

DPC Corrupt Conduct Policy

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1 Purpose

The objective of this policy is to:

- explain what to do if you want to make a complaint which you think may involve 'corrupt conduct' as defined in s.15 of the *Crime and Corruption Act 2001* (CC Act)
- set out how the Department of the Premier and Cabinet (DPC) will deal with a complaint or allegation that may involve 'corrupt conduct' including a complaint involving corrupt conduct against a Director-General.

This policy should be read in conjunction with the DPC Complaint Management Policy.

2 What is corrupt conduct?

Corrupt conduct is defined in the CC Act¹ as the conduct of a person (regardless of whether the person holds or held an appointment) that fulfils **each** of the following elements:

[A] Adversely affects, or could adversely affect, directly or indirectly, the performance of functions, or the exercise of powers of a unit of public administration (UPA)² or a person holding an appointment in a UPA

[B] Results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph [A] 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, either knowingly or recklessly; or 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

[C] Is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person

[D] Would, if proved, be a criminal offence; or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

¹ Section 15(1) see also ss 14, 16, 17 and 18.

² Section 20 of the CC Act. DPC is a UPA.

Without limiting the definition of **corrupt conduct** above, the CC Act provides that conduct that involves any of the following **could** be corrupt conduct³ —

abuse of public office, bribery, including bribery relating to an election, extortion, obtaining or offering a secret commission, fraud, stealing, forgery, perverting the course of justice, an offence relating to an electoral donation, loss of revenue of the State, sedition, homicide, serious assault or assault occasioning bodily harm or grievous bodily harm, obtaining a financial benefit from procuring prostitution or from unlawful prostitution engaged in by another person, illegal drug trafficking and illegal gambling.

Common examples of corrupt conduct could include:

- engaging in fraud and/or forgery to obtain a certain outcome e.g. manipulating timesheets to accumulate accrued hours not worked i.e. ‘fraud’
- stealing from the department, such as office supplies, laptops or portable and attractive items without returning them to the department i.e. ‘theft’
- accessing and/or disclosing official, confidential or personal information for own benefit, for a family member or for third parties i.e. ‘unauthorised release of information’
- engaging in preferential treatment of certain suppliers of goods or services to the department in return for a monetary consideration or other benefit from the supplier to you and/or your family members i.e. ‘obtaining a secret commission’
- hiring or promoting a family member or staff member to a role they are not qualified for, regardless of merit i.e. ‘nepotism’.

Conduct is defined in the CC Act⁴ to include —

neglect, failure and inaction; and conspiracy to engage in conduct; and attempt to engage in conduct.

For the purpose of this policy a **complaint** includes an allegation or information or matter.⁵

Amendments that will expand the definition of ‘corrupt conduct’ have been passed by the Parliament (*Crime and Corruption and Other Legislation Amendment Act 2018*, section 5) and are likely to commence in early 2019. This policy will be updated when that happens.

3 Other misconduct

Corrupt conduct under the CC Act is not the same as misconduct under the *Public Service Act 2008*, although they do share some attributes; therefore not all misconduct will amount to corrupt conduct under the CC Act.

Misconduct encompasses any inappropriate or improper conduct relating to an officer’s duties; OR any private act by an officer that reflects seriously and adversely on the public service. Misconduct may not warrant dismissal or criminal charges, and therefore has a lower threshold than corrupt conduct.

For example, if an officer insults a client or a customer, the conduct would not be considered corrupt as it is neither a criminal offence nor serious enough to warrant dismissal, but is inappropriate and reflects adversely on the department. However, if the officer were to physically assault the client (criminal offence) or the officer escalates the situation by passing confidential information about the client to a third party (grounds for dismissal) the matter may be considered corrupt conduct.

³ Section 15(2) of the CC Act.

⁴ Section 14 of the CC Act.

⁵ Section 48(4) CC of the CC Act.

4 Reasonable suspicion

In accordance with section 38 of the CC Act, notification must be made to the CCC if there is 'reasonable suspicion' of corrupt conduct. For a suspicion to be 'reasonable', there needs to be more than bare or idle speculation.

In essence, there must be some evidence sufficient for a reasonable person to suspect corrupt conduct. For example, the available facts, evidence or other information must suggest that the allegation, if proven, would amount to corrupt conduct.

This 'reasonable suspicion' is the trigger point for how a suspected corrupt conduct matter is to be dealt with by the department, or referred to the CCC pursuant to section 38 of the CC Act.

