

Criminal conduct inside your organisation

Legal information for community organisations

This fact sheet covers:

- ▶ what to do if you suspect that criminal conduct has occurred in your organisation, and
- ▶ examples of cases involving not-for-profit or charitable organisations



Disclaimer

This fact sheet provides general information about criminal conduct. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.



Caution

Criminal conduct is very serious. If your organisation is experiencing an emergency (for example, you believe someone to be in direct harm), call 000.

If no one is in imminent danger or harm, we recommend organisations take the steps outlined in this fact sheet.

What should you do?

If you suspect that criminal conduct is taking place in your organisation, or someone has alerted you to allegations of criminal conduct, **consider taking the following actions:**

- check your facts and investigate
- call the police
- call your insurer
- seek legal advice

These actions are discussed in more detail below.

The actions you take will depend on the circumstances.



Check your facts and investigate

It may be appropriate to take initial fact-finding steps or a preliminary review, such as reviewing relevant documents, securing and preserving evidence, checking policies and legal obligations and assessing immediate risk.

Consider policies in place – If the organisation has a policy (or procedure) which sets out to how to handle criminal conduct (such as a harassment policy or a whistle-blower policy) it's important that you review the policy and follow the appropriate steps for reporting and investigating a complaint made under the policy.

For example, if an employee reports criminal conduct, your organisation may need to protect the identity of the reporter and prevent any harm to the reporter from the organisation or other employees under a whistle-blower policy.

Such policies are put in place to ensure fair treatment and protection to all parties involved.

If there is a policy in place but it's not followed, those involved may raise concerns about:

- impartiality of the investigation
- privacy
- procedural fairness, or
- any combination of these things

The investigation

There is not a 'one size fits all' process in terms of the investigation necessary following alleged criminal misconduct. The investigation should be proportionate to the alleged conduct.

For example, in some instances it may be appropriate for an impartial party inside the organisation to carry out an investigation. However, in other instances, it may be necessary to engage an independent external party to carry out an investigation.

Factors to consider in determining whether an internal or external investigation is appropriate include:

- What does the policy provide for (if one exists)?
- How serious and complex are the allegations?
- Is there an internal person who is impartial and objective with the required training to carry out the investigation?
- What level is the employee who is being investigated? (ie. would it be more appropriate that an external person investigate the employee?)



Tips

- Avoid putting anyone at risk by going straight to the police if you think there is a risk of harm to anyone.
- Consider seeking legal or expert advice early.
- Ensure you have appropriate reporting channels in place. For example, who would someone tell if they saw something illegal or suspicious?
- Document concerns by making sure file notes are kept of conversations or incidents. Ask relevant people to write down in their own words what has happened and what they think that means.
- Investigate if records support suspicions. For example, do the financial statements indicate that there are funds missing without authorisation or reimbursement claims for inappropriate reasons?



Call the police

If the situation is an emergency, call 000.

Otherwise, call the Police Assistance number on 131 444.

Call your insurer

Your organisation may have fidelity or fraud insurance, or a directors' and officers' insurance policy which covers your organisation in this situation. If this is the case, read the policy carefully and notify your insurer immediately if you think it applies.

If you try to make a claim later and didn't notify the insurer when the incident occurred, you may not be covered.

Coverage under each insurance policy will depend on the terms and conditions of each policy. It's important to contact your insurer as soon as you can after learning of facts or circumstances which may give rise to a claim.

Often, insurance companies have a panel of lawyers to assist with specific legal issues and you may be referred to one of these for further help.



For more information, see our [guide to insurance and risk management](#).



Caution

It's important that you don't admit liability (responsibility) for a potential claim to anyone outside your organisation without first speaking with a lawyer (discussed below) and your insurer. If you make an admission which is not approved in advance by your insurer, your insurance cover may be refused.

Seek legal advice

Enlisting the assistance of lawyers early can help to ensure that the matter is handled appropriately and that any investigation complies with privacy obligations and procedural fairness requirements. Your lawyer can also confirm any obligations you have to report or notify matters to bodies such as the Australian Charities and Not-for-profits Commission (**ACNC**).

Charities registered with the ACNC are required to notify the ACNC if they think they have breached the *Australian Charities and Not-for-profits Commission Act 2012* or not complied with an ACNC Governance Standard or External Conduct Standard in a significant way, which includes serious breaches of the law. The ACNC may investigate. See the [ACNC website](#) for more information.

There may also be other obligations under other laws or that organisations have to other regulators (aside from the ACNC).

Informing others

Investigations about suspected criminal conduct should generally be handled with strict confidentiality.

The board or committee of management should be informed about suspected criminal conduct, depending on the expert advice you receive. Check this with your lawyer.

All staff or volunteers should generally **not** be told about an investigation to allegations or criminal conduct, as it may jeopardise the investigation and expose the organisation to legal risk. Again, check this with your lawyer.



Case examples

There are many different types of criminal conduct. They include:

- sexual harassment
- theft
- fraud, which could be either internal fraud committed by someone with or connected to the charity or organisation, or external fraud committed by someone with no connection to the organisation
- threats of violence, stalking or harassment

The case examples below involve financial fraud.



Example 1 – finance manager guilty of fraud

Ms Mooney was employed as the finance manager at not-for-profit organisation Transport Industries Skills Centre Inc (**Centre**). While the Centre's payroll processing software required two signatures from authorised persons, Mooney had access to the CEO's security USB, as well as his e-signature (for emailing purposes). She used these and a company credit card to fraudulently authorise overpayments to herself and finance an unauthorised loan agreement for a motor vehicle.

