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Office of the  
Director-General

Department of  
Education

Ms Leanne Linard MP  
Chair  
Education, Employment and Industrial Relations Committee  
Parliament of Queensland  
Email: [eesbc@parliament.qld.gov.au](mailto:eesbc@parliament.qld.gov.au)

Dear Ms Linard

I refer to the email from Ms Erin Jameson, A/Committee Secretary dated 13 August 2020, regarding issues raised in correspondence from the Local Government Association of Queensland (LGAQ) about the interplay between the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 (the Bill) currently being considered by the Education, Employment and Small Business Committee (the Committee) and the *Crime and Corruption Act 2001* (CC Act).

The Department of Education – Office of Industrial Relations (the department) has considered the issues raised by the LGAQ and notes that some offences under the Criminal Code, in particular fraud under section 408C, already have application to wage theft related conduct. The department can confirm that the Bill does not amend the CC Act and the amendments are not intended to change reporting requirements relating to corrupt conduct.

The department notes that the CC Act at section 38 requires complaints to be referred to the Crime and Corruption Commission (CCC) 'if a public official reasonably suspects that a complaint ... involves, or may involve, corrupt conduct'. Chapter 2 of the CCC guide, *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector*, expands on this, explaining at page 2.1 that "[f]or a suspicion to be 'reasonable' ... there must be some evidence sufficient for a reasonable person to suspect corrupt conduct" and that "[r]easonable suspicion must be based on an objective assessment of the information at hand". A copy of the CCC guide is enclosed.

The department notes the LGAQ's suggestion that the Committee recommend the use of the CCC's power under section 40 of the CC Act to issue directions about referral of wage theft complaints. The exercise of this discretionary power is a matter for the CCC.

Should you have any further queries, I invite you to contact Mr Tony James, Acting Deputy Director-General, Industrial Relations, on [REDACTED].

I trust this advice is of assistance to the Committee.

Yours sincerely

TONY COOK  
Director-General

Enc.

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Crime and Corruption Commission  
QUEENSLAND

# Corruption in focus

**A guide to dealing with  
corrupt conduct in the  
Queensland public sector**

January 2020









# Corruption in focus

A guide to dealing with corrupt conduct  
in the Queensland public sector



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# Introduction

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## The purpose of the *Crime and Corruption Act 2001*

The main purposes of the *Crime and Corruption Act 2001* (CC Act) are to:

- combat and reduce the incidence of major crime
- continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.

To achieve these purposes, the CC Act establishes the Crime and Corruption Commission (CCC). In relation to corruption, the CCC has the following functions:

- to raise standards of integrity and conduct in the public sector
- to ensure complaints about corruption are dealt with appropriately
- to deal with conduct that may allow, encourage or cause corrupt conduct, or be connected with corrupt conduct
- to investigate whether corrupt conduct, or conduct that may allow, encourage or cause corrupt conduct or be connected with corrupt conduct, may have happened, may be happening or may happen.

In performing its functions, the CCC is subject to monitoring and review by the Parliamentary Crime and Corruption Committee.

## Working with units of public administration

The CC Act does not put sole responsibility for preventing and dealing with corruption onto the CCC. It recognises that reducing corruption must be core business for all public sector agencies, including the Queensland Police Service.

As a public official, you are responsible for managing your agency under any governing legislation, which includes preventing and dealing with any inappropriate behaviour on the part of your staff. Your responsibility in this area is reinforced by the CC Act. While the CC Act recognises that action to prevent and deal with corruption in a unit of public administration (UPA) should generally happen within that unit, it obliges you to notify all cases of suspected corruption to the CCC first to ensure that all corruption is dealt with consistently. At the same time, the CCC focuses on more serious or systemic cases of corrupt conduct.

These guidelines are designed to help you recognise precisely when you need to notify the CCC, and to decide the best way of dealing with complaints that are referred to you by the CCC. They also give practical advice about conducting an investigation, and explain the CCC's monitoring role.

## Scope and limitations of this guide

The jurisdiction of the CCC is diverse, encompassing suspected corrupt conduct affecting:

- departments and statutory bodies
- universities
- local government
- courts, tribunals and boards (including jurisdiction over judicial officers where they are acting as members of decision-making bodies in UPAs)
- prisons

- state and local politicians (only where the corrupt conduct would, if proven, amount to a criminal offence).

As this guide has been designed to be used throughout the public sector, it is necessarily generic. With the exception of chapter 4, which looks specifically at local government, it does not provide advice on legislation or rules that might be specific to a particular UPA.

It does, however, provide practical advice on:

- meeting your obligations under the CC Act
- conducting an investigation
- maintaining the integrity of the complaints process
- ensuring confidentiality and fairness during the process
- preventing corrupt conduct.

## Terminology

A glossary of relevant terms is provided at the end of this guide. However, the following terms are defined here for you, as an understanding of them is vital to comprehending the information in this guide.

### Complaint

For the purposes of this guide, complaint means not only a formal complaint, but also—

- “information” that might be received through such means as routine agency audits, media articles, Crime Stoppers or the CCC’s intelligence activities or sources
- “matter” that might be received through such means as court proceedings, or referrals from the Coroner or a public inquiry.

### Corruption

Corruption and corrupt conduct are not the same thing under the CC Act. Corruption includes both corrupt conduct (see chapter 1) and police misconduct, but for the purposes of this guide, the focus is on corrupt conduct.

### Public official

Means—

- the ombudsman
- the chief executive officer of a UPA, including the commissioner of police  
or
- a person who constitutes a corporate entity that is a UPA.

## Structure of this guide

### Information for CEOs and managers

This section comprises four chapters dealing with the relationship between public officials and the CCC.

- Chapter 1 describes what corrupt conduct is, and what the CCC’s role is in relation to it. It differentiates between corrupt conduct and other misconduct, and provides scenarios to help you do the same.
- Chapter 2 describes your obligations in relation to corrupt conduct. It explains the concept of “reasonable suspicion”, and takes you through how, when and what to notify the CCC. It also



explains your obligation to record any decision you make to not notify the CCC about alleged corrupt conduct.

- Chapter 3 provides guidance on what happens when complaints are referred to you by the CCC to deal with, including what action you can take, choosing an investigator, the CCC's monitoring role, and how to report back to the CCC.
- Chapter 4 provides specific additional advice for local government CEOs, who must also consider the requirements of the *Local Government Act 2009* about the roles of the chief executive officer, mayor and councillors, and the closeness of the interaction between the community, government and management. Mayors and councillors should also find this chapter useful in helping them understand the obligations placed on their council's CEO, especially the obligation to notify the CCC about corrupt conduct.

## Information for CEOs, managers and investigators

This section outlines several key issues that need to be considered by anyone in your UPA involved in dealing with complaints about corrupt conduct.

- Chapter 5 discusses the issues surrounding:
  - confidentiality
  - public interest disclosures
  - conflicts of interest
  - procedural fairness.

It also provides advice on managing the impact of an investigation on the workplace, regardless of whether the investigation is being conducted internally, or by the CCC.

## Information for investigators

This section comprises five chapters dealing with how to conduct an investigation into corrupt conduct.

- Chapter 6 provides guidance on how to plan an investigation and ensure that you have sufficient authority to undertake the tasks that are needed.
- Chapter 7 describes the different types of evidence that you might need to collect, how to gather evidence, and the rules of evidence and standards of proof.
- Chapter 8 deals specifically with conducting interviews, including developing questions, evaluating an interview, and alternatives to face-to-face interviews.
- Chapter 9 deals with analysing the evidence collected, preparing the final report and closing the investigation.
- Chapter 10 describes the methods you can use when an investigation goes off track, including where evidence is lost, information is leaked, or conflicts of interest emerge during the course of the investigation.

