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LEGAL PRACTICE



When does workplace bullying constitute corrupt conduct?

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The Crime and Corruption Commission (CCC) has published a paper examining when workplace bullying reaches the legal threshold to constitute corrupt conduct under the *Crime and Corruption Act* 2001.

What is corrupt conduct?

Corrupt conduct is a serious form of misconduct relevant to the public sector. It is not a criminal offence in itself and so does not attract criminal penalties, such as imprisonment. However, conduct which amounts to corrupt conduct can, in some circumstances, also amount to a criminal offence and be separately charged as such.

Corrupt conduct is defined in the *Crime and Corruption Act* 2001 as conduct concerning a "unit of public administration" and which:

1. adversely affects, or could adversely affect the performance of functions or the exercise of powers; and
2. results, or could result, in the performance of functions or the exercise of powers in a way that is:
   - not honest or is not impartial; or
   - involves a breach of the trust placed in a person holding an appointment; or
   - involves a misuse of information or material acquired in connection with the performance of functions or the exercise of powers; and
3. would if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.

Corrupt conduct is further defined to also include conduct that:

1. impairs, or could impair, public confidence in public administration; and
2. involves, or could involve, any of the following

1. collusive tendering;
2. fraud relating to an application for certain licences or permits;
3. dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment of public funds;
4. evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
5. fraudulently obtaining or retaining an appointment; and

3. would if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.

When does bullying amount to corrupt conduct?

The CCC has examined when workplace bullying in the public sector might amount to corrupt conduct. It notes that there must be a connection between the alleged conduct and the workplace to bring such conduct within the definition of corrupt conduct.

Allegations of workplace bullying against an officer who is senior to the complainant/victim, and who has supervisory responsibilities towards them, may amount to corrupt conduct given that a supervisor or manager is likely to have specific responsibilities vested in their position to protect staff they supervise from harm within the workplace.

The CCC has noted that workplace bullying involving officers at the same level would not usually amount to corrupt conduct, but it may do if the alleged conduct forms a pattern of behaviour intended to cause a detriment to an employee or to favour another employee.

Examples of workplace bullying

Common examples of workplace bullying include things such as:

1. humiliating or intimidating another employee where there is a power imbalance between the offender and the victim;
2. misusing one's authority or position as a senior employee or manager, including:
   - unfair rostering of an employee;
   - refusing to allow an employee to do warranted overtime;
   - unjustifiably placing an employee on a performance management plan; and
   - unreasonably denying professional development opportunities to an employee.

What are the penalties for corrupt conduct?

Corrupt conduct proceedings are dealt with in the Queensland Civil and Administrative Tribunal.

The *Crime and Corruption Act* 2001 sets out the penalties that can be imposed following a finding of corrupt conduct. The most common penalties are dismissal (termination of services), demotion or the imposition of a fine.

Get help from an employment lawyer

Investigations involving allegations of bullying in the public sector can be legally and factually complex and carry serious potential consequences.

If you are accused of workplace bullying or have been the victim of such conduct, you should obtain urgent specialist advice from us.

Further resources and information

Resources for government officers in relation to workplace bullying can be found at the WorkSafe Queensland website as well as the Human Rights Commission website.

Contacting Gilshenan &Luton

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.