

1 Crime and Corruption Commission

Corrupt conduct

Under the CC Act, conduct includes:

- neglect, failure and inaction
- conspiracy to engage in conduct
- attempt to engage in conduct.

Corrupt conduct is conduct by any person which meets the four elements stipulated in the CC Act, and described below.

1. Effect of the conduct

Corrupt conduct adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—

- a unit of public administration (UPA)
or
- an individual person holding an appointment in a UPA.

2. Result of the conduct

Corrupt conduct results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above in a way that—

- is not honest or is not impartial
- involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly
- involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment.

In relation to a breach of trust:

- knowingly can be taken to mean that the subject officer knew that their actions were a breach of the trust placed in them
- recklessly can be taken to mean that, while the subject officer did not necessarily know that their actions were a breach of trust, they were aware that there was a real and apparent risk that the conduct would amount to a breach of the trust and they nevertheless without justification went through with the conduct.

3. Benefit or detriment arising from the conduct

Corrupt conduct is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person.

The CC Act defines:

- benefit as property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person, whether or not it has any inherent or tangible value, purpose or attribute
- detriment as including detriment caused to a person's property.

4. Criminal offence or disciplinary breach

Corrupt conduct would, if proved, be—

- a criminal offence
or
- a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were a holder of an appointment.

The CC Act provides examples of conduct that could be corrupt conduct, including:

- abuse of public office
- bribery, including bribery relating to an election
- extortion
- obtaining or offering a secret commission
- fraud, stealing or forgery
- perverting the course of justice
- an offence relating to an electoral donation
- loss of revenue of the state
- sedition
- homicide, serious assault or assault occasioning bodily harm or grievous bodily harm
- obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person
- illegal drug trafficking
- illegal gambling.

Conduct must satisfy all four elements above to be considered corrupt conduct, as in the example below. Applying the four elements is discussed further in chapter 2.

Conduct	Elements that make it corrupt conduct
An audit reveals that a public servant cheated on travel allowances by claiming allowances for trips not taken, and claiming expenses that were not incurred.	<ol style="list-style-type: none">1. Adversely affects the performance of the department through misuse of resources.2. Is dishonest.3. Is engaged in for the officer’s benefit.4. Is a criminal offence (i.e. fraud).

“Would, if proved”

To determine whether an allegation would, if proved, amount to a criminal offence, you need to ascertain whether there is evidence of **each element** of the relevant offence. You should assess the quality of that evidence.

To determine whether an allegation would, if proved, amount to a disciplinary breach providing reasonable grounds for termination, you need to assess the evidence against the objective standards of honesty and integrity — taking into account how reasonable, right thinking members of the community would view the conduct — and not by subjective criteria. These standards are found in the ethics principles in the *Public Sector Ethics Act 1994*:

- integrity and impartiality (section 6)
- promoting the public good (section 7)
- commitment to the system of government (section 8)
- accountability and transparency (section 9).

You must also consider “grounds for disciplinary action” as stated in section 187 of the *Public Service Act 2008*.

For UPAs not covered by the *Public Service Act 2008* (e.g. local government, universities), your underpinning legislation (e.g. Local Government Regulation 2012) and your code of conduct should be used as a guide to what would amount to a dismissible disciplinary breach.

Who may be guilty of corrupt conduct

The CC Act specifies that corrupt conduct can be attributed to any person, regardless of whether they hold an appointment in a UPA, including:

- people who no longer hold an appointment in a UPA (see also “Subject officer’s resignation” in chapter 3)
- people who subsequently take up an appointment in a UPA
- private individuals or organisations
- people outside Queensland, provided there is a direct link between the conduct and its adverse effect on a Queensland UPA, or someone holding an appointment with one.

The conduct does not cease to be corrupt conduct just because action relating to the conduct can no longer be taken or continued, including action for dismissal.

Professional misconduct

Professional misconduct is conduct connected with exercising the skill of a professional or engaging in the performance of the specified duties or activities of a position. For example, positions such as medical professionals, counsellors or engineers (technical position) are considered to have special responsibilities by virtue of their position, and in many cases, they have ethical or statutory obligations attached to the discharge of their powers or functions.

Professional misconduct can also be corrupt conduct if it meets the four elements.