Many of the principles outlined in these investigation chapters may also apply to investigations you need to conduct that do not relate to corrupt conduct, although some of the stricter recommendations might be excessive in certain circumstances. For example, the requirement to electronically record all interviews with witnesses might be relaxed in less serious cases where notes of interviews may suffice. Similarly, in less serious cases, it is not necessary to be so strict about the perceived independence of the investigator, especially if it is not practical to appoint someone from a different work unit. These decisions will need to be made on a case-by-case basis, balancing the nature and seriousness of the allegations with practicalities such as cost.

## Prevention

While most of this guide is concerned with what must be done where there is a reasonable suspicion of corrupt conduct, this section applies a more proactive perspective.

- Chapter 11 gives practical advice to help UPAs take advantage of opportunities to prevent, or at least minimise, corrupt conduct in the workplace. It does not attempt to cover the full range of strategies needed to build UPA resistance to fraud and corruption, but outlines how prevention activities for the future might be initiated as a result of an investigation or complaint.

## Internal complaints management systems

This guide assumes that your UPA has an established system, as part of a human rights-focused framework, to record complaints about service delivery and staffing matters, as is mandatory under the *Public Service Act 2008* (see section 219A). This system should incorporate a process to capture, categorise and refer immediately to you any suspected corrupt conduct, including corrupt conduct that may be a human rights complaint.

To be effective, the system must provide the guidelines for receiving, recording, processing, responding to and reporting on complaints, as well as helping to improve services and decision-making.

Members of the public, managers and staff should all be made aware of these reporting systems and have access to information about how to lodge a complaint. Your UPA's code of conduct should also place an obligation on your staff to report any suspected corrupt conduct.

The Queensland Ombudsman's Office is committed to ensuring agencies meet best practice standards in complaints handling, and has developed a number of tools to assist in developing an effective complaint management system.

For more information, visit <[www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)>

For more information about your agency's obligations under the *Human Rights Act 2019* and human rights complaints, visit <https://www.qhrc.qld.gov.au/your-responsibilities>.

## Local government

Councils must also have established systems to record complaints about administrative action (e.g. service delivery and staffing matters). Members of the public, councillors and staff should all be made aware of these reporting systems and know how to gain access to them.

Under the [\*Code of Conduct for Councillors in Queensland\*](#), councillors have an obligation to report any suspected wrongdoing, including corrupt conduct, in a timely manner. Council employees also have an obligation to report any suspected corrupt conduct, and this should be stipulated in your council's code of conduct.

Guidelines for complaints management in councils are available in the 2001 publication [\*Complaints management: recognising opportunities for improvement\*](#), published jointly by the Department of Local Government and Planning (now the Department of Local Government, Racing and Multicultural Affairs) and the Queensland Ombudsman.

# 1 Crime and Corruption Commission

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## Corrupt conduct

Under the CC Act, conduct includes:

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

Under the CC Act, there are two different types of corrupt conduct. Your obligations to notify the CCC apply to both types.

“Type A” corrupt conduct involves conduct that affects, or could affect, how officers from a unit of public administration (UPA) perform their functions or exercise their powers. “Type B” corrupt conduct involves conduct that impairs, or could impair, public confidence in public administration.

## Type A corrupt conduct (section 15(1) CC Act)

Type A corrupt conduct is conduct by any person that satisfies the three elements described below.

### 1. Effect of the conduct

Type A corrupt conduct 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)  
or
- an individual person holding an appointment in a UPA.

### 2. Result of the conduct

Type A corrupt conduct results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above 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.

In relation to a breach of trust:

- knowingly can be taken to mean that the subject officer knew that their actions were a breach of the trust placed in them
- recklessly can be taken to mean that, while the subject officer did not necessarily know that their actions were a breach of trust, they were aware that there was a real and apparent risk that the conduct would amount to a breach of the trust and they nevertheless without justification went through with the conduct.

### 3. Seriousness of the conduct

Type A corrupt conduct 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 a holder of an appointment.

Conduct must satisfy all three elements above to be considered Type A corrupt conduct, as in the example below. Applying the three elements is discussed further in chapter 2.

Conduct	Elements that make it Type A corrupt conduct
An audit reveals that a public servant cheated on travel allowances by claiming allowances for trips not taken, and claiming expenses that were not incurred.	<ol style="list-style-type: none"><li>1. Adversely affects the performance of the department through misuse of resources.</li><li>2. Is dishonest.</li><li>3. Is a criminal offence (i.e. fraud).</li></ol>

## Type B corrupt conduct (section 15(2) CC Act)

Type B corrupt conduct is conduct by any person that satisfies the three elements described below.

### 1. Effect of the conduct

Type B corrupt conduct impairs, or could impair, public confidence in public administration.

### 2. Type of conduct

Type B corrupt conduct involves, or could involve, one of the following types of conduct:

- collusive tendering
- fraud relating to an application for a licence, permit or other authority under an Act that has any of the following purposes or objects:
  - protecting people's health or safety
  - protecting the environment
  - protecting or managing the use of the State's natural, cultural, mining or energy resources
- dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets
- evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue
- fraudulently obtaining or retaining an appointment.

### 3. Seriousness of the conduct

Type B corrupt conduct 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 a holder of an appointment.

Conduct must satisfy all three elements above to be considered Type B corrupt conduct, as in the example below. Applying the three elements is discussed further in chapter 2.



Conduct	Elements that make it Type B corrupt conduct
A government department issues licences. Anyone wishing to obtain a licence from that department must first complete mandatory training and obtain suitable qualifications. The main reason for the licence is to ensure public safety. However, the department has outsourced responsibility for training and qualifying people to a private company. One of the employees of the private company has accepted bribes from an outlaw motorcycle gang to issue qualifications to unqualified persons so that they can obtain licences. The result is that the department is now issuing licences in good faith to unqualified people.	<ol style="list-style-type: none"> <li>1. Impairs or could impair public confidence in public administration.</li> <li>2. Fraud relating to a licence application where the purpose of the regulation is public safety.</li> <li>3. Is a criminal offence (i.e. fraud).</li> </ol>

### “Would, if proved”

To determine whether an allegation would, if proved, amount to a criminal offence, you need to ascertain whether there is evidence of **each element** of the relevant offence. You should assess the quality of that evidence.

To determine whether an allegation would, if proved, amount to a disciplinary breach providing reasonable grounds for termination, you need to assess the evidence against the objective standards of honesty and integrity — taking into account how reasonable, right thinking members of the community would view the conduct — and not by subjective criteria. These standards are found in the ethics principles in the *Public Sector Ethics Act 1994*:

- integrity and impartiality (section 6)
- promoting the public good (section 7)
- commitment to the system of government (section 8)
- accountability and transparency (section 9).

You must also consider “grounds for disciplinary action” as stated in section 187 of the *Public Service Act 2008*.

For UPAs not covered by the *Public Service Act 2008* (e.g. local government, universities), your underpinning legislation (e.g. Local Government Regulation 2012) and your code of conduct should be used as a guide to what would amount to a dismissible disciplinary breach.

### Who may engage in corrupt conduct

The CC Act specifies that both types of corrupt conduct can be attributed to any person, regardless of whether they hold an appointment in a UPA, including:

- people who no longer hold an appointment in a UPA (see also “Subject officer’s resignation” in chapter 3)
- people who subsequently take up an appointment in a UPA
- private individuals or organisations
- people outside Queensland, provided there is a direct link between the conduct and its adverse effect on a Queensland UPA, or someone holding an appointment with one.

The conduct does not cease to be corrupt conduct just because action relating to the conduct can no longer be taken or continued, including action for dismissal.



## Professional misconduct

Professional misconduct is conduct connected with exercising the skill of a professional or engaging in the performance of the specified duties or activities of a position. For example, positions such as medical professionals, counsellors or engineers (technical position) are considered to have special responsibilities by virtue of their position, and in many cases, they have ethical or statutory obligations attached to the discharge of their powers or functions.

