the latter to the finding of the criminal court.[26]

44. However, even acknowledging a distinction between the factual commission of an offence and the legal outcome of conviction, the CCM Act could be said to forbid the Commission from reporting on even the former of these. Section 217A is comprehensive, and subsections (2) and (3) both refer to any finding or opinion that 'a particular person *is guilty of or has committed*, is committing or is about to commit a criminal offence' [emphasis added].

45. There are also key differences between the legislation considered by the High Court and the CCM Act. The High Court observed that for the purposes of the *Broadcasting Services Act 1992*, 'Whether a licensee has used the broadcasting service in the commission of a relevant offence is a question of fact' and 'a determination that may be made by the Authority as a preliminary step to the taking of administrative enforcement action'.[27]

46. By contrast, the Commission is not a regulatory body. As an investigative body, it is not empowered to take any enforcement action when it forms an opinion of serious misconduct. Further, the CCM Act does not appear to contemplate that the Commission can determine, as a preliminary step, that an offence has been committed. Instead, it explicitly provides that the Commission cannot report that a person has committed a criminal offence,[28] and that an opinion of serious misconduct is not to be taken as a finding or opinion that this is the case.[29]

47. Overall, the intended meaning of section 4(c) is, at best, uncertain.

SOME INTERJURISDICTIONAL COMPARISON

48. The distinction between an opinion that a person has committed a crime and an opinion that he or she has engaged in conduct that constitutes an offence is a very fine one. In the public mind, the difference may be illusory at best.

49. Nevertheless, this is the zone in which integrity commissions operate. These bodies must deal with conduct that may involve criminal offending while not being capable of determining whether a person has committed an offence. I will not attempt to cover the field, but a few examples will show some of the ways in which other jurisdictions have dealt with this knotty issue.

50. The *Independent Commission Against Corruption Act 1988* (NSW) contains a similar paradox to that in the CCM Act. It provides that conduct will only constitute 'corrupt conduct' if it 'could' constitute or involve (among other

[26] Ibid at [37].
[27] Ibid at [44].
[28] CCM Act, section 217A(2).
[29] CCM Act, section 217A(3).

things) a criminal offence[30] and that the ICAC is empowered to make a finding of corrupt conduct in relation to a person only if it is 'satisfied' that the person is engaged in or has engaged in conduct that meets this standard.[31] However, the ICAC cannot report a finding or opinion 'that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence'.[32]

51. Other Acts import a concept of 'proof' on which an integrity commission can rely in carrying out their functions. Thus, the *Crime and Corruption Act 2001* (Qld) defines 'corrupt conduct' to include actions that 'would, if proved', be a criminal offence.[33] Similarly, the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) defines 'corrupt conduct' by reference to dishonest behaviour that 'would constitute a relevant offence', and provides that in determining whether conduct would meet that definition, the integrity commission 'may assume that the required state of mind to commit the relevant offence can be proven'.[34]

52. The Queensland and Victorian legislation convey that an integrity commission can proceed on the basis of its own satisfaction as to facts that have not been proven in court. However, these formulations raise other questions, such as the standard of proof called for and the degree to which each integrity commission must satisfy itself of the relevant facts.

CONCLUSION AND RECOMMENDATION

53. The situation outlined in this report is not of the Commission's making, and I acknowledge its efforts to ensure that its opinions of serious misconduct are carefully formed. Nevertheless, it seems to me that there is an irreconcilable inconsistency between the Commission's ability to form and report an opinion on the basis of section 4(c) and the proscription contained in section 217A(2).

54. Recent years have seen calls for substantial amendments to the CCM Act[35] which 'is no longer completely fit for purpose'.[36] Accordingly the Commission has recommended that the CCM Act be replaced with a new Act.[37]

55. I recommend that as part of any process of amendment or replacement, the Parliament take action to address the issue discussed here.