While professional misconduct only rarely amounts to corrupt conduct, it can do so even when there is no criminal offence involved. In such cases, the conduct must involve repeated behaviour (including neglect, failure and inaction) that undermines the trust placed in the person by virtue of their position; or be a single incident of behaviour indicating a callous or reckless disregard for, or indifference to, the skills required for the proper discharge of the duties of the position.

Consider the following scenario, which illustrates professional misconduct that is also corrupt conduct. The chief financial officer in this scenario has a responsibility to manage the resources of the UPA efficiently using the skills and qualifications appropriate to her position. While the mismanagement of the budget can be seen as serious professional neglect, it is the attempted cover up in order to protect her position — and the subsequent outcome for the UPA — that lifts the conduct over the threshold to corrupt conduct.

Professional misconduct	Also corrupt conduct because ...
A chief financial officer responsible for preparing your UPA’s budget fails to reconcile funding movements, resulting in a million dollar deficit in the budget. When the issue comes to her attention, she does not report the deficit to the board in a deliberate attempt to cover up her mistake.	<ol style="list-style-type: none"> 1. Adversely affects the performance of the department through budget deficit. 2. Is dishonest and a breach of trust. 3. Is engaged in for the officer’s benefit. 4. Is reasonable grounds for dismissal.

Other misconduct

Corrupt conduct has a specific meaning under the CC Act. It is not the same as misconduct under the *Public Service Act 2008*, although they do share some attributes; therefore not all misconduct will amount to corrupt conduct under the CC Act.

Misconduct encompasses any inappropriate or improper conduct relating to an officer’s duties, or any private act by an officer that reflects seriously and adversely on the public service. Misconduct may not warrant dismissal or criminal charges, and therefore has a lower threshold than corrupt conduct.

Conduct	Is NOT corrupt conduct because ...
Allegations have been made that an office manager has stolen \$10 000 from a suburban cricket club where he is the treasurer.	<p>The allegation relates to the conduct of the manager in his private capacity and has no connection with the performance of his duties as a manager of a public sector agency.</p> <p>It is not corrupt conduct, but it may be misconduct under the statutory and policy framework governing your employees and the club may pursue criminal charges.</p>

The scenarios at the end of this chapter further illustrate the difference between misconduct and corrupt conduct.

The CCC’s corruption function

The CCC’s specific corruption function under the CC Act is to ensure that complaints about corruption are dealt with appropriately, subject to the principles set out in section 34 of the Act:

- cooperation — the CCC and UPAs should work cooperatively to deal with corruption
- devolution — subject to the other principles, action to deal with corruption in a UPA should generally happen within the UPA
- public interest — the CCC has an overriding responsibility to promote public confidence in the way UPAs deal with corruption.

The CCC performs its corruption function under the CC Act by:

- assessing each complaint about corrupt conduct made or notified to it
- referring those complaints most appropriately dealt with by the relevant UPA
- monitoring the way in which a UPA deals with complaints referred to it
- investigating, either by itself or in cooperation with a UPA, those complaints alleging more serious or systemic corrupt conduct
- assessing the appropriateness of systems and procedures adopted by a UPA for dealing with complaints about corruption, and providing advice and recommendations to the UPA
- ensuring evidence is gathered to support any prosecution or disciplinary proceedings.

How the CCC becomes aware of suspected corrupt conduct

There are four main avenues by which the CCC becomes aware of suspected corrupt conduct:

- through a complaint made to the CCC
- as “information”, which could be received through such means as routine agency audits, media articles, Crime Stoppers or the CCC’s own intelligence activities or sources
- as “matter”, which could be received through such means as court proceedings, or referrals from the Coroner or a public inquiry
- through mandatory notification from a public official (see chapter 2).

How the CCC assesses complaints about corrupt conduct

The CCC assesses each complaint or notification based on whether it:

- is within CCC jurisdiction
- will have a serious impact on the public sector
- appears to be genuine, and made in good faith
- could result in an unjustifiable use of resources
- involves high-profile, sensitive or complex issues
- involves a high-level politician or other official
- has a bearing on public confidence or order
- indicates the possibility of systemic corrupt conduct within a UPA.

If necessary, further information is gathered as quickly as possible to enable the CCC to decide on the best course of action. Additional information may come from external sources, such as the complainant or the UPA concerned, or from internal sources.