5 Reporting corrupt conduct

All persons⁶ have an obligation to report any suspicions or allegations of corrupt conduct on the part of any persons working for the department. There does not need to be a formal complaint from an aggrieved person to make a report.

You can report corrupt conduct to:

- the Deputy Director-General, Corporate and Government Services (as the DPC CCC Liaison Officer)
- any DPC employee, who must immediately refer any complaint which may involve corrupt conduct to DPC's CCC Liaison Officer
- the Director-General, or other senior staff member
- directly to the (CCC) see www.ccc.qld.gov.au/corruption/report-corruption

Suspicions or allegations of corrupt conduct may also be made to the Queensland Police Service, the Queensland Audit Office, or the relevant Minister.

It is important to report any suspicions of corrupt conduct as early as possible, to enable the department to prevent escalation of corrupt conduct or cause greater harm to DPC's finances, service delivery or reputation. Also, it will enable the department to identify any 'red flags' or early warning signs of any other corrupt conduct activity. You may come across the following, as examples, of possible 'red flags' or early warning signs of corrupt conduct activity:

- goods or services procured through the same supplier on a number of occasions with no clear reasons or justification, especially if the individual involved in the procurement and the supplier are friends, family or have had a previous professional relationship
- unusual trends start to appear in the spend pattern of a staff member with a corporate credit card and no clear explanation for the spend (it may start with small value items and start to increase in value over time)
- staff members 'bragging' to other staff or to anybody outside of the department about getting away with things.

Section 3.6 of Appendix A of this policy sets out the types of information that may be useful in the reporting of a suspicion of corrupt conduct, but the unavailability of this information should not preclude an officer from reporting a suspicion.

Please see the DPC Complaint Management Policy on how to make a complaint to DPC, including a suspicion or allegation of corrupt conduct.

⁶ **Persons** means departmental officers whether permanent, temporary, full-time, part-time or casual and any contractor, consultant, volunteer or anyone else who works in any other capacity for the department.

5.1 Duty to make and keep a record of a decision to not refer an allegation of corrupt conduct to the CCC

New section 40A of the CC Act (which commenced in November 2018) requires units of public administration like DPC to prepare and retain complete and accurate records of any decision to not notify the CCC of an allegation of corrupt conduct. Details to be recorded are: (i) the details of the complaint or matter; (ii) the evidence relied on when making the decision to not refer; and (iii) and other reasons for the decision. The Office of the General Manager, Government Services in DPC is available to provide advice about how best to record decision making.

6 DPC's procedure for dealing with corrupt conduct

6.1 CCC and DPC joint responsibility

Under the CC Act, complaints about corrupt conduct where the alleged corrupt conduct is serious or systemic are generally dealt with directly by the CCC. The table provided in Appendix A sets out thresholds for these complaints. Complaints about corrupt conduct that do not meet this threshold are managed by DPC. For further clarification, see Appendix A.

6.2 DPC's role

Under the CC Act the Director-General of DPC has responsibilities in relation to complaints about corrupt conduct. The Director-General's responsibilities in this regard are delegated to DPC's CCC Liaison Officer, the Deputy Director-General, Corporate and Government Services who must:

- **notify** the CCC of a complaint which DPC's CCC Liaison Officer **reasonably suspects** involves, or may involve, corrupt conduct.⁷
- **deal with** complaints which may involve corrupt conduct referred to DPC by the CCC, in the way DPC's CCC Liaison Officer considers most appropriate, subject to directions given by the CCC⁸ and within the timeframes set out in DPC's Complaint Management Policy.

*To **deal with** a complaint involving corruption, is defined under the CC Act⁹ to include—

- investigate the complaint, information or matter
- gather evidence for prosecutions for offences or disciplinary proceedings
- refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding
- start a disciplinary proceeding
- take other action, including managerial action, to address the complaint appropriately.
- **report to the CCC** about DPC investigations involving corrupt conduct in the way and at the times the CCC directs.¹⁰

6.3 Other guidance

DPC's CCC Liaison Officer's responsibilities in section 6.2 above are subject to the latest direction from CCC to DPC made under s.40 of the CC Act (s.40 Direction). The s.40 Direction (see **Appendix A**) sets out the categories of corrupt conduct which DPC:

- does and does not need to notify to the CCC
- must 'deal with'
- what information must be recorded and included in notifications to the CCC about each matter.