Professional misconduct can also be Type A or Type B corrupt conduct.

While professional misconduct only rarely amounts to corrupt conduct, it can do so even when there is no criminal offence involved. In such cases, the conduct must involve repeated behaviour (including neglect, failure and inaction) that undermines the trust placed in the person by virtue of their position; or be a single incident of behaviour indicating a callous or reckless disregard for, or indifference to, the skills required for the proper discharge of the duties of the position.

Consider the following scenario, which illustrates professional misconduct that is also Type A corrupt conduct. The chief financial officer in this scenario has a responsibility to manage the resources of the UPA efficiently using the skills and qualifications appropriate to her position. While the mismanagement of the budget can be seen as serious professional neglect, it is the attempted cover up in order to protect her position — and the subsequent outcome for the UPA — that lifts the conduct over the threshold to Type A corrupt conduct.

Professional misconduct	Also corrupt conduct because...
A chief financial officer responsible for preparing your UPA's budget fails to reconcile funding movements, resulting in a million dollar deficit in the budget. When the issue comes to her attention, she does not report the deficit to the board in a deliberate attempt to cover up her mistake.	<ol style="list-style-type: none"><li>1. Adversely affects the performance of the department through budget deficit.</li><li>2. Is dishonest and a breach of trust.</li><li>3. Is reasonable grounds for dismissal.</li></ol>

## Other misconduct

Corrupt conduct has a specific meaning under the CC Act. It 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.

Conduct	Is NOT corrupt conduct because...
Allegations have been made that an office manager has stolen \$10 000 from a suburban cricket club where he is the treasurer.	<p>The allegation relates to the conduct of the manager in his private capacity and has no connection with the performance of his duties as a manager of a public sector agency.</p> <p>It is not Type A or Type B corrupt conduct, but it may be misconduct under the statutory and policy framework governing your employees and the club may pursue criminal charges.</p>

The scenarios at the end of this chapter further illustrate the difference between misconduct and corrupt conduct.



## The CCC's corruption function to ensure complaints are dealt with appropriately

One of the CCC's corruption functions under the CC Act is to ensure that complaints about corruption are dealt with appropriately, subject to the following four principles set out in section 34 of the Act:

- cooperation — the CCC and UPAs should work cooperatively to deal with corruption
- capacity building — the CCC has a lead role in building the capacity of UPAs to deal with cases of corruption effectively and appropriately
- devolution — subject to the other principles, action to deal with corruption in a UPA should generally happen within the UPA
- public interest — the CCC has an overriding responsibility to promote public confidence in the way UPAs deal with corruption.

The CCC performs this function under the CC Act by:

- assessing each complaint about corruption made or notified to it
- referring those complaints most appropriately dealt with by the relevant UPA
- monitoring the way in which a UPA deals with complaints referred to it
- investigating, either by itself or in cooperation with a UPA, those complaints alleging more serious or systemic corrupt conduct
- assessing the appropriateness of systems and procedures adopted by a UPA for dealing with complaints about corruption, and providing advice and recommendations to the UPA
- ensuring evidence is gathered to support any prosecution or disciplinary proceedings.

## How the CCC becomes aware of suspected corrupt conduct

There are four main avenues by which the CCC becomes aware of suspect corrupt conduct (including corrupt conduct that may also be a human rights complaint after 1 January 2020):

- through a complaint made to the CCC
- as “information”, which could be received through such means as routine agency audits, media articles, Crime Stoppers or the CCC's own intelligence activities or sources
- as “matter”, which could be received through such means as court proceedings, or referrals from the Coroner or a public inquiry
- through mandatory notification from a public official (see chapter 2).

## How the CCC assesses complaints about corrupt conduct

The CCC assesses each complaint or notification (giving proper consideration to human rights relevant to the decision, as required) based on whether it:

- is within CCC jurisdiction
- will have a serious impact on the public sector
- appears to be genuine, and made in good faith
- could result in an unjustifiable use of resources
- involves high-profile, sensitive or complex issues
- involves a high-level politician or other official
- has a bearing on public confidence or order
- indicates the possibility of systemic corrupt conduct within a UPA.

If necessary, further information is gathered as quickly as possible to enable the CCC to decide on the best course of action. Additional information may come from external sources, such as the complainant or the UPA concerned, or from internal sources.

The CCC must also assess the capacity of your UPA to deal with the complaint if it is referred. This assessment may be based on existing information held by the CCC, or CCC officers may contact representatives of your UPA — usually a designated CCC liaison officer — to consult about the capacity of your UPA to deal with the complaint, and to seek your view about appropriate action.

## Possible courses of action

After the assessment is complete, the CCC may decide to:

- refer the complaint to you to deal with, subject to some level of monitoring by the CCC (see “How the CCC ensures complaints are dealt with appropriately”)
- ask you to carry out further enquiries before a final assessment is made (e.g. the complaint appears to indicate quite serious corruption, but the initial information gathered suggests that there may be an innocent explanation for what happened)
- investigate the complaint itself
- investigate the complaint in cooperation with you
- refer possible criminal activity to the Queensland Police Service (QPS)
- refer the complaint (with the consent of the person who could make the complaint) to the Queensland Human Rights Commission under the HR Act
- take no further action where the complaint:
  - is frivolous or vexatious
  - lacks substance or credibility
  - is not made in good faith
  - is made recklessly or maliciously, or primarily for a mischievous purpose
  - is outside the CCC’s jurisdictionor where dealing with the complaint would be an unjustifiable use of resources, or not in the public interest.

Under the principle of devolution, referring the complaint to you is the preferred option, and is the main focus of this guide.

## CCC investigation

If the CCC decides to investigate on its own, there are a number of possible outcomes. The CCC might:

- find that no wrongdoing has occurred
- find that there is insufficient evidence to establish the allegations
- confirm corrupt conduct and recommend that you take disciplinary action
- refer the case through appropriate channels to the Queensland Civil and Administrative Tribunal (QCAT) for disciplinary charges to be heard
- recommend or arrange for a person to be charged with a criminal or other offence, including by referring a matter to a prosecuting authority.

When the CCC refers a complaint to you for disciplinary action, it will provide a report to help you decide what action to take.

The following scenarios of corrupt conduct illustrate when a matter would likely be referred to the relevant UPA to deal with, and the circumstances that might lead the CCC to decide to deal with the matter itself.

Conduct	May be referred to UPA...	CCC may investigate...
An allegation has been made that an officer responsible for the decision-making with respect to a project worth over \$50 000 has failed to adhere to the department's procurement processes and awarded the contract and subsequent amendments to the contract to his brother-in-law's company, in which the subject officer also has a financial interest.	On the basis of the information available, the alleged conduct appears to be a one-off situation. The UPA has indicated its understanding of the seriousness of the allegations and its capacity to deal with the matter. The UPA has also agreed to refer the matter to police if necessary.	The information suggests that the conduct has been occurring for a number of years despite concerns being raised within the UPA. Preliminary enquiries confirm that the subject officer does have a financial interest in the company, and value of the contracts over the course of these years may exceed \$500 000.
An allegation has been made that an administration officer in a public hospital has been accessing the personal and financial information of patients and disclosing it to her boyfriend.	On the basis of the information available, the reasons for the disclosure are not apparent, the concerns do not appear to be systemic, and the subject officer does not have any relevant complaint history of similar behaviour. The UPA has acknowledged that it may need to report the conduct to the police and other regulatory bodies.	Preliminary enquiries reveal that the subject officer has various convictions for fraud which were not disclosed at the time of her employment. Enquiries also reveal that her boyfriend is well known to the police for his involvement in various scamming activities and credit card fraud.
An audit of a small UPA reveals inconsistent and unauthorised purchases being made on corporate credit cards.	The audit suggests that the conduct is isolated to an individual officer, and the value of the personal purchases is less than \$10 000. The UPA would deal with this matter in accordance with section 40 arrangements (see page 2.1).	The audit suggests that the conduct is widespread across the UPA, and that the UPA does not have appropriate policies and procedures in place for the issue and use of credit cards. The audit estimates that the cost of the misuse to the UPA could range from \$18 000 and to as much as \$40 000. The conduct is not limited to lower level staff, but appears to involve senior executives of the UPA.
An allegation has been made that a mining company has received preferential treatment in obtaining relevant exploration permits because they are friends with the processing officer.	On the basis of the information available, the mining company has submitted all relevant paperwork and complied with relevant standards. The subject officer does not have any decision-making powers in relation to the issuing of permits. The UPA may make further enquiries to see if the company had access to any inside information as a result of its relationship with the subject officer.	Further information provided to the CCC reveals that the mining company allegedly gave the delegated decision-maker a new car in return for approval of the exploration permit, and the subject officer is rumoured to have recently acquired a new luxury car.

