



New South Wales

# Crimes Amendment (Misconduct in Public Office and Other Matters) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to prohibit the following misconduct in or in relation to public office:

- (a) current and former public officials misusing information obtained in an official capacity,
- (b) public officials engaging in official conduct, or exercising influence, for dishonest purposes,
- (c) public officials acting in matters in which they have a pecuniary interest,
- (d) the bribing of public officials,
- (e) public officials accepting bribes,
- (f) conspiring to dishonestly influence a public official,
- (g) conspiring to dishonestly obtain a benefit from a public authority,
- (h) conspiring to dishonestly cause a loss or risk of loss to a public authority.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      Amendment of Crimes Act 1900 No 40

Schedule 1 inserts the following provisions in the *Crimes Act 1900* in proposed Part 4AF:

**Proposed section 215** defines *public official*.

**Proposed section 216** makes it an indictable offence for a public official or former public official to use information obtained in the person's capacity as a public official with the intention of dishonestly obtaining a benefit for any person (including the public official) or dishonestly causing a detriment to another person. The maximum penalty is imprisonment for 7 years.

**Proposed section 217** makes it an indictable offence:

- (a) for a public official to engage in official conduct with the intention of dishonestly obtaining a benefit for any person or dishonestly causing a detriment to another person, or
- (b) for a public official to exercise influence as a public official with the intention of dishonestly obtaining a benefit for any person or dishonestly causing a detriment to another person.

In each case, the maximum penalty is imprisonment for 7 years.

**Proposed section 218** makes it an indictable offence for a public official to deal with matters in an official capacity if the public official has a pecuniary interest in the matters. The maximum penalty is imprisonment for 7 years.

**Proposed section 219** makes it an indictable offence to bribe a public official. The maximum penalty is imprisonment for 7 years.

**Proposed section 220** makes it an indictable offence for a public official to receive a bribe. The maximum penalty is imprisonment for 7 years.

**Proposed section 221** makes it an indictable offence to conspire with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official. The maximum penalty is imprisonment for 7 years.

**Proposed section 222** makes it an indictable offence to conspire with another person with the intention of dishonestly obtaining a gain from, or causing a loss or substantial risk of loss to, a public authority. In each case, the maximum penalty is imprisonment for 7 years.

**Proposed section 223** provides that the proposed Part is in addition to, and does not derogate from, other existing offences about corrupt practices.



New South Wales

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New South Wales

# Crimes Amendment (Misconduct in Public Office and Other Matters) Bill 2018

No. , 2018

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## A Bill for

An Act to amend the *Crimes Act 1900* to prohibit misconduct by or in relation to public officials.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes Amendment (Misconduct in Public Office and Other Matters) Act 2018*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Crimes Act 1900 No 40</b>	1
<b>Part 4AF</b>		2
Insert after Part 4AE:		3
<b>Part 4AF Offences relating to misconduct in public office</b>		4
<b>215 Meaning of “public official”</b>		5
In this Part:		6
<b>public official</b> means an individual having public official functions or acting in a public official capacity, and includes any of the following:		7
(a) a person employed in a Public Service agency or any other government sector agency within the meaning of the <i>Government Sector Employment Act 2013</i> ,		8
(b) a person who performs work for the Crown under a contract for services,		9
(c) a person who holds or performs the duties of an office established by a law of the State,		10
(d) a person who is otherwise in the service of the Crown,		11
(e) a judicial officer within the meaning of the <i>Judicial Officers Act 1986</i> ,		12
(f) a member of Parliament.		13
<b>216 Misuse of information obtained in official capacity</b>		14
(1) A person who is a public official or former public official must not use any information that the person obtained in the person’s capacity as a public official if the person does so with the intention of:		15
(a) dishonestly obtaining a benefit for the person or for another person, or		16
(b) dishonestly causing a detriment to another person.		17
Maximum penalty: Imprisonment for 7 years.		18
(2) A person is not guilty of an offence against this section if the person had a reasonable excuse for using the relevant information or did so for a lawful purpose. The onus of proof of reasonable excuse or lawful purpose lies on the accused.		19
(3) In this section:		20
<b>former public official</b> means a person who has ceased to be a public official in a particular capacity:		21
(a) whether or not the person continues to be a public official in some other capacity, and		22
(b) whether the cessation occurred before, at or after the commencement of this section.		23
<b>217 Abuse of public office by public officials</b>		24
(1) A person who is a public official must not engage in any conduct in the exercise of the person’s duties as a public official (including, but not limited to, conduct that constitutes or involves a breach of public trust or the dishonest or partial exercise of any public official functions) if the person does so with the intention of:		25
(a) dishonestly obtaining a benefit for the person or for another person, or		26