While all personnel were required to submit receipts that established proper use of the credit card for all payments, the Centre's software pooled all credit card expenditure into a single account, making it hard to establish the legitimacy of individual transactions.

Nonetheless, Mooney was convicted of offences relating to the misappropriation of funds (which exceeded a total of \$157,000 over four years) and sentenced to three years imprisonment.

R v Mooney [2017] ACTSC 358



Example 2 – audit reveals history of fraud

In this case, the offender was the chief financial officer of the Canberra Police Community Youth Club (**CPCYC**), a not-for-profit organisation that facilitated interaction between police officers and young people. As CFO, the offender managed all accounts held by the CPCYC, most of which she was authorised to do on her own and without the need for a second signature.

In 2015 (some four years after the offender's employment at CPCYC) an investigation of the accounts of CPCYC highlighted the existence of overdue reminders, letters of demand and some suspended and cancelled accounts. A more detailed investigation and a subsequent police investigation revealed the nature and extent of the offender's illegal transactions, which included the transfer of funds from the CPCYC into her own account, the deposit of cheques into her own account, and withdrawal of money from ATM's using the CPCYC account. Each of these appropriations were done without the permission of her employer, and amounted to a total of \$406,875. The Court was of the view that these transactions were made in pursuit of satisfying the offender's gambling addiction.

Although the systems of CPCYC in relation to monitoring the company's financial position were not really considered in this case, it's clear there are some similarities between this case and that of Mooney (above). In particular, the offender was largely given free-rein when it came to the authorisation of most transactions, without the requirement for approval of a second person of authority.

The Court imposed a sentence of three years, which was to be suspended after a period of 15 months.

R v NQ [2017] ACTSC 317



Example 3 – funder uncovers fraud

Mr Matcham was the CEO of Katungul Aboriginal Corporation Community and Medical Services (**Katungul**), a not-for-profit Aboriginal owned and controlled entity.

Over a period, a Katungul board member questioned Mr Matcham at board meetings about his concerns regarding Katungul's position, its finances and other issues concerning the quality of the services it was providing.

A funder of Katungul, the Commonwealth Office of Aboriginal and Torres Strait Islander Health conducted an audit of Katungul's financial records based on these concerns. It was discovered that Mr Matcham had made unauthorised payments to himself (totalling more than \$700,000).

The finance manager hadn't checked the accuracy of hours Mr Matcham recorded in his timesheets (which, at one point, indicated that he was working over 24 hours per day).

The Court found Mr Matcham abused his position of trust by obtaining large payments to which he was not entitled, and which were acquired for his personal use. Given the payments were authorised by him over a period of four years, the Court was also satisfied that he knew he was not entitled to the payments without board approval. The unauthorised payments obtained by Mr Matcham contributed to Katungul's parlous financial position, depriving the Indigenous community of health care services.

The Court ordered that Mr Matcham:

- pay back Katungul in the amount of \$705,905.07
- be disqualified from managing Aboriginal and Torres Strait Islander corporations for a period of 15 years, and
- pay the Commonwealth a penalty of \$500,000

Registrar of Aboriginal and Torres Strait Islander Corporations v Matcham (No 2) [2014] FCA 27



Example 4 – principal officer of two NGOs involved in fraud

Ms Sharobeem, was the principal officer of the Immigrant Women's Health Service (**IWHS**) and the person in day-to-day charge of Non-English Speaking Housing Women's Scheme Inc (**NESH**), both not-for-profit entities.

IWHS' auditor reported concerns about Sharobeem's conduct to the South Western Sydney Local Health District (**SWSLHD**), a public authority that funded IWHS. SWSLHD reported this to NSW Independent Commission Against Corruption (**ICAC**).

ICAC's investigation found that Sharobeem improperly exercised her official function at IWHS and NESH to misuse up to \$773,000 of public funds to benefit herself and members of her family. It was alleged Sharobeem claimed and authorised reimbursement from IWHS and NESH for non-work related expenses such as refurbishment work on her property and liposuction for her son. It was also found that she used IWHS and NESH credit cards for personal expenses such as purchasing a Mercedes car and a massage chair.

Due to the limited funding received by both organisations, the misuse of funds represented a substantial amount of public funds given to those organisations for public purposes.

ICAC found that Sharobeem engaged in 24 serious corrupt conduct findings and recommended the Director of Public Prosecutions advise on her prosecution.

Investigation into the conduct of a principal officer of two non-government organisations and others (2018).



Example 5 – misuse of funds and failure to properly investigate and report

The NSW State Government conducted an independent inquiry into the RSL NSW Branch, RSL Welfare and Benevolent Institution and RSL LifeCare.

The inquiry heard evidence of a range of misconduct, including that the former President of RSL NSW, Mr Donald Rowe, misused funds – he spent over \$465,000 on his RSL credit card over a period of five years, covering payments such as mortgage repayments and flights for family members, and allowed his son to stay, rent-free, in RSL-owned accommodation for seven years.

When the RSL NSW State Council became aware of Rowe's misuse of funds, it failed to properly investigate and did not report the allegations to the police. Instead, the State Council provided Rowe with the option of resigning rather than undergoing an investigation. When Rowe resigned, the State Council made misleading statements regarding the circumstances of the resignation by indicating that it was due to health reasons.

In response to the report, RSL NSW and RSL LifeCare took steps to address the governance failures, including specified measures to demonstrate improved governance, transparency and financial management, and to take on enforcement undertakings for a three year period.

Report of the Inquiry under the Charitable Fundraising Act 1991 into The Returned and Services League of Australia (New South Wales Branch), RSL Welfare and Benevolent Institution, RSL LifeCare Limited, January 2018