

Corrupt conduct and professional engineering services

This factsheet is based on a presentation given at the Institute of Public Works Engineering Australasia Queensland, November 2020.



During 2020, the Crime and Corruption Commission (CCC) received a complaint that employees in a local council were undertaking professional engineering services, but that they:

- were not registered with the Board of Professional Engineers, or
- were not being directly supervised by a practising professional engineer.

The CCC engaged with the Board of Professional Engineers, as the primary regulator of the profession, about this issue. The Board advised the CCC of some similar concerns they held that councils may be undertaking engineering work without the supervision of a properly registered engineer.

The Board confirmed that, in the most severe cases, it actively undertakes prosecutions, under section 115 of the *Professional Engineers Act 2002*, of offenders undertaking professional engineering services when not registered.

The CCC considers that conduct of this nature — undertaking such services without the required registration or supervision — may amount to corrupt conduct under the *Crime and Corruption Act 2001*.

This factsheet sets out:

- When the work of engineers may be within the CCC's jurisdiction
- The definition of corrupt conduct
- The application of the definition of corrupt conduct to engineers' work
- Advice for public sector agencies in relation to professional engineering services



What are professional engineering services?

The term “**professional engineering services**” is defined in the *Professional Engineers Act 2002* as:

an engineering service that requires, or is based on, the application of engineering principles and data to a design, or to a construction, production, operation or maintenance activity, relating to engineering, and does not include an engineering service that is provided only in accordance with a prescriptive standard.

A prescriptive standard means a document that states procedures or criteria:

- (a) for carrying out a design, or a construction, production, operation or maintenance activity, relating to engineering; and
- (b) the application of which, to the carrying out of the design, or the construction, production, operation or maintenance activity, does not require advanced scientifically based calculations.

You may wish to get advice from a professional organisation or approved assessment entity as to whether your work involves “professional engineering services”.

Professional engineers and the public sector

Engineers work in a variety of different fields and for a wide range of public sector agencies, including local councils, government-owned corporations, departments and statutory authorities. These types of agencies are called units of public administration (UPAs) and as such are within the CCC’s jurisdiction.

If your work for any UPA requires you to carry out “professional engineering services” (see the text box to the left) and the work is not under the direct supervision of a practising professional engineer, you must be registered or you may be:

- Breaching the *Professional Engineers Act 2002*; and
- Committing corrupt conduct.

Exemptions

However, you would not be committing corrupt conduct in the following circumstances:

- If the work you are doing for the UPA is not a professional engineering service.
- If your work is a professional engineering service, but it is under the supervision of a practising professional engineer.

But how could I be corrupt? I haven’t accepted a bribe or been dishonest!

Corruption, or “corrupt conduct” does not always or only mean dishonesty that involves, for example, accepting bribes, or appointing friends and family to public sector positions inappropriately.

You could potentially be involved in corrupt conduct if you are in breach of any of the legislation that governs your profession, such as the *Professional Engineers Act 2002*.



Professional Engineers Act 2002

Section 115 specifies the requirements for carrying out professional engineering services.

Section 115 - Who may carry out professional engineering services

- (1) A person who is not a practising professional engineer must not carry out professional engineering services. Maximum penalty—1000 penalty units.
- (2) However, a person does not commit an offence under subsection (1) if the person carries out the professional engineering services under the direct supervision of a practising professional engineer who is responsible for the services.
- (3) A person who is a practising professional engineer must not carry out professional engineering services in an area of engineering other than an area of engineering for which the person is registered under this Act.- Maximum penalty—1000 penalty units.
- (4) However, a person does not commit an offence under subsection (3) if the person carries out the professional engineering services under the direct supervision of a practising professional engineer who is registered in the area of engineering and responsible for the services.
- (5) For this section, a person carries out professional engineering services under the direct supervision of a practising professional engineer only if the engineer directs the person in the carrying out of the services and oversees and evaluates the carrying out of the services by the person.

Therefore, if you work for a UPA that is within the CCC's jurisdiction, such as a council or other government agency, and if your conduct is in breach of section 115 of the *Professional Engineers Act 2002*, or any other law, you may be committing corrupt conduct.

Let's look now at the definition of corrupt conduct.



What is corrupt conduct?

Under the *Crime and Corruption Act 2001* (CC Act), there are two different types of corrupt conduct, but either of these types:

- must involve a UPA within the CCC's jurisdiction, and
- must satisfy criteria relating to the effect, result and seriousness of the conduct involved.

Type A corrupt conduct (section 15(1) CC Act)

Type A involves conduct that affects, or could affect, how officers from a UPA perform their functions or exercise their powers, and that satisfies the three elements described below.

1. Effect of the conduct

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

- a UPA or
- an individual person holding an appointment in a UPA.

2. Result of the conduct

Type A 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—

- (i) is not honest or is not impartial or
- (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly* or recklessly** or
- (iii) 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. Seriousness of the conduct

Type A corrupt conduct would, if proved, be—

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



Type B corrupt conduct (section 15(2) CC Act)

Type B corrupt conduct involves conduct that impairs, or could impair, public confidence in public administration. Type B recognises that the actions of people outside the public sector can result in a loss of confidence in UPAs. Type B corrupt conduct must satisfy the three elements described below.

1. Effect of the conduct

Type B corrupt conduct impairs, or could impair, public confidence in public administration.

2. Type of conduct

Type B corrupt conduct involves, or could involve, one of the following types of conduct:

- (i) collusive tendering;
- (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
 - (A) protecting health or safety of persons;
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State's natural, cultural, mining or energy resources;
- (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
- (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
- (v) fraudulently obtaining or retaining an appointment.

3. Seriousness of the conduct

Type B corrupt conduct would, if proved, be—

- (i) a criminal offence; or
- (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.



Advice for all UPAs in relation

to professional engineering services

In relation to the complaint described at the beginning of this factsheet, the CCC assessed this complaint as suspected corrupt conduct and wrote to the Board of Professional Engineers, requesting them to deal with the allegations. The CCC also wrote to all council CEOs requesting that they conduct an audit of any positions that employed engineers, to ensure they were providing those services in a manner which was compliant with the *Professional Engineers Act 2002*.

To prevent any recurrence of such complaints, all UPAs should:

- Review the registration status of employees undertaking engineering services, to ensure compliance with the *Professional Engineers Act 2002*
- Take appropriate action to address practices, if any, contrary to the *Professional Engineers Act 2002*, and
- Flag such matters with their internal audit and risk units.

Application of the definition of corrupt conduct to engineers' work

The definition of corrupt conduct could apply to you if:

- You work for an agency that is within the CCC's jurisdiction, and
- Your conduct is in breach of a law (e.g. the *Professional Engineers Act 2002*), and thus a criminal offence.

For example, you could be meeting the three criteria for Type A corrupt conduct:

- If you carry out your work – the function or activity you perform as part of your employment – in a manner that is contrary to the law, as the conduct **could adversely affect** that function. (***Effect of the conduct***)
- If the manner in which you work results in the performance of the function in a way that is a **breach of the trust** placed in a person holding the appointment. (***Result of the conduct***)
- Because a contravention of section 115(1) of the Professional Engineers Act is a criminal offence, so, if proved, it would be a **criminal offence**. (***Seriousness of the conduct***)



Further information

For further information about the CCC or the complaints process, go to: www.ccc.qld.gov.au

For more information about professional engineering services, contact:

- Board of Professional Engineers of Queensland: www.bpeq.qld.gov.au
- Institute of Public Works Engineering Australasia, Queensland: www.ipweaq.com
- Engineers Australia: www.engineersaustralia.org.au
- Professionals Australia: www.professionalsaustralia.org.au