## How the CCC ensures complaints are dealt with appropriately

When the CCC refers a complaint to you to deal with, it may monitor how you deal with it, subject to the level of seriousness of the complaint. This may take the form of:

- referred with no further advice (RNFA)
- audit
- public interest review
- merit and compliance review.

### Referred with no further advice

The CCC will apply this level of monitoring when the complaint does not require review by the CCC due to the low level nature of the alleged corrupt conduct.

Where a complaint is referred to you as RNFA, you do not have to report the outcome, and may deal with the complaint as you consider appropriate.

These cases will form the basis of the CCC's audit program (see below), so you must maintain a robust complaints management system for recording and dealing with them.

As with all corrupt conduct cases, the CCC will maintain its right to assume responsibility for RNFA cases, or assign a closer level of monitoring, if it becomes aware that the conduct in question may be more serious or systemic than originally thought.

### Audits

The CCC will maintain an audit program that will undertake regular audits of all UPAs and the systems and practices in place for dealing with corrupt conduct. The CCC may conduct an audit of your UPA in the areas of:

- your integrity framework
- complaints that you dealt with under a section 40 direction without notifying the CCC, or which were referred with an RNFA option
- public interest topics that might be relevant to a single UPA, a group of UPAs or a sector as a whole, and which have been identified by the CCC or via a research directive.

See "CCC audits" in chapter 3.

### Merit and compliance review

The CCC will apply this level of monitoring to determine whether an agency is dealing with matters involving serious or systemic corruption appropriately.

The CCC will apply a strict reporting regime. Unless special circumstances exist, the CCC will require you to deal with a complaint subject to this type of review within six months. A progress report from you is mandatory at three months.

After you have finalised your investigation and taken any appropriate disciplinary action, the CCC will review your investigation, focusing on:

- your compliance with any directions or guides that the CCC has issued
- your compliance with your internal policies and procedures (including where relevant the incorporation of human rights into existing complaints processes and their compatibility with human rights)
- the integrity with which the case was dealt with

- your identification and implementation of recommendations addressing systemic concerns whether procedural (for example consideration if future limitations on relevant human rights are reasonable and justified) or in relation to an individual officer.

## Public interest review

In some circumstances, the CCC may consider that a matter involving serious corruption or systemic corruption should be dealt with by the agency in the first instance, but that in order to meet the public interest, the CCC should:

- closely monitor how you deal with the complaint
- consider assuming responsibility for the investigation (e.g. if, at some stage, the investigation might require the additional resources of the CCC to deal with the complaint).

As the cases subject to this type of review will be those the CCC considers are more serious or systemic in nature, the CCC will again require a strict reporting obligation by you. Progress reports are mandatory at six weeks, and then three months, six months and nine months, and you will be expected to finalise the investigation within 12 months unless you have reported special circumstances which might prevent this. Due to the nature of the conduct and the likely actions that will be needed to deal with it, a shorter time frame may be stipulated. The CCC will advise you of this at the time of referral.

The CCC will monitor the progress of this investigation to ensure that you are dealing with the case in a way that promotes public confidence, focusing on:

- your compliance with any directions or guides that the CCC has issued
- your compliance with your internal policies and procedures (including where relevant the incorporation of human rights into existing complaints processes and their compatibility with human rights)
- the adequacy, impartiality and transparency of any investigation or other resolution processes
- the appropriateness of the conclusions and recommendations made (for example procedural recommendations addressing systemic concerns including those in relation to human rights) made as a result of the investigation or other action taken
- the appropriateness of the decision to initiate show cause proceedings or lay charges, or to take other action
- where show cause proceedings are started, the appropriateness of the allegations, and of the decision-maker to hear those allegations
- the appropriateness of any finding or disciplinary action.



## Scenarios

These scenarios illustrate how conduct may be misconduct without being corrupt conduct, and provide examples of what further elements might lift them over the threshold to corrupt conduct.

Scenario	Not corrupt conduct because...	Might become corrupt conduct if...
An officer insults a client or customer.	The conduct is not a criminal offence or serious enough to warrant dismissal, but is inappropriate, and reflects adversely on your UPA.	The officer assaults the client (criminal offence). OR The officer escalates the situation by passing confidential information about the client to a third party (grounds for dismissal).
An officer circulates inappropriate (but not criminal) email jokes to other staff on the agency email system.	The conduct is not a criminal offence or serious enough to warrant dismissal, but is an inappropriate use of agency resources.	The material circulated by the officer includes child exploitation material (criminal offence). OR The material circulated by the IT officer includes confidential information obtained in the course of his duties about a senior officer (grounds for dismissal).



## 2 Obligations of public officials

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### Duty to notify the CCC about corrupt conduct

You must notify the CCC if you reasonably suspect that corrupt conduct has occurred, in accordance with section 38 of the CC Act. There does not need to be a formal complaint from an aggrieved person — other information or matter may give rise to a reasonable suspicion. For example, a reasonable suspicion of corrupt conduct might arise through the findings of an internal audit report, or in the course of resolving a grievance.

#### Reasonable suspicion

For a suspicion to be “reasonable”, there needs to be more than bare or idle speculation (*George v Rockett* (1990) 170 CLR 104). In essence, there must be some evidence sufficient for a reasonable person to suspect corrupt conduct.

You do not have to *believe* that the alleged conduct is corrupt conduct, or that the conduct has actually occurred. Reasonable suspicion must be based on an objective assessment of the information at hand. It is not sufficient for you to subjectively decide that someone is or is not capable of the alleged conduct.

You do not have to have sufficient evidence to *prove* the corrupt conduct allegation, but the available facts, evidence or other information must suggest that the allegation, if proven, would amount to corrupt conduct. The suspicion may be based on hearsay and other inadmissible material that nevertheless is relevant (*George v Rockett*).

You do not have to notify the CCC if you do not hold a reasonable suspicion. For example, you do not need to notify the CCC if there is something about the allegation — including any direct knowledge you might have — which shows beyond doubt that it is not correct.

#### Section 40 directions

Your obligation to notify the CCC is subject to any directions issued to you by the CCC under section 40 of the CC Act, including:

- the kinds of complaints that must be notified to the CCC
- how and when this notification must be made
- the kinds of complaints that you can immediately start dealing with without notifying the CCC at all
- those cases that only need to be reported to the CCC on a routine basis (e.g. some may only need to be reported on a monthly basis).

It is important that you understand what needs to be notified and what doesn’t before you take any action to deal with it (see also “Actions before notification” below).

#### Assignment of your obligations

Your obligation to notify the CCC about suspected corrupt conduct can be assigned to an appropriate officer within your UPA. This assignment should be formally documented in your UPA’s complaints management policy and procedures. You should also write to the CCC advising of the assignment and relevant contact details of the officer (see also “Complaints against public officials”).

