

4 Local government

Corrupt conduct in local government

As outlined in chapter 2, section 38 of the CC Act obliges you to notify the CCC if you reasonably suspect that a complaint, information or matter involves, or may involve, corrupt conduct. Although many of the provisions governing how you deal with corrupt conduct are the same as for all other public officials — for example, what constitutes a reasonable suspicion, when to notify the CCC, what actions you may take — there are some important distinctions that relate only to local government, and this chapter will outline those for you.

Under the CC Act, the responsibility for dealing with suspected corrupt conduct on the part of a council employee or a councillor may rest with:

- the CCC
- you as CEO
- the Director-General of the Department of Local Government, Community Recovery and Resilience (the department).

At the same time — in the interest of maintaining community confidence in the integrity of their council — councillors (including mayors) also need to take some responsibility for preventing corrupt conduct. They need to support you in setting a tone of openness, accountability, transparency and integrity in all council dealings (see chapter 11).

Although the CCC must be notified of all complaints that may involve corrupt conduct, in the majority of cases, these will be referred back to you to deal with in accordance with any directions from the CCC (see also “Section 40 directions” below), and may be subject to CCC monitoring (see “How the CCC ensures complaints are dealt with appropriately” in chapter 1).

Misconduct and corrupt conduct

The terms “misconduct” and “corrupt conduct” may cause confusion because, although they share some similar concepts, they are defined differently in the *Local Government Act 2009* (LG Act) (s. 176(3)) and the CC Act.

Misconduct

In the LG Act, “misconduct” applies only to councillors, and is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor:

- that adversely affects, or could adversely affect (either directly or indirectly) the honest and impartial performance of the councillor’s responsibilities or the exercise of the councillor’s powers
- that is or involves—
 - the performance of the councillor’s responsibilities, or the exercise of the councillor’s powers in a way that is not honest or is not impartial
 - a breach of the trust placed in the councillor
 - a misuse of information or material acquired in or in connection with the performance of the councillor’s responsibilities, whether the misuse is for the benefit of the councillor or someone else

- a failure by the councillor to comply with a direction to leave a meeting of the council or its committees by the chairperson presiding at the meeting
or
- a refusal by the councillor to comply with a direction or order of the regional conduct review panel or tribunal about the councillor
or
- that is a repeat of inappropriate conduct under section 176(4) that the mayor or the department's chief executive has ordered to be referred to the regional conduct review panel
or
- that contravenes sections 171(3) (releasing information that the councillor knows, or should know, is confidential) or 173(4) (failing to deal with a conflict of interest in a transparent and accountable way).

If, in assessing or investigating a complaint about corrupt conduct against a councillor, the CCC becomes aware of potential misconduct under the LG Act as well, it will consider referring all allegations to the Director-General of the department.

If the CCC receives a complaint that does not involve possible corrupt conduct, but does involve potential councillor misconduct, the complainant will be advised to lodge their complaint directly with your council or with the Director-General of the department.

Corrupt conduct

Corrupt conduct under the CC Act has a broader application. The definition of corrupt conduct is provided in chapter 1. From a local council perspective, corrupt conduct can apply to both:

- elected councillors, including mayors (conduct that would, if proved, be a criminal offence only)
- council staff (conduct that would, if proved, be a criminal offence or reasonable grounds for dismissal).

Corrupt conduct as it relates to councillors is limited to conduct that would amount to a criminal offence because they are elected officials, and therefore not subject to a disciplinary regime involving "a disciplinary breach providing reasonable grounds for dismissal".

In considering whether conduct would, if proven, amount to a criminal offence, you need to bear in mind that criminal offences are not limited to offences contained in the Criminal Code or the LG Act. There are numerous other Acts that contain criminal offences and have particular relevance for local government, including:

- *Local Government Electoral Act 2011*
- *Building Act 1975*
- *Environmental Protection Act 1994*
- *Invasion of Privacy Act 2014*
- *Plumbing and Drainage Act 2002*
- *Regional Planning Interests Act 2014*
- *Water Act 2000*
- *Sustainable Planning Act 2009*
- *Liquor Act 1992*
- *Public Interest Disclosure Act 2010*
- *Electoral Act 1992*.

The scenario below illustrates how a *councillor's* conduct may be misconduct without being corrupt conduct, and provides an example of what further elements might lift it over the threshold to corrupt conduct.

Scenario	Not corrupt conduct because ...	Might become corrupt conduct if ...
A councillor relates a confidential decision about future zoning, made at a recent council meeting she attended, to friends at a barbecue.	This would be misconduct, as it involves the councillor disclosing information that came to her knowledge by virtue of her position as a councillor, and that she knows is confidential. It is not corrupt conduct because it is not done for anyone's benefit or detriment, and it is not a criminal offence.	The friends at the barbecue are local developers who regularly provide hospitality and gifts to the councillor, and who will benefit from advance knowledge of the new zoning. The four elements of corrupt conduct would now be present.