The CCC must also assess the capacity of your UPA to deal with the complaint if it is referred. This assessment may be based on existing information held by the CCC, or CCC officers may contact representatives of your UPA — usually a designated CCC liaison officer — to consult about the capacity of your UPA to deal with the complaint, and to seek your view about appropriate action.

Possible courses of action

After the assessment is complete, the CCC may decide to:

- refer the complaint to you to deal with, subject to some level of monitoring by the CCC (see “How the CCC ensures complaints are dealt with appropriately”)
- ask you to carry out further enquiries before a final assessment is made (e.g. the complaint appears to indicate quite serious corruption, but the initial information gathered suggests that there may be an innocent explanation for what happened)
- investigate the complaint itself
- investigate the complaint in cooperation with you
- refer possible criminal activity to the Queensland Police Service (QPS)
- take no further action where the complaint:
 - is frivolous or vexatious
 - lacks substance or credibility
 - is not made in good faith
 - is made recklessly or maliciously, or primarily for a mischievous purpose
 - is outside the CCC’s jurisdiction

or where dealing with the complaint would be an unjustifiable use of resources, or not in the public interest.

Under the principle of devolution, referring the complaint to you is the preferred option, and is the main focus of this guide.

CCC investigation

If the CCC decides to investigate on its own, there are a number of possible outcomes.

The CCC might:

- find that no wrongdoing has occurred
- find that there is insufficient evidence to establish the allegations
- confirm corrupt conduct and recommend that you take disciplinary action
- refer the case through appropriate channels to the Queensland Civil and Administrative Tribunal (QCAT) for disciplinary charges to be heard
- refer a criminal offence to the Director of Public Prosecutions or another prosecuting authority.

When the CCC refers a complaint to you for disciplinary action, it will provide a report to help you decide what action to take.

The following scenarios of corrupt conduct illustrate when a matter would likely be referred to the relevant UPA to deal with, and the circumstances that might lead the CCC to decide to deal with the matter itself.

Conduct	May be referred to UPA ...	CCC may investigate ...
An allegation has been made that an officer responsible for the decision-making with respect to a project worth over \$50 000 has failed to adhere to the department's procurement processes and awarded the contract and subsequent amendments to the contract to his brother-in-law's company, in which the subject officer also has a financial interest.	On the basis of the information available, the alleged conduct appears to be a one-off situation. The UPA has indicated its understanding of the seriousness of the allegations and its capacity to deal with the matter. The UPA has also agreed to refer the matter to police if necessary.	The information suggests that the conduct has been occurring for a number of years despite concerns being raised within the UPA. Preliminary enquiries confirm that the subject officer does have a financial interest in the company, and value of the contracts over the course of these years may exceed \$500 000.
An allegation has been made that an administration officer in a public hospital has been accessing the personal and financial information of patients and disclosing it to her boyfriend.	On the basis of the information available, the reasons for the disclosure are not apparent, the concerns do not appear to be systemic, and the subject officer does not have any relevant complaint history of similar behaviour. The UPA has acknowledged that it may need to report the conduct to the police and other regulatory bodies.	Preliminary enquiries reveal that the subject officer has various convictions for fraud which were not disclosed at the time of her employment. Enquiries also reveal that her boyfriend is well known to the police for his involvement in various scamming activities and credit card fraud.
An audit of a small UPA reveals inconsistent and unauthorised purchases being made on corporate credit cards.	The audit suggests that the conduct is isolated to an individual officer, and the value of the personal purchases is less than \$10 000. The UPA would deal with this matter in accordance with section 40 arrangements (see page 2.1).	The audit suggests that the conduct is widespread across the UPA, and that the UPA does not have appropriate policies and procedures in place for the issue and use of credit cards. The audit estimates that the cost of the misuse to the UPA could range from \$18 000 and to as much as \$40 000. The conduct is not limited to lower level staff, but appears to involve senior executives of the UPA.

<p>An allegation has been made that a mining company has received preferential treatment in obtaining relevant exploration permits because they are friends with the processing officer.</p>	<p>On the basis of the information available, the mining company has submitted all relevant paperwork and complied with relevant standards. The subject officer does not have any decision-making powers in relation to the issuing of permits. The UPA may make further enquiries to see if the company had access to any inside information as a result of its relationship with the subject officer.</p>	<p>Further information provided to the CCC reveals that the mining company allegedly gave the delegated decision-maker a new car in return for approval of the exploration permit, and the subject officer is rumoured to have recently acquired a new luxury car.</p>
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How the CCC ensures complaints are dealt with appropriately

When the CCC refers a complaint to you to deal with, it may monitor how you deal with it, subject to the level of seriousness of the complaint. This may take the form of:

- referred – no further action (RNFA)
- audit
- public interest review
- merit and compliance review .