The assignment should allow the officer to:

- receive or be notified of all complaints raising possible corrupt conduct (from external or internal sources)
- notify the CCC if that officer reasonably suspects that the complaint involves, or may involve, corrupt conduct.

Assigning your obligations does not remove your responsibility for notifying the CCC; further, even with an assignment in place, you may still choose to deal yourself with specific complaints.

## What must be notified

Determining whether conduct might be “corrupt conduct” is not always easy. You must look at the circumstances of each case and the particular position held by the person whose conduct is in question. Some complaints may appear minor at first, but can often turn out to be quite serious, or an aggregation of minor issues can indicate a systemic problem.

When considering whether the conduct of an officer might be Type A or Type B corrupt conduct, you must apply all of the three elements discussed in chapter 1, as shown in the examples below (see more scenarios at the end of this chapter). If the conduct does not meet all three elements, it is not corrupt conduct.

### Example of Type A corrupt conduct

Conduct	Elements that make it Type A corrupt conduct
A transport officer provides personal information obtained through a driver licence application to a friend who is trying to locate his estranged wife.	<ol style="list-style-type: none"><li>1. Adversely affects the performance of the department through breach of privacy obligations.</li><li>2. Involves a misuse of information.</li><li>3. Is a criminal offence (i.e. abuse of public office).</li></ol>

### Example of Type B corrupt conduct

Conduct	Elements that make it Type B corrupt conduct
A government department outsources the provision of public housing to a private company. Numerous staff from the company are involved in a scheme where they offer to assist individuals who are not eligible for public housing to successfully obtain a tenancy in return for a ‘kickback’.	<ol style="list-style-type: none"><li>1. Impairs or could public confidence in public administration.</li><li>2. Helping someone to dishonestly obtain a benefit from the payment or application of public funds.</li><li>3. Is a criminal offence (i.e. fraud).</li></ol>

In considering whether conduct would, if proven, amount to a criminal offence, you need to bear in mind that criminal offences are not limited to offences contained in the Criminal Code. They are also found in a wide range of other Acts, including:

- *Local Government Act 2009*
- *Environmental Protection Act 1994*
- *Corrective Services Act 2006*
- *Liquor Act 1992*
- *Public Interest Disclosure Act 2010*
- *Electoral Act 1992*
- Commonwealth Acts such as the *Crimes Act 1914* and the *Competition and Consumer Act 2010*.

In fact, any offence other than a regulatory offence (specified in the *Regulatory Offences Act 1985*) is a criminal offence.



If the conduct does not meet the criteria for corrupt conduct, it may be more appropriate for you to consider other disciplinary action under the *Public Service Act 2008*, the *Public Sector Ethics Act 1994* or your UPA's code of conduct.

### Is Type A corrupt conduct always serious?

The conduct may be something comparatively minor, as shown in the example below, but still be corrupt conduct because it is an allegation of criminal conduct (theft) occurring in the course of the officer's duties.

Conduct	Type A corrupt conduct because...	Not serious because...
A finance officer pilfers \$200 from the petty cash tin.	<ol style="list-style-type: none"> <li>1. Adversely affects the performance of the department through misuse of resources.</li> <li>2. Is dishonest and a breach of trust.</li> <li>3. Is a criminal offence (i.e. theft).</li> </ol>	The amount involved is small, the officer may have no prior history of similar conduct.

In a case such as this, you must notify the CCC unless it is something identified in your section 40 directions as not warranting notification. If you do notify the CCC, it is likely that it would be referred back to you to take the appropriate action. Note that theft of property may also need to be reported to the Queensland Audit Office and QPS under the requirements of section 21 of the Financial and Performance Management Standard 2009.

### Type B corrupt conduct will generally always be serious

For conduct to satisfy the first element of "impairs or could impair public confidence in public administration", the conduct will generally need to be serious and the scale on which the conduct has occurred will generally need to be significant. Isolated incidents, as shown in the example below, would not usually be capable of impairing public confidence in public administration but should still be reported to the QPS.

Conduct	NOT Type B corrupt conduct because...	Would be Type B corrupt conduct if...
A government department issues \$5000 grants to individuals who satisfy certain criteria. The Department discovers that two grants were made to applicants who falsely claimed they satisfied the criteria. The Department officers involved in the grants process had no knowledge of the false statements and acted with due diligence in awarding the grants.	<ol style="list-style-type: none"> <li>1. It does not impair and could not impair public confidence in public administration.</li> </ol> <p>Even though elements 2 and 3 are satisfied because:</p> <ol style="list-style-type: none"> <li>2. Is dishonestly obtaining a benefit from the payment of public funds.</li> <li>3. Is a criminal offence (i.e. fraud).</li> </ol>	If the grants involved a more significant amount of money (e.g. \$100 000) and the incidence of false applications was higher (e.g. 10 per cent of all applications), all three elements of Type B corrupt conduct would be satisfied.

## How corrupt conduct comes to your attention

Suspected corrupt conduct can come to your attention from many sources, including:

- a complaint referred to you by the CCC
- through your existing complaints process as a human rights complaint
- a complaint made by a member of the public to one of your managers
- a report by a staff member to their manager in accordance with your UPA's internal reporting system or grievance procedures
- an internal audit report that reveals possible corrupt conduct
- a letter from a local contractor alleging corrupt conduct
- concerns raised by a member of the public about your UPA in the local newspaper.

### What if the complaint...

#### ...is made anonymously?

There are many good reasons why a complainant may not wish to disclose their identity — chiefly fear of reprisal — and experience has shown that anonymous complaints can lead to the exposure of serious corrupt conduct. Moreover, under section 17(1) of the PID Act, a public interest disclosure may be made in any way, including anonymously.

Your UPA's complaints process must, therefore, ensure that anonymous complaints are recorded and considered.

#### ...is not in writing?

Complaints need not be in writing, but the details of the complaint should be recorded in writing by the receiving officer. You must still notify the CCC of a complaint made orally (by telephone or otherwise).

## When notification should be made

You should notify the CCC as soon as you have a reasonable suspicion that corrupt conduct may have occurred.

### Actions before notification

Although the devolution principle requires that corrupt conduct should generally be dealt with in the UPA, your notification obligation (section 38) takes precedence over your responsibility to deal with corrupt conduct, so you should not take any action in relation to a complaint before notifying the CCC. The only exceptions (usually outlined in your section 40 directions) are where:

- the complaint is of a kind that does not need to be notified to the CCC
- the complaint is of a kind that only needs to be reported to the CCC on a monthly basis.

One of the reasons you must notify the CCC before starting enquiries is that the CCC might already be dealing with the complaint. The reporting obligation ensures that evidence can be preserved for any possible CCC or QPS investigation, and it also protects you from the accusation of covering up suspected corrupt conduct.

Before notifying the CCC, you may consider any relevant information in your direct knowledge or the direct knowledge of a relevant officer (such as the manager of the person complained about), or contained in your UPA's records, in deciding whether an allegation raises a reasonable suspicion of corrupt conduct.



The example below illustrates an allegation that would, if proved, amount to corrupt conduct (Type A), but your direct knowledge of the situation shows that it cannot be true, based on the information available.

Conduct	No reasonable suspicion because...
A telephone complainant explains that she was unsuccessful in tendering for a contract with your UPA. She was told that one of the other tenderers was a company managed by the brother of your UPA's purchasing officer, and complained that he had an unfair advantage as a result.	As CEO, you signed the contract with the successful tenderer, and based on this direct knowledge, you know that the company referred to in the complaint was not the successful tenderer, and the complainant was mistaken.  Therefore, there is no reasonable suspicion of corrupt conduct based on the information at hand, although you may choose to review the tender process to ensure compliance with policies and procedures, and confirm that your purchasing officer has declared the potential conflict of interest.

Although you can use what initial information is available to show that the conduct complained of could NOT have occurred (in which case there is no reasonable suspicion), you should not be gathering information to show that the conduct complained of COULD have occurred, and you must NOT make enquiries by way of interviewing anyone.