⁷ Sections 38 and 40 of the CC Act.

⁸ Sections 40, 43, 44, 46(2) (b) and (f) and 48(1) (c) (ii) of the CC Act.

⁹ Schedule 2 of the CC Act.

¹⁰ Sections 40 and 48(1) (c) of the CC Act.

When handling a complaint which may involve corrupt conduct, guidance should be sought from the CCC's guide, *Corruption in Focus*,¹¹ which provides practical advice on meeting DPC's obligations under the CC Act.

To ensure that staff are aware of their responsibilities and options, the departmental intranet provides information on all policies and procedures, alongside links to further information on external sites. Specific Fraud and Corruption Control training and periodic staff awareness exercises are also provided.

7 Complaints about the Director-General (s.48A of the CC Act)

This policy nominates the Deputy Director-General, Corporate and Government Services as the Nominated Person under the CC Act to handle complaints which may involve corrupt conduct on the part of a Director-General.¹²

If the Nominated Person **reasonably suspects** a complaint may involve corrupt conduct on the part of the Director-General, the Nominated Person has the same responsibilities as the Director-General under the CC.

Act in respect of complaints received which may involve corrupt conduct (see section 6.2 of this policy).¹³

The DPC CCC Liaison Officer is to keep the CCC and the Nominated Person informed of:

- the contact details for the Director-General and the Nominated Person
- any proposed changes to this policy in respect of how it will handle an allegation that may involve corrupt conduct on the part of the Director-General.

8 Complaint about corrupt conduct may also be a public interest disclosure

When a public officer makes an allegation about the conduct of another person which would, if proved, be corrupt conduct, it may also be a public interest disclosure under the *Public Interest Disclosure Act 2010*¹⁴ and the discloser will be entitled to certain protections. See the *DPC Public Interest Disclosure Procedure* for guidance.

9 Record keeping

DPC officers and others (such as external investigators) involved in dealing with a complaint which may involve corrupt conduct must record the details identified in the s.40 Direction (**Appendix A**) about each complaint. Recordkeeping in accordance with this section supports effective notification of complaints to the CCC and allows matters to be easily monitored and audited by the CCC.

10 Approval and review

The CCC Liaison Officer is responsible for the preparation, review and maintenance of this document. It will be reviewed annually, unless circumstances dictate that a review should be undertaken sooner to ensure that the contents accord with relevant legislation and standards.

This policy was initially approved by the Chief Operating Officer on 2 February 2015. Further revisions have been made in response to the CCC Audit into Public Sector Corrupt Conduct Compliance in April 2016. The CCC endorsed DPC's policy on 20 May 2016. It was approved by the Deputy Director-General, Corporate and Government Services on 16 June 2016.

¹¹ See www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus

¹² Section 48A of the CC Act.

¹³ Sections 48A (3) CC Act.

¹⁴ Section 13(1) of the *Public Interest Disclosure Act 2010*. See section 7 of the *Public Interest Disclosure Act 2010* for the meaning of public officer which include an employee, member or officer of the entity.

Appendix A: Directions issued by the Crime and Corruption Commission pursuant to section 40 of the Crime and Corruption Act 2001

1 Preamble

The Director-General or the nominated officer of the Department of the Premier and Cabinet (DPC) is the relevant public official for the purposes of sections 38, 40 and 48A of the *Crime and Corruption Act 2001* (CCA).

A public official must notify the Crime and Corruption Commission (CCC) of a complaint or information or matter which the public official reasonably suspects involves, or may involve, corrupt conduct pursuant to section 38 of the CCA.

'Corrupt conduct' is conduct that could adversely affect, directly or indirectly, the performance of official duties. The conduct must be of a kind that could result, directly or indirectly, in the improper performance of those duties. Also the conduct must be engaged in for the purpose of providing a benefit, or causing a detriment, to a person. Finally, the conduct must be such that it would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for dismissal (s15 of CCA).

Section 40 of the CCA provides that the CCC may issue directions about how and when a public official must notify the CCC of complaints under section 38.

The CCC has decided to issue directions under section 40 in relation to three categories. The CCC has determined two categories are appropriate to be dealt with by the agency, prior to notifying the CCC. All other complaints must be immediately referred to the CCC prior to the agency dealing with the complaint. The categories of complaints are set out in the following table.