Referred – no further action

The CCC will apply this level of monitoring when:

- the complaint does not require review by the CCC due to the low level nature of the alleged corrupt conduct.

Where a complaint is referred to you as RNFA, you do not have to report the outcome, and may deal with the complaint as you consider appropriate.

These cases will form the basis of the CCC’s audit program (see below), so you must maintain a robust complaints management system for recording and dealing with them.

As with all corrupt conduct cases, the CCC will maintain its right to assume responsibility for RNFA cases, or assign a closer level of monitoring, if it becomes aware that the conduct in question may be more serious or systemic than originally thought.

Audits

The CCC will maintain an audit program that will undertake regular audits of all UPAs and the systems and practices in place for dealing with corrupt conduct. The CCC may conduct an audit of your UPA in the areas of:

- your integrity framework
- complaints that you dealt with under a section 40 direction without notifying the CCC, or which were referred with an RNFA option
- public interest topics that might be relevant to a single UPA, a group of UPAs or a sector as a whole, and which have been identified by the CCC or via a research directive.

See “CCC audits” in chapter 3.

Merit and compliance review

The CCC will apply this level of monitoring to determine whether an agency is dealing with matters involving serious or systemic corruption appropriately.

The CCC will apply a strict reporting regime. Unless special circumstances exist, the CCC will require you to deal with a complaint subject to this type of review within six months. A progress report from you is mandatory at three months.

After you have finalised your investigation and taken any appropriate disciplinary action, the CCC will review your investigation, focusing on:

- your compliance with any directions or guides that the CCC has issued
- your compliance with your internal policies or procedures
- the integrity with which the case was dealt with
- your identification and implementation of recommendations addressing systemic concerns, whether procedural or in relation to an individual officer.

Public interest review

In some circumstances, the CCC may consider that a matter involving serious corruption or systemic corruption should be dealt with by the agency in the first instance, but that in order to meet the public interest, the CCC should:

- closely monitor how you deal with the complaint
- consider assuming responsibility for the investigation (e.g. if, at some stage, the investigation might require the additional resources of the CCC to deal with the complaint).

As the cases subject to this type of review will be those the CCC considers are more serious or systemic in nature, the CCC will again require a strict reporting obligation by you. Progress reports are mandatory at six weeks, and then three months, six months and nine months, and you will be expected to finalise the investigation within 12 months unless you have reported special circumstances which might prevent this. Due to the nature of the conduct and the likely actions that will be needed to deal with it, a shorter time frame may be stipulated. The CCC will advise you of this at the time of referral.

The CCC will monitor the progress of this investigation to ensure that you are dealing with the case in a way that promotes public confidence, focusing on:

- your compliance with any directions or guides that the CCC has issued
- your compliance with your internal policies or procedures
- the adequacy, impartiality and transparency of any investigation or other resolution processes
- the appropriateness of the conclusions and recommendations made as a result of the investigation or other action taken
- the appropriateness of the decision to initiate show cause proceedings or lay charges, or to take other action
- where show cause proceedings are started, the appropriateness of the allegations, and of the decision-maker to hear those allegations
- the appropriateness of any finding or disciplinary action.

Scenarios

These scenarios illustrate how conduct may be misconduct without being corrupt conduct, and provide examples of what further elements might lift them over the threshold to corrupt conduct.

Scenario	Not corrupt conduct because ...	Might become corrupt conduct if ...
An officer insults a client or customer.	The conduct is not a criminal offence or serious enough to warrant dismissal, but is inappropriate, and reflects adversely on your UPA.	The officer assaults the client (criminal offence). OR The officer escalates the situation by passing confidential information about the client to a third party (grounds for dismissal).
An officer circulates inappropriate (but not criminal) email jokes to other staff on the agency email system.	The conduct is not a criminal offence or serious enough to warrant dismissal, but is an inappropriate use of agency resources.	The material circulated by the officer includes child exploitation material (criminal offence). OR The material circulated by the IT officer includes confidential information obtained in the course of his duties that is detrimental to a senior officer (grounds for dismissal).