You must be careful not to take information at face value. For example, relying on timesheets or rosters to determine if there is a reasonable suspicion about an officer's conduct in work time can be dangerous, as these records could have been falsified by the subject officer.

## Highly sensitive or urgent cases

You may think it best to expedite the notification process because the case is:

- urgent —
  - There is a risk that evidence may be destroyed if immediate action is not taken (for more information on preserving evidence, see chapter 7).
  - You consider it advisable to suspend the subject officer to prevent continuing corrupt conduct (for further information on when to advise the subject officer, see chapter 5).
  - There is a risk to public safety.
- highly sensitive —
  - You are required to respond to your Minister.
  - There are sensitive political considerations,
  - The allegations are against a senior executive.

The following scenario provides an example of when and what urgent action might be required.

Conduct	Urgent action needed because...	Steps to take
An allegation has been made that a procurement officer has been receiving regular kickbacks from multiple suppliers in return for favourable treatment.	The officer is about to transfer to a new business unit within your UPA in which she will continue to be involved with procurement activities. There is a dual risk of evidence being destroyed before her move, and that she will continue the corrupt conduct in her new position.	Contact the CCC immediately to get approval or assistance to preserve the evidence. Whether or not you suspend the officer, or reconsider her transfer, is your decision to make, but you can consult with the CCC about this.

In such cases, you may seek advice from one of the following CCC officers:

- Director, Integrity Services
- Senior Executive Officer, Corruption
- Chief Executive Officer  
or
- Chairperson.

## How notification should be made

The CCC has an online form for public officials available at <[www.ccc.qld.gov.au/referral](http://www.ccc.qld.gov.au/referral)>. You can also notify the CCC by way of letter, as long as the letter contains the essential information required, as far as practical:

- details of the notifier (reporting officer), the complainant and the person complained about
- consideration of any potential human rights complaint raised and action taken
- the outcome that the complainant desires (if applicable)
- a précis of the complaint, including the dollar value of any fraud or theft, or the nature of any benefit or detriment
- notes on the action taken to date, if any (subject to “Actions before notification” above)
- an assessment of your UPA’s capacity to deal with the case
- a suggestion about the most appropriate way to deal with the complaint
- any other relevant details, such as—
  - background information (e.g. relevant complaint history of the officer)
  - whether or not the complaint has been reported to any other agencies
  - witnesses
  - whether an assessment of the complaint is required urgently
  - evidentiary matters.

Provide as much detail as you possess to help the CCC assess the complaint. You should not defer reporting the suspected corrupt conduct while you conduct further enquiries to get this information.

## Complaints against public officials

While section 44 of the CC Act places an obligation on you to deal with complaints about corrupt conduct, you should not deal with any allegations of corrupt conduct made against you as public official for the obvious reason that you have a conflict of interest.

Under section 48A of the CC Act, you must have a policy about how your UPA will deal with a complaint that involves, or may involve, corrupt conduct by you as public official so that transparency and integrity are maintained. The CCC has published details of what this policy should include at <[www.ccc.qld.gov.au/s48A](http://www.ccc.qld.gov.au/s48A)>, and you must consult with the Chairperson of the CCC when you develop this policy.

Where your policy nominates another officer to notify the CCC of the complaint and to deal with it, this may be the same officer to whom you have made a general assignment of your responsibilities under the CC Act (see “Assignment of your obligations”).



## After notification has been made

After you have notified the CCC, you must wait for its assessment of the case before you take any further action (see “How the CCC assesses complaints about corrupt conduct” in chapter 1).

The CCC may consult with you before referring a complaint to discuss the allegations, and to ascertain whether your UPA has the capacity to deal with it.

The CCC will advise you of its assessment decision and outline the nature of the complaint, the allegations that have been distilled by the CCC from the complaint, and the assessment decision, with some explanation.

If an allegation is referred to you to deal with, the CCC may also provide recommendations or directions about how you should deal with it (if appropriate).

## Obligations where no notification is made

If you consider a complaint and decide that you do not have a reasonable suspicion that corrupt conduct may have occurred, the CC Act requires you to make a record of your decision. This record must include the following information:

- the details of the complaint
- the evidence on which you relied in making your decision; and
- any other reasons for your decision.

Under the CC Act, the CCC may ask to see any records you have made about decisions not to make a notification to the CCC.

## Scenarios – Type A corrupt conduct

These scenarios have been prepared to illustrate how the three elements apply in establishing if conduct would be Type A corrupt conduct.

Conduct	Elements that make it Type A corrupt conduct
An employee of a university manipulates a selection panel on which she is sitting to ensure that her spouse gets a position for which he is not qualified.	<ol style="list-style-type: none"><li>1. Adversely affects the performance of the university through the appointment of an unqualified person.</li><li>2. Lacks impartiality.</li><li>3. Is reasonable grounds for dismissal.</li></ol>
A liquor licensee offers monetary inducements to an investigator for advance information about investigations and search warrants.	<ol style="list-style-type: none"><li>1. Adversely affects the execution of the department’s powers under the relevant legislation.</li><li>2. Is dishonest and involves a misuse of information.</li><li>3. Is a criminal offence (e.g. bribery).</li></ol>
A prison officer takes no action while a prisoner is violently assaulted by other prisoners in front of him.	<ol style="list-style-type: none"><li>1. Adversely affects the execution of the officer’s powers under the relevant legislation.</li><li>2. Involves a breach of trust placed in the officer by virtue of his position.</li><li>3. Is a criminal offence (e.g. party to assault/negligence causing harm).</li></ol>

## Scenario – Type B corrupt conduct

The following scenario has been prepared to illustrate how the three elements apply in establishing if conduct would be Type B corrupt conduct.

Conduct	Elements that make it Type B corrupt conduct
Six road construction companies have engaged in a collusive tendering scheme for six multi-million dollar contracts awarded by a government department. Each company has applied for more than one contract, but has only been successful with one of its tenders. The companies have agreed to “take turns” at winning the contracts, with all companies except the winner deliberately quoting above a certain dollar value to make the winner’s quote appear competitive. The price of each awarded contract is significantly higher than previous contracts for similar work.	<ol style="list-style-type: none"><li>1. Impairs or could impair public confidence in public administration.</li><li>2. Involves collusive tendering</li><li>3. Is a criminal offence (i.e. one of the cartel conduct offences in the <i>Competition and Consumer Act 2010</i> (Cth)).</li></ol>



## 3 Managing a referral from the CCC

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As you will see in this chapter, investigation is not the only option available to you when dealing with complaints referred to you by the CCC. Subject to any directions received from the CCC, you can choose to:

- take no action
- take appropriate management action
- or
- investigate.

Investigations can be expensive and time-consuming. Another course of action may be more appropriate, depending on the nature and scope of the complaint.

### Referrals from the CCC

The CCC's referral will advise you of:

- the complainant (unless anonymity has been requested, or the CCC has identified a risk in disclosing this information)
- the subject officer (if known)
- the reasons for the assessment
- any directions for how the complaint should be dealt with
- whether the CCC (or a complainant or notifier) has identified a corruption complaint includes a 'human rights complaint' and the relevant human rights
- the timeframes for reporting back to the CCC (if applicable)
- as much information as the CCC can disclose, to assist in the investigation of the complaint.

Based on the CCC's assessment of the complaint (see chapter 1), a referral from the CCC may stipulate that:

- you should deal with the complaint, subject to any recommendation or direction provided by the CCC, and either—
  - the CCC will not require any further report about it
  - the CCC will apply some level of monitoring (see "How the CCC ensures complaints are dealt with appropriately" in chapter 1)
- you should carry out further preliminary enquiries and report back to the CCC before a final assessment can be made
- you should investigate the complaint, either alone or in cooperation with the CCC (e.g. in cases where the CCC's coercive powers may be required).