This document also sets out the agreed administrative arrangements between the CCC and DPC in relation to directions issued in accordance with section 40 of the CCA, and must be read in conjunction with:

- *Corruption in Focus*: The CCC's guide for dealing with suspected corrupt conduct in Queensland public sector agencies issued by the CCC
- any other guidelines under section 48(1)(a) of the Act issued by the CCC
- any report generated by the CCC, and referred to the agency, in which it explains the assessment and the requirements of the agency for individual complaints.

2 General Instructions

- 2.1 Should the Director-General require an urgent CCC assessment of a complaint, initial notification may be made by telephone to an appropriate CCC officer.
- 2.2 These directions do not prevent the Director-General notifying the CCC of any complaint by way of a letter, email or facsimile transmission at any time.
- 2.3 If, in the course of dealing with a complaint pursuant to section 40 directions, conduct is revealed which falls within the **Level 1** category, the Director-General must cease any action in relation to the matter and immediately notify the CCC. (See reporting obligations for **Level 1**)

3 Administrative arrangements

- 3.1 Level 2 complaints must be notified to the CCC via a section 30 schedule (the schedule). The schedule must be provided by DPC to the CCC at the conclusion of each calendar month and must be in the format prescribed by the CCC (as below).
- 3.2 The schedule must list all Level 2 complaints in the preceding period and must include, at a minimum and where known, the data identified at 3.6.1 to 3.6.7 for each complaint.

- 3.3 Subject to section 48 the CCC will advise DPC within five working days of receipt of the schedule of any complaint on the schedule about which it:
- requires further information
 - wishes to monitor by way of a review
 - wishes to assume responsibility.
- 3.4 DPC will nominate an officer designated as the CCC Liaison Officer to deal with inquiries from the CCC in relation to notifications of complaints and the monitoring of complaints and any other matters involving the CCC and DPC. This will enable the CCC to expedite matters relating to complaints.
- 3.5 The CCC will provide contact details of a CCC officer designated to deal with any inquiries from DPC in relation to matters relating to complaints.
- 3.6 Any matter a 'unit of public administration' deals with may be subject to monitoring, including audits, by the CCC. The agency must have systems in place to record these matters so they may be easily identified for the purpose of auditing by the CCC. Any system the agency implements must facilitate the recording of details as identified in the schedule requirements and must support the provision of investigative material or documents to the CCC. As a guide, an agency's system must be able to record the following:
- 3.6.1 The name of the complainant and/or informant and/or whistleblower
 - 3.6.2 The name of the alleged victim if he or she is not the complainant and/or informant and/or whistleblower
 - 3.6.3 The age of the alleged victim
 - 3.6.4 The name of the subject officer(s)
 - 3.6.5 The position held by the subject officer(s), and/or the details of the relevant Business Unit and/or District
 - 3.6.6 A précis of the complaint, including, where applicable the date and location of the alleged incident, the value of any property and the value of any detriment or loss incurred
 - 3.6.7 The action being taken by the agency at the time of referral to the CCC or advice as to the outcome of the matter
 - 3.6.8 The assessment and distillation of allegations
 - 3.6.9 Relevant policies and procedures
 - 3.6.10 The process used to deal with the matter
 - 3.6.11 Terms of reference (if appropriate)
 - 3.6.12 Evidence gathered including record of interviews, CCTV footage, photographs, documents etc
 - 3.6.13 Correspondence/notifications to complainants, subject officers and witnesses
 - 3.6.14 Investigation report or other document in which findings were made
 - 3.6.15 Decisions made by a delegated officer regarding disciplinary outcomes
 - 3.6.16 The outcome of any identified corruption risk activities
 - 3.6.17 Outcome advice correspondence to relevant parties.
- 3.7 After first giving DPC a reasonable opportunity to address any issues of concern, the CCC can terminate this agreement unilaterally if it is dissatisfied with compliance by DPC with its obligations under the Act, the section 40 directions or the administrative arrangements.
- 3.8 This direction came into effect on 13 October 2014.