Similarly, conduct by one of your *employees* could require disciplinary action on your part without being corrupt conduct, as in the next scenario, which again provides an example of what further elements might lift it over the threshold to corrupt conduct.

Scenario	Not corrupt conduct because ...	Might become corrupt conduct if ...
A council client services officer abuses a customer in front of witnesses.	The conduct is not a criminal offence or serious enough to warrant dismissal, but is inappropriate, and reflects adversely on your council.	The officer knowingly shreds development application documents lodged by the customer, delaying the customer's application and resulting in additional cost to the customer. The four elements of corrupt conduct would now be present.

There are other scenarios at the end of this chapter that may provide you with some clarity around determining whether conduct constitutes corrupt conduct.

Section 40 directions

The procedure for notifying the CCC about suspected corrupt conduct is set out in chapter 2.

As discussed in chapter 2, conduct that might appear quite minor in nature can still be corrupt conduct (e.g. an employee pilfering a small amount of money from petty cash). Your obligation to notify the CCC remains, regardless of how serious or otherwise the corrupt conduct is. However, this obligation is subject to any directions issued to you by the CCC under section 40 of the CC Act, which tell you:

- the kinds of complaints that must be notified to the CCC
- how and when this notification must be made
- the kinds of complaints that you can immediately start dealing with without notifying the CCC at all
- those cases that only need to be reported to the CCC on a routine basis (e.g. some may only need to be reported on a monthly basis).

It is important that you understand what needs to be notified and what doesn't before you take any action to deal with it (see "Actions before notification" in chapter 2).

Informing the council

You are not required to seek any approval from the council or the mayor before notifying the CCC of any suspected corrupt conduct — the obligation to notify rests with you alone.

After notification, a council's right to be informed of matters is specified in the LG Act, and may also be set out in policies and procedures adopted by your particular council.

Where the CCC has indicated that a communication is regarded as “Confidential” or “In confidence”, its contents should not be revealed unless the CCC advises otherwise. If you are unsure whether a communication is covered by the confidentiality provisions of the CC Act, contact the CCC.

Other factors to consider

- As well as referring complaints, you are obliged to report any other information or matter that may suggest corrupt conduct, such as the findings of an internal audit report or a matter that arises in the course of resolving a grievance.
- You can assign your responsibility to notify the CCC about corrupt conduct to another council officer. This assignment can be for all complaints, or be limited to certain complaints (e.g. complaints against you) (see chapter 2).
- Your obligation to notify the CCC immediately if you reasonably suspect corrupt conduct is further compounded by section 242 of the LG Act, which limits the time within which some criminal proceedings can be started. If there is a delay in notifying the CCC about suspected corrupt conduct until close to the time limit for bringing a criminal prosecution, the possibility of taking that course of action may be denied. In some cases this will mean that the only action available is a disciplinary charge or, if the officer has left the council, no action at all, which in serious cases is a concern.
- Allegations about corrupt conduct, whether true or not, can cause unwarranted damage to the reputation of the council, a councillor or a council employee within the local community — particularly those complaints that are aired in the local newspaper. Your council should employ strategies to combat any perception within the community of “guilty until proven innocent” that may result from the public airing of complaints (see also “Determining if a complaint is frivolous, vexatious or not made in good faith” in chapter 3).
- You should resist pressure from council or the community to get a quick result.
- You should review your council's local laws, subordinate local laws, policies and procedures (including complaints management and records management systems) to ensure that they comply with your obligations under the CC Act for dealing with corrupt conduct.

Scenarios

These scenarios illustrate how conduct may require disciplinary action against council employees 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 ...
<p>An allegation has been received that a council supervisor delivered a quantity of timber to his son's private residence in a council utility, and the timber was used for renovations to that residence.</p>	<p>On the information available, the conduct is not a criminal offence or conduct that would warrant dismissal — the supervisor is authorised to use the utility for private purposes outside of working hours, and there is no evidence linking the timber to the council.</p>	<p>The allegation coincides with an audit report about the loss of a quantity of timber to the value of \$750 from council stores to which the supervisor has access.</p> <p>This raises the reasonable suspicion that the supervisor may be guilty of a criminal offence (i.e. theft) for the benefit of a member of his family, which would be corrupt conduct.</p>
<p>You receive an allegation from someone who witnessed an incident at a job site in which one council employee punched another, who sustained a split lip. The person also informs you that the employee who was assaulted does not want it reported to the police.</p>	<p>The conduct may have been the result of a personal confrontation, unrelated to either employee's position. Although it is not corrupt conduct, it could still warrant disciplinary action under your policies and procedures.</p>	<p>Evidence suggests the assault was an attempt by one employee to intimidate his supervisor out of reporting his theft of council property.</p> <p>This would amount to corrupt conduct because it is connected to the performance of official duties, and could result in criminal charges.</p> <p>The victim's decision not to report the assault to the police has no bearing on your notifying obligation.</p>