(b)	dishonestly causing a detriment to another person.	1
(2)	A person who is a public official must not exercise any influence that the person has in the person's capacity as a public official if the person does so with the intention of:	2 3 4
(a)	dishonestly obtaining a benefit for the person or for another person, or	5
(b)	dishonestly causing a detriment to another person.	6
(3)	A person is not guilty of an offence against this section if the person had a reasonable excuse for engaging in the relevant conduct or for the relevant exercise of influence or did so for a lawful purpose. The onus of proof of reasonable excuse or lawful purpose lies on the accused.	7 8 9 10
	Maximum penalty: Imprisonment for 7 years.	11
<b>218</b>	<b>Abuse of public office where public official has pecuniary interest</b>	12
(1)	A person who is a public official must not, in the performance or discharge of the functions of the person's office or employment, act in any matter in relation to which the person, directly or indirectly, has any pecuniary interest if the person does so with the intention of:	13 14 15 16
(a)	dishonestly obtaining a benefit for the person or for another person, or	17
(b)	dishonestly causing a detriment to another person.	18
	Maximum penalty: Imprisonment for 7 years.	19
(2)	For the purposes of this section, a <i>pecuniary interest</i> is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.	20 21 22
(3)	For the purposes of this section, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:	23 24
(a)	the person, or	25
(b)	the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or	26 27
(c)	a company or other body of which the person, or a nominee, partner or employer of the person, is a member.	28 29
	<b>Note.</b> "De facto partner" is defined in section 21C of the <i>Interpretation Act 1987</i> .	30
<b>219</b>	<b>Bribery of public officials</b>	31
(1)	A person must not dishonestly provide a benefit to another person, or cause a benefit to be provided to another person, if the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the public official's duties as a public official.	32 33 34 35
(2)	A person must not dishonestly offer or promise to provide a benefit to another person, or cause an offer or promise of the provision of a benefit to be made to another person, if the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the public official's duties as a public official.	36 37 38 39 40
(3)	In a prosecution for an offence against this section, it is not necessary to prove that the accused knew:	41 42
(a)	that the official was a public official, or	43
(b)	that the duties exercised were duties as a public official.	44
	Maximum penalty: Imprisonment for 7 years.	45

<b>220</b>	<b>Public officials accepting bribes</b>	1
	A person who is a public official must not dishonestly ask for, receive or obtain, or dishonestly agree to receive or obtain, any money, property or other benefit of any kind for the person or for another person if the public official does so:	2
	(a) with the intention that the exercise of the person's duties as a public official will be influenced, or	3
	(b) with the intention of inducing, fostering or sustaining a belief that the exercise of the person's duties as a public official will be influenced.	4
	Maximum penalty: Imprisonment for 7 years.	5
<b>221</b>	<b>Conspiracy to dishonestly influence public officials</b>	6
(1)	A person must not conspire with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official.	7
	Maximum penalty: Imprisonment for 7 years.	8
(2)	In a prosecution for an offence against this section, it is not necessary to prove that the accused knew:	9
	(a) that the official was a public official, or	10
	(b) that the duties exercised were duties as a public official.	11
<b>222</b>	<b>Conspiracy to defraud or cause loss or risk of loss to public authorities</b>	12
(1)	A person must not conspire with another person with the intention of dishonestly obtaining a gain from a public authority.	13
	Maximum penalty: Imprisonment for 7 years.	14
(2)	A person (the <i>relevant person</i> ) must not conspire with another person with the intention of dishonestly causing a loss or risk of loss to a public authority if the relevant person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.	15
	Maximum penalty: Imprisonment for 7 years.	16
(3)	In a prosecution for an offence against this section, it is not necessary to prove that the accused knew that the public authority was a public authority.	17
(4)	In this section:	18
	<i>public authority</i> includes the following:	19
	(a) a Public Service agency or any other government sector agency within the meaning of the <i>Government Sector Employment Act 2013</i> ,	20
	(b) a statutory body representing the Crown,	21
	(c) a person or body in relation to whom or to whose functions an account is kept of administration or working expenses, where the account:	22
	(i) is part of the accounts prepared under the <i>Public Finance and Audit Act 1983</i> , or	23
	(ii) is required by or under any Act to be audited by the Auditor-General, or is one with respect to which the Auditor-General has powers under any law, or may exercise powers under a law relating to the audit of accounts if requested to do so by a Minister of the Crown,	24
	(d) a local government authority.	25



**223 Operation of Part**

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|                                                                                                                                                                 | 1 |
| (1) This Part is in addition to, and does not derogate from, Part 4A.                                                                                           | 2 |
| (2) A person is not liable to be convicted of both an offence under this Part and an offence under Part 4A if the offences arose out of the same circumstances. | 3 |
|                                                                                                                                                                 | 4 |