



FACT SHEET

WHAT IS CORRUPTION? DEFINING CORRUPT CONDUCT

The purpose of this fact sheet is to provide general guidance and examples of corrupt conduct under the Law Enforcement Integrity Commissioner Act 2006 (Cth) (LEIC Act). The examples are not exclusive, but are provided to assist in understanding what types of conduct might fall within the definitions. Regardless of the type of corruption or level of seriousness, all corruption issues must be referred or notified to ACLEI.

Engages in corrupt conduct

Section 6 of the LEIC Act states that:

(1) ...a staff member of a law enforcement agency engages in corrupt conduct if the staff member, while a staff member of the agency, engages in:

- (a) conduct that involves, or that is engaged in for the purposes of, the staff member **abusing his or her office** as a staff member of the agency; or
- (b) conduct that perverts, or that is engaged in for the purpose of **perverting, the course of justice**; or
- (c) conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, **corruption of any other kind**.

For staff members of agencies prescribed in the *Law Enforcement Integrity Commissioner Regulations 2017* (Cth) (LEIC Regulations), the conduct must also relate to the performance of a law enforcement function of the agency.¹

Abuse of office

Abuse of office involves improper acts or omissions by officials in their capacity as an official, accompanied by an awareness that the act or omission is improper.

Is the conduct an abuse of office?

The elements of s 142.2 of the *Criminal Code Act 1995* (Cth) (Criminal Code) below can be useful when considering whether a staff member engaged in conduct involving an abuse of office.

Did the staff member of the agency:

- **exercise any influence** that the official has in their capacity as an employee of the agency; or
- **engage in any conduct** in the exercise of their duties as an employee of the agency; or
- **use any information** that they acquired in their capacity as an employee of the agency; and

¹ The agencies prescribed in the LEIC Regulations are the Australian Competition and Consumer Commission, Australian Prudential Regulation Authority, Australian Securities and Investments Commission, Australian Taxation Office and Office of the Special Investigator.

Did the staff member of the agency do it with the intention of:

- dishonestly **obtaining a benefit** for him or herself or another person; or
- dishonestly **causing a detriment**, to another person?

Note: Section 140.1 of the Criminal Code defines the term 'benefit' to include 'any advantage and is not limited to property'. While often the type of benefit obtained is financial, non-financial benefits can also amount to an abuse of office.

Examples

A staff member's exercise of influence, engagement in conduct and/or use of information in their capacity as an employee of the agency may involve:

- Using official powers and discretions for self, or to assist others, for an improper purpose
- Using law enforcement functions to support or assist criminal activity
- Misusing official information to support or assist criminal activity

Types of benefits may include:

- Financial advantage (gaining property or profit and/or savings on costs that would have otherwise needed to be paid²)
- Advantages from obtaining information that might not ordinarily be available to a person, such as access to databases or direct and speedy access to information through a separate source (even if the information could be given legally, i.e. an FOI request).³

- Potential employment or other job-related opportunities such as being able to tender for work⁴ or using agency resources to further a personal business⁵
- Access to a particular status or commodity which would not be ordinarily available to a person (use of disabled parking permit or access to a car⁶, membership or venue)
- Social capital, including any relationship in a social network, group or community, which may increase or maintain a person's standing, reputation⁷ or trust with another person⁸ (also see ACLEI's Social Capital Fact Sheet and Investigation Reports)⁹

Note: No benefit or detriment needs to actually occur but there must be an **intention** to dishonestly obtain a benefit or cause a detriment.¹⁰ Where there is no evidence of an intention to obtain a benefit or cause a detriment, consideration should be given to whether the conduct is 'corruption of any other kind'.

Perverting the course of justice

Perverting the course of justice involves interfering with judicial processes.

Is the conduct perverting the course of justice?

- Was there **conduct which has a tendency, and is intended**, to pervert the course of justice?¹¹
- 'The course of justice is perverted (or obstructed) by **impairing (or preventing the exercise of) the**

² *R v Harrap; R v Moyse* [2021] SASCA 22.

³ *R v Austin* [2013] SASFC 133.

⁴ *R v Rodney Bradley* [2007] ACTSC 35.

⁵ *R v Lee* [2019] NSWDC 888.

⁶ *R v Bartels* [2018] SASFC 34.

⁷ *R v Martin* [2017] SADC 73.

⁸ *Valsamakis v R* [2015] NSWCCA 156.

⁹ ACLEI Social Capital Fact Sheet <https://www.aclei.gov.au/sites/default/files/aclei_factsheet_-_corruption_prevention_concepts_-_social_capital.pdf>; ACLEI Investigation Reports <<https://www.aclei.gov.au/reports/investigation-reports/>>.

¹⁰ *R v Michaelis* [2018] SADC 118 at [86] and [99].

¹¹ *R v Rogerson* (1992) 174 CLR 268, 276 (Mason CJ, *R v Vreones* (1891) 1 QB 369).

capacity of a court or competent judicial authority to do justice.¹²

Examples

Conduct involving the erosion of the integrity of the court or judicial authority by:¹³

- Hindering access to it
- Deflecting applications that would be made to it
- Denying it knowledge of the relevant law
- Denying it the true circumstances of the case
- Impeding the free exercise of its jurisdiction and powers
- Impeding the powers of executing its decisions

Note: The course of justice begins with the commencement of proceedings before a court or competent judicial body.¹⁴ Generally, police investigations are not considered part of the 'course of justice', except where prosecution or disciplinary proceedings are 'imminent, probable or even possible.'¹⁵ An example of 'possible' is where a person engages in conduct in relation to a criminal investigation to prevent the commencement of a prosecution where a prosecution was possible (not merely hypothetical).

Corruption of any other kind

Corruption of any other kind concerns improper conduct connected with official duties that involves dishonesty or knowledge that the conduct is improper. This category is a catch-all for corrupt conduct that does not fit into the other categories but there may also be some overlap.¹⁶

Is the conduct perverting the course of justice?

Did the staff member of the agency engage in conduct that was:

- **'a deliberate act of dishonesty, breach of the law, or abuse of public trust or power** that undermines or is incompatible with the impartial exercise of an official's powers, authorities, duties or functions';¹⁷ or
- A **'moral impropriety** in, or in relation to, public administration'?¹⁸

Examples

- Unauthorised access to personal records may be corruption of any other kind if the staff member did not gain a benefit or cause a detriment by disclosing the information.
- Lying about work experience or qualifications in order to receive a promotion. While the staff member is seeking to gain a benefit for themselves, it might not be an abuse of office if they aren't using influence, exercising duties or using information obtained in their position as a public officer. However, their conduct is a deliberate act of dishonesty.
- Where a staff member forges their boss' signature on a decision minute because they disagree with the approach being taken. Such conduct might not be an abuse of office if they did not intend to gain a benefit or cause a detriment but it would be a deliberate act of dishonesty which is incompatible with the impartial exercise of an official's powers, authorities, duties or functions.

Learn more

For further information and resources, please visit www.aclei.gov.au

¹² Ibid 280 (Brennan and Toohey JJ).

¹³ Ibid.

¹⁴ Ibid 276 (Mason CJ).

¹⁵ Ibid 276–277.

¹⁶ It is not necessary for agencies to determine which category the corrupt conduct falls into.

¹⁷ LexisNexis, *Encyclopaedic Australian Legal Dictionary* (online at 15 March 2021) Corruption.

¹⁸ *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1, 32 (Gageler J).