MATTHEW ZILKO SC
PARLIAMENTARY INSPECTOR

---

[30] *Independent Commission Against Corruption Act 1988* (NSW), section 9(1)(a).
[31] ICAC Act, section 13(3A).
[32] ICAC Act, section 74B(1)(a).
[33] *Crime and Corruption Act 2001* (Qld), sections 15(1)(c)(i) and 15(2)(c)(i).
[34] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), sections 4(1)(da) and 4(1A).
[35] See for example *Meaningful Reform Overdue*, JSCCCC Report No 17, tabled November 2020.
[36] Commission, *Reflections and Recommendations on Corruption,* 18 June 2025, [493].
[37] Ibid, [494].

ANNEXURE A:

SUBMISSION FROM THE CORRUPTION AND CRIME COMMISSION

WESTERN AUSTRALIA

CCC | Corruption and Crime Commission

SUBMISSION ON THE PARLIAMENTARY INSPECTOR'S REPORT ON OPINIONS OF SERIOUS MISCONDUCT PURSUANT TO SECTION 4(c)

1. The Parliamentary Inspector has provided the Commission with a draft of his report, *Opinions of Serious Misconduct Pursuant to Section 4(c)*.

2. There is nothing in the draft that is adverse to the Commission's interests. Nevertheless, the Commission makes the following brief submission to provide further context to the issue raised by the Parliamentary Inspector.

3. The Commission accepts that s 4(c) of the *Corruption, Crime and Misconduct Act 2003* (**CCM Act**) is susceptible to more than one interpretation. Is the effect of the word 'commits', when read with the whole of the section, that the Commission only has jurisdiction under s 4(c) where a public officer has pleaded guilty to or has been convicted of an offence? Alternatively, can the Commission form an opinion that a public officer has committed an offence based on findings it has made in an investigation regardless of whether the officer has been prosecuted for the offence?

4. The Commission's present view is that it can express an opinion that serious misconduct has occurred where the facts it has found could satisfy the elements of an offence if proved beyond a reasonable doubt in a court of law. However, the Commission accepts that the ambiguity identified by the Parliamentary Inspector should be resolved if the CCM Act is amended or replaced.

5. The Commission notes the Parliamentary Inspector's reference in his report to calls for substantial amendments to the CCM Act, citing JSCCCC Report No 17, *Meaningful Reform Overdue* and the Commission's recent report, *Reflections and Recommendations on Corruption* in which a recommendation was made for the CCM Act to be replaced with a new Act. The Commission seeks to raise two further matters in that context.

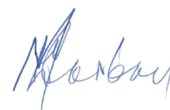
6. First, it is important to note that the issue raised by the Parliamentary Inspector only concerns s 4(c). The Commission often finds facts in exercising jurisdiction under s 4(a) or s 4(b) of the CCM Act that would constitute a criminal offence if proved beyond reasonable doubt in a court of law. Those sections require the Commission to find that a public officer corruptly acted or corruptly failed to act (s 4(a)) or corruptly took advantage of their position to obtain a benefit or cause a detriment (s 4(b)). The facts on which the Commission finds that a public officer has engaged in corrupt conduct might also form the basis for a prosecution under s 83 of the *Criminal Code* (corruption).

7. There are other ways in which the facts investigated and found by the Commission under s 4(a) or s 4(b) may be consistent with the commission of a criminal offence. For example, Part III of the *Criminal Code* contains various offences concerning public

officers and government contractors (Chapter XIII forming part of Pt III is entitled 'Corruption and abuse of office') and many investigations into procurement misconduct involve criminal fraud.

8. In such cases, the Commission will express an opinion of serious misconduct under s 4(a) and/or s 4(b) without expressing any opinion about the criminality that may be involved. It will do so mindful of the prohibition in s 217A. However, s 217A is obviously not intended to limit the Commission's jurisdiction under s 4(a) or s 4(b).

9. Second, the Commission considers there is scope for further reviewing the definition of 'serious misconduct' in light of experience since the CCM Act was enacted in 2003. A review of the definition might also have regard to the nature and extent of the jurisdiction conferred on other anti-corruption bodies. To take but one example, consideration might be given to whether the Commission should have power to investigate allegations of corrupt conduct by persons and entities that contract with government agencies - a power that is conferred on the National Anti-Corruption Commission by the *National Anti-Corruption Commission Act 2022* (Cth).



Michael Corboy SC

Deputy Commissioner
Corruption and Crime Commission

9 September 2025