### How to deal with a referral

Under section 44(2) of the CC Act, you are responsible for dealing with a complaint referred to you in the way you consider most appropriate, subject to any directions given by the CCC.

Some of the complaints referred to you will have been made directly to the CCC, so you will not have heard of them before. Regardless of how the complaint comes to you, or how you ultimately choose to deal with it, you must be careful from the outset to maintain confidentiality and preserve evidence (see chapter 5).

## Make preliminary enquiries

When deciding how to deal with a complaint, preliminary enquiries can help you to ascertain the nature and extent of any conduct that may have led to the complaint.

Just because a complaint has been referred to you to deal with, don't assume that there has actually been corrupt conduct on the part of the subject officer, or even that there is substance to the complaint. For example, an allegation of corrupt conduct in a tender process may have arisen simply because a contractor was unsuccessful in a tender and thereby suspected corrupt conduct, when in fact the process was strictly in compliance with policy and procedures and another contractor provided the best offer.

On the other hand, while there may be no corrupt conduct, there may still be workplace issues that need to be dealt with. For example, your policies may not have been adequately communicated to tenderers, which contributed to the allegation of corrupt conduct.

Once you are satisfied that you understand the nature and scope of the complaint, and any conduct that may have led to it, you can make a decision about how to deal with it.

## Take no action

Section 44(3) of the CC Act allows you to take no action, or discontinue action, if you are satisfied that:

- the complaint—
  - is frivolous or vexatious
  - or
  - lacks substance or credibility
  - or
- dealing with the complaint would be an unjustifiable use of resources.

You need to consider the circumstances carefully before drawing any conclusions, especially given the fact that, if the CCC had sufficient information to reach any of these conclusions itself, it would not have referred the case to you in the first place.

You must also remember that section 44(5) requires you to advise any complainant of your reasons for deciding to take no action, so your decision needs to be defensible.

### **Determining if a complaint is frivolous, vexatious or not made in good faith**

Indicators could include:

- The complainant has a history of making false or unsubstantiated complaints.
- There is no information to support the allegation in any way.
- The allegation is not serious or sensible, and is of such a nature that a reasonable person could not treat it as being bona fide.
- The allegation is without any foundation and appears to be designed to harass, annoy or embarrass the subject officer.
- The allegation is inherently improbable and there is no information that in any way supports it.

However, complaints should not be dismissed on the basis of these indicators alone. A complaint may, at first glance, appear emotive, malicious or quite incredible, as in the case study below, yet turn out to be true, so careful analysis of such complaints should be made to isolate the basic information sources, which should then be assessed on their merits.



Allegations made	Further investigation revealed...
The QPS reported an allegation that a serving police officer was “recruiting” adults and children as undercover police informants. The officer had allegedly been inducing them to provide him with samples of pubic hair and photographs of themselves naked, asserting that this was part of the recruitment process.	Despite this allegation appearing too preposterous to be true, especially in relation to educated adults, the former CMC investigated the allegations, assisted by officers from the QPS. The investigation yielded sufficient evidence to support a prosecution in relation to the allegations. The officer was convicted and sentenced to five years imprisonment.

You should therefore make some preliminary enquiries before determining that a complaint is frivolous, vexatious or lacking in substance.

Under sections 216 and 216A of the CC Act, it is an offence to make a complaint that is vexatious or not made in good faith. If you decide to take no further action on this basis, you should advise the CCC, which can decide whether or not to take any action against the complainant.

Do not write off a complaint simply because it is made anonymously, or because the complainant later withdraws the complaint. Although it may not be possible to rely on the complainant for evidence in either situation, the allegations should still be tested by other means if possible. Anonymity alone is not a sound basis for determining that a complaint is lacking credibility.

### Unjustifiable use of resources

Action may be an unjustifiable use of resources if:

- the law or policy alleged to have been breached is no longer in force
- the lapse of time between the alleged corrupt conduct and the making of the complaint reduces the likelihood of productive investigation through inability to obtain relevant evidence
- the complaint is repetitious — repeating, without any additional grounds and with no fresh allegations or evidence, the substance of a previous complaint that has been dealt with
- the complaint cannot be substantiated because there could not be any evidence capable of proving the allegations.

The following scenario shows a case that would be impractical to pursue for a number of reasons.

Allegations made	Unjustifiable use of resources because...
Your internal audit unit has found that, three years ago, before the implementation of asset control measures, it was common practice for staff to take stationery home for personal use.	It would no longer be productive to investigate these allegations — three years have elapsed, the monetary value is not high, and the new control measures prevent similar behaviour. However, this should not prevent you from considering what steps you can take to address any ongoing systemic or workplace issues, or any policy or procedural deficiencies.

### Factors to consider when taking action

When the CCC refers a complaint to you with a direction to conduct an investigation, you must investigate. Otherwise, if the CCC indicates that it will simply review or audit the case, you can choose how best to deal with it.



The nature of any action you take — investigation or management action — will depend on a range of factors that you should consider systematically by asking questions such as:

- What was the outcome of any preliminary enquiries into the allegations? You may have identified deficiencies in your UPA's procedures that directly or indirectly led to the conduct, rather than blatant corrupt conduct on behalf of any officer. Complaints often result from organisational communication problems or misunderstandings that can be readily resolved, although poor organisational or personal practices are no excuse for serious or systemic corrupt conduct.
- How serious is the complaint? As the seriousness of the allegation is an important determinant, you must find this out quickly. You should seek to ascertain the nature and scope of the alleged conduct, the circumstances surrounding the complaint, and the likely outcome if the alleged conduct is proven.
- What does the complainant want to see happen as a result of making the complaint? For example, they may want an explanation or an apology, or reassurance that the person they complained about will not do the same thing again to someone else. The complainant may have little knowledge of the various responses available, so explain them in a way that enables them to understand that there may be other options apart from formal investigation that can satisfy their concerns. Take care not to influence the complainant to accept a "soft option".
- Will there be sufficient evidence to lead to a successful prosecution or disciplinary action?
- What is the history of complaints against the subject officer? Is there a pattern of complaints and, if so, what remedies have already been tried? It may also be useful to consider the complaints history of the unit in which the subject officer works, and that of other officers who have the same supervisor. For example, an allegation of a particular type may be referred to you that, at first glance, you could deal with appropriately by actions other than investigation. If, however, the allegation is not the first of its type concerning the same officer or the same work unit, it may be more appropriate to investigate it. Consider the following scenario.

Allegations made	Dealing with the original allegation	A history develops
An allegation is made that an IT officer involved in awarding contracts has been receiving gifts from a major IT contractor.	<p>Preliminary enquiries reveal that the officer has received several gifts from the supplier which have not been declared. Individually, each gift is only of token value, but collectively their value is close to \$400.</p> <p>An appropriate response might be to give the officer guidance and training to ensure that she is aware of your policies around the giving and receiving of gifts, and your code of conduct. The gifts should be registered in accordance with your policies in this regard.</p>	<p>Six months later, further allegations are made that the officer has received more significant gifts from several suppliers (e.g. electronic equipment, airfares, accommodation), again without declaring the gifts.</p> <p>On this occasion, a full investigation of the conduct of the officer may be warranted because of the nature of the allegation and the subject officer's history. The fact that the officer had recently received training about your agency's policies escalates the seriousness of the conduct.</p>

In situations such as the above scenario, you should weigh your decision about how to deal with the allegations, and how much effort to expend, against:

- the educative and deterrent value of a good investigation
- the likelihood of increased public confidence in the accountability and transparency of your UPA's decision-making processes
- the restoration of the good reputation of the person being complained about, where allegations are publicly known

- the opportunity to identify and rectify any systemic problems, any policy or procedural deficiencies or any workplace issues.