Level	Conduct type	Reporting obligation
1	<ul style="list-style-type: none"> • involves an allegation of corrupt conduct against a Director-General or another senior executive level officer or a public officer in a prominent and/or sensitive position • involves an allegation of corrupt conduct against an elected official • is one concerning conduct about which the CCC has notified the public official is of a type of a particular interest to it • raises suspicion of serious systemic concerns, and involves an allegation of 'professional misconduct', which is either <ul style="list-style-type: none"> ○ a course of conduct involving repeated and/or wilful behaviour that undermines the trust placed in the person by virtue of their position; or ○ a single incident of behaviour indicating a callous disregard for, or reckless indifference to, the exercise of skills or the performance of the duties or activities of the subject officer, or • an offence relating to corruption or abuse of office in chapter 13 of the Criminal Code (CC), including an allegation of an offence of corruption (s87), extortion by public officers (s88), abuse of office (s92), misconduct in relation to public office (s92A), or • an offence relating to receiving, soliciting, gifting or offering secret commissions in chapter 42A of the CC, or • an offence relating to the administration of justice as contained in chapter 16 of the CC, including an offence or attempt to pervert the course of justice (s140O), or official corruption (s121), or perjury (s123), or fabricating evidence (s126), or corruption of witnesses (s127), or damaging evidence with intent (s129), or conspiring to bring false accusations (s131), or • an offence relating to the executive and the legislative assembly contained in chapter 8 of the CC, including an offence of false evidence before Parliament (s57), or a member of parliament receiving bribes (s59) or bribery of a member of parliament (s60), or • an offence under Chapter 5 of the CCA, including injury or detriment to witness (s211), victimisation (s212), secrecy (s213) and a person making a frivolous or vexatious complaint (s216), or counselling or procuring a person to make a frivolous or vexatious complaint, or • involves an allegation of an offence under the <i>Drugs Misuse Act 1986</i> of trafficking in dangerous drugs (s5), supplying dangerous drugs (s6), producing dangerous drugs (s8), or permitting use of place (s11), or • an offence relating to property and public monies in Part 6 of the CC and maladministration where the value exceeds \$20,000, or • use of force exercised in the course of performing official duties which has caused or may cause a serious injury and which could lead to a charge of unlawful wounding (s323) or doing grievous bodily harm (s320) in Chapter 29 or the CC, or • in the course of performing official duties, an offence occurring at a custodial or health facility that could involve life-threatening injuries or sexual assault as contained in Chapter 32 of the CC, or 	<p>These matters are to be reported to the CCC without unreasonable delay. The public official may notify the CCC of the complaint by way of:</p> <ul style="list-style-type: none"> • letter, • email, or • facsimile transmission <p>The public official must take no other action in relation to the complaint other than that which is required to 1) maintain the integrity of any possible evidence, 2) implement public interest disclosure protection or 3) meet another statutory obligation under another act, including the referral of criminal conduct/allegations to the Queensland Police Service.</p> <p>The public official may commence dealing with a matter notwithstanding its inclusion in this direction once 14 days has lapsed since the complaint was first provided to the CCC.</p> <p>When reporting these matters to the CCC, the public official must include the data as identified in the administrative arrangements from 3.6.1 to 3.6.7.</p>

<p>1</p>	<ul style="list-style-type: none"> • an offence of reprisal or a breach of confidentiality under s41 and s65 respectively or the <i>Public Interest Disclosure Act 2010</i>, or • the conduct of an employee of an agency that results in a child or vulnerable person being placed at imminent risk of abuse or neglect (e.g. prisoner, detainee, health patient), or • involves an allegation of a deliberate failure to comply with section 38 of the CCA, or • the public official reasonably considers that the public interest requires that the matter be referred in the first instance to the CCC, or • a complaint concerning an officer who has a significant complaints history, or • is already or likely to be the subject of significant media attention. 	
<p>2</p>	<p>A complaint of corrupt conduct that does not meet any of the ‘conduct types’ as identifies in Level 1, but involves:</p> <ul style="list-style-type: none"> • Repeated behaviour of a similar nature (e.g. conduct that has been occurring for a significant period of time) • Fraud or misappropriation over \$5000 • A substantial injury • A senior officer or supervisor failing to report or deal with corrupt conduct, or • Potential systemic concerns 	<p>The public official can commence dealing with these matters immediately and notify the CCC by way of a monthly schedule.</p> <p>The schedule must include the data as identified in the administrative arrangements from 3.6.1 to 3.6.7.</p>
<p>3</p>	<p>All other matters the public official reasonably suspects involves, or may involve, corrupt conduct.</p>	<p>These matters are not required to be reported to the CCC. The public official can commence dealing with these matters immediately. These matters will be subject to the CCC’s auditing program.</p> <p>The CCC requires the agency to maintain a complaints system and relevant data as described in the administrative arrangements at 3.6.1 to 3.6.7 for the purpose of auditing.</p>