National Anti-Corruption Commission

What is corrupt conduct?

There are 4 types of corrupt conduct under the NACC Act.

A person engages in corrupt conduct if they:

1. do something that **adversely affects a public official's honest or impartial exercise of powers** or performance of official duties. Any person can engage in this type of corrupt conduct, even if they are not a public official themselves
2. are a public official and they **breach public trust**
3. are a public official and they **abuse their office** as a public official
4. are a public official or former public official and they **misuse information** they have gained in their capacity as a public official.

A person also engages in corrupt conduct if they try or plan to do any of those things. Corrupt conduct by a public official may involve one or more types of corrupt conduct.

The following explanations and illustrations are for general information, and do not confine what the Commission may regard as corrupt conduct.

Breach of public trust

A public official engages in corrupt conduct if their conduct constitutes or involves a breach of public trust.

What is public trust?

Public officials are given powers to make decisions or do other things as part of their official roles.

For example, ministers are sometimes given powers under legislation to issue permits or licenses; other public officials have powers to enter into contracts involving the use of public money, or to grant applications for financial assistance. Each of these powers are granted to the public official 'on trust' for the Australian public. That means the power must be exercised for the purposes for which the power was granted, not for some other, improper purpose.

A public official can breach public trust even if they don't gain any advantage for themselves or someone else. The key element of a breach of public trust is the exercise of an official power other than honestly for the purpose for which it was conferred.

What if the decision maker goes against advice?

It is not a breach of public trust for a decision maker to disagree with the advice of other public officials about what is the right decision in a particular case, so long as the decision-maker exercises their power honestly for a proper purpose.

What if the decision is made for an improper purpose but still benefits the public?

This is still a breach of public trust, if the decision is not made honestly for a proper purpose, even if there is benefit to the public.

Abuse of office

A public official engages in corrupt conduct if they do something that constitutes, involves or is engaged in for the purpose of **abusing their office** as a public official.

A public official **abuses their office** if they:

- engage in **improper acts or omissions** in their **official capacity**, and
- **intend to gain a benefit** for themselves or another person, **or cause a detriment** to another person.

What is an improper act or omission?

Whether someone's action (or failure to do something) is improper will depend on the nature, scope and expectations of their official role and the general standards of conduct expected of public officials.

For example, an act (or failure to act) by a public official could be improper because it:

- involves an undeclared or unmanaged conflict of interest
- involves a misuse of information gained in their capacity as a public official
- breaches an applicable policy in their agency, the APS Code of Conduct, or another applicable rule.

What is a benefit or a detriment?

To commit an abuse of office, a public official must either intend to make something good happen for themselves or someone else (a benefit), or make something bad happen to someone else (a detriment).

Common examples of an abuse of office include financial benefits or detriments, such as:

- obtaining property or money for yourself or someone else
- depriving someone of their property or assets
- causing a significant cost to someone that would otherwise not have arisen.

Or they could be employment or job-related benefits or detriments, such as:

- using agency resources to further a personal business interest
- depriving a person of an employment opportunity.

The public official may still have abused their office even if they did not gain a personal benefit.

Misuse of information

A public official, or a person who has previously been a public official, can engage in corrupt conduct if they do something that constitutes or involves the misuse of information or documents that they have or had access to because of their role as a public official.

For example, a public official might misuse information if they:

- **access information** on their agency's IT system that they don't need to know to do their job
- **change or disclose official information** when they are not supposed to
- **sell classified information or documents** to a third party.

There is no need to show that a public official intended to gain a benefit or cause a detriment to another person through the misuse of the information, or to show that they acted dishonestly. It is enough to show that the public official acquired the information or documents in their official role, and that they misused the information.

Conduct that adversely affects the honesty or impartiality of a public official

Any person who does something to adversely affect a public official's honest and impartial exercise of their official functions, powers or duties, engages in corrupt conduct.

A member of the public can do something to adversely affect a public official's honesty and impartiality. Similarly, one public official can do something to adversely affect another public official's honesty and impartiality.

What if the public official doesn't actually go on to behave dishonestly or in a biased way?

A person's conduct could be corrupt if it has the potential to cause a public official to behave dishonestly or in a partial way, even if the public official does not actually end up behaving as the person intended.

For example, as a member of the public, you would engage in this type of corrupt conduct if you:

- offer a public official a bribe to make a decision that favours you, even if the public official doesn't actually take the bribe
- make plans to offer a public official a bribe
- pressure a friend who is a public official responsible for regulating your business, to give you inside information about how to bypass certain checks. This is corrupt conduct even if your friend has no intention of telling you anything that you could use to your advantage and never does.

A public official engages in this type of corrupt conduct if they:

- pressure another official who is the chair of a selection panel to promote someone even though other candidates are more suitable. The first official has tried to pressure the chair of the panel into acting in a dishonest and biased way, which amounts to corrupt conduct even if the chair of the panel resists the pressure and conducts the recruitment process according to the selection criteria.

Contact us

Please use our webform to make a report of corrupt conduct.

If in doubt about whether to refer a matter to the Commission, contact us.

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