## Management action

Once you have decided that the case warrants management action rather than a full investigation, you must choose the appropriate management strategy to use to:

- resolve the complainant's concerns
- deal with the conduct of any individual
- address any systemic or workplace issues, and any policy or procedural deficiencies, to maintain standards of behaviour.

Strategies could include:

- undertaking enquiries
- performance improvement
  - guidance
  - counselling
  - training
- systems improvement, including amendments to policies and procedures
- preventive action
- dispute resolution or mediation.

In resolving a case, you should tailor the response to fit the offending behaviour and the circumstances in which it occurred. You may have some established ways of handling less serious complaints that have been successful in the past — the important thing is that your decision on the appropriate action to take can be justified. The scenarios at the end of this section can help you identify possible strategies.

## Explanation to the complainant

In some cases it may be appropriate for the relevant manager to meet with the complainant to discuss their concerns and try to resolve them. Such a meeting might include the subject officer, if there is a need for the complainant and that officer to have continuing contact.

## Performance improvement

An appropriate response might include increased supervision or performance improvement strategies, giving guidance or counselling, or providing specific training for the subject officer (or more broadly). This type of response suits less serious complaints that relate to the competence or performance of the subject officer, or minor breaches of policies, procedures or the code of conduct.

## Systems improvement

The conduct may have occurred because of lack of awareness on the subject officer's part about certain policies or procedures. This might be remedied by a bulletin to all staff about the provisions of those policies and procedures, as well as a review of your UPA's induction processes to ensure all new staff are fully aware. This type of response suits less serious complaints that relate to minor breaches of policies, procedures or the code of conduct.

## Mediation

Where you cannot resolve a complainant's concerns — for example, when the complainant is unwilling to accept the management action taken or proposed, and maintains they have serious concerns that must be addressed — mediation may be appropriate. This process may help a complainant explain why they feel that they have been inappropriately treated, and the consequences for them of the alleged conduct. One of the outcomes could be to make the subject officer more self-aware, and so improve



their behaviour. It may also provide a better opportunity for your UPA to gain an insight into any procedural deficiencies or systemic issues.

## Investigation

There will be some cases where a full investigation of the complaint is the only appropriate response. In other cases, an investigation may only be justified if there are good prospects of the allegation being substantiated, and no other method of dealing with the complaint can satisfy the needs of the stakeholders. Sometimes an investigation may be necessary to clear the subject officer and restore their reputation, or identify and address any systemic issues.

Because the consequences are so serious, you should take the utmost care to ensure that such complaints are investigated fairly and thoroughly. Chapters 6–10 provide guidance on how to investigate a complaint referred by the CCC.

It is not necessary to await the outcome of an investigation into the conduct of an individual before taking management action to deal with any systemic or workplace issues. For example, it may be apparent from preliminary enquiries that your UPA is at risk because of the absence of appropriate checks and balances in a particular process, and immediate steps can be taken to rectify this.

### Deciding whether to investigate

Ask yourself:

- Are the issues raised by the complainant serious? If relevant, are the monetary amounts or other benefits, or any detriment to another person, substantial (e.g. although the conduct would amount to a criminal offence — e.g. theft — if the value involved is low, a prosecution is unlikely)?
- How many staff are alleged to be involved?
- Does the complaint indicate a systemic problem or a serious abuse of power (e.g. a single complaint may not appear worth investigating, but a series of complaints relating to the same issue or against the same officer might suggest that an investigation is needed to determine whether there is a pattern of conduct or a broader systemic problem)?
- What significance does the complaint have for your UPA?
- How long is it since the events took place (e.g. if the events occurred a long time ago, it may be difficult to track witnesses and documents, recollections of events will be less reliable, and evidence may be unavailable)?
- Is there a better mechanism for dealing with the complaint?
- What course of action, if any, has the CCC recommended?
- Would the investigation be an unjustifiable use of resources?

## Establishing an investigation

If you are conducting an investigation — either because the CCC has directed you to, or because you believe it is the best course of action under the circumstances — you first need to develop the scope and purpose of the investigation and choose an investigator.

### Developing the scope and purpose

You need to be clear about what kind of investigation will be required so that you can impart this to the investigator.

The scope and purpose (sometimes called the terms of reference) will dictate:

- the powers that will be needed to investigate the complaint
- the resources that will be needed
- the authorisation necessary to undertake the investigation
- the outcomes that are required.

The scope and purpose should take account of the practicalities of an investigation, particularly the resources available to the investigator. Without a statement of scope and purpose, the investigator may be tempted to take the investigation into areas that are not necessarily material to the original allegations. The investigation may blow out or lose direction.

The scope and purpose will usually be developed by you, often in consultation with the investigator. However, sometimes you may delegate the entire responsibility to the investigator.

Check with your UPA's human resources and legal departments for details of disciplinary procedures, statutory functions, and employee awards, contracts or agreements.

The scope must set out the bounds of the investigation. It should:

- not just reiterate the allegations made by the source
- be framed in neutral terms that do not suggest that the issues have been prejudged
- set a timeframe in the scope of the investigation that will let the investigator gather the relevant information. A particular day may be specified when the conduct allegedly occurred, or you might go back six months or two years to establish ongoing or systemic issues.

You should also make it very clear whether the investigator is simply to gather information for you to consider, or is required to:

- make findings about the conduct of the subject officer
- make findings about your UPA's policies and systems
- make recommendations as to the appropriate action
- recommend redress for anyone who has suffered detriment because of the conduct.

Regardless of whether you ask the investigator to make findings and recommendations or just gather information, on receipt of the final report, you must analyse the contents, including supporting evidence, prior to making your final decision on the allegations. If you intend to assign responsibility for making the final decision to another officer (not the investigator), this should also be done as part of the scope and purpose of the investigation.

You should also work out the purpose of the investigation for your UPA. A useful question to ask is: "How does this affect the functions or role of my UPA?"

Try to frame your scope and purpose as broadly as possible around the central focus of the allegations. This may avoid the need to amend your document if more information comes to light, for example, more serious allegations, or systemic issues that need to be addressed.

## Choosing an investigator

Legislation, guidelines or policies governing the disciplinary system applicable to your UPA will generally set out who may conduct disciplinary investigations. It is not uncommon for a specialist internal unit, external consultants (including retired former senior officials), or a senior member of staff to be made responsible for investigations.

Where possible, an investigation should not be conducted by anyone with direct involvement with the person or complaint being investigated. In particular, think carefully before deciding to appoint the subject officer's supervisor to investigate a complaint. In some instances, this may be appropriate, but not if the conduct complained of was directly or indirectly influenced by the supervisor's actions or inaction.

The investigator who is appointed should:

- have the necessary skills and experience to conduct the investigation, taking into account the likelihood of the investigation resulting in prosecution or termination
- be able to remain objective (see chapter 5)
- have sufficient seniority to conduct an interview with the subject officer.

If criminal proceedings are likely, the investigation should be conducted by trained specialist investigators only.

## Limited resources

You may encounter significant resource problems in undertaking an investigation, particularly if your UPA is small. You might also experience difficulties in:

- ensuring confidentiality
- gaining access to witnesses who may be reluctant to come forward
- maintaining organisational stability, such as when key staff are offline to conduct an investigation
- dealing with stakeholder pressure for a quick result
- dealing with any perceived lack of impartiality, particularly if the complaint involves a senior officer.

One of the factors that you will need to consider is whether or not the investigation is to be carried out by in-house staff or by a person or organisation external to the agency.

Whatever decision is made, the investigation will be more likely to succeed if you already have appropriate policies and procedures in place that reflect the advice contained in this guide.

Some possible ways to handle the need for investigations in an agency environment are:

- appointing a discrete investigator or investigation unit
- using the investigative functionality or duties of existing units, for example:
  - risk management units
  - internal audit units
  - complaints handling, internal monitoring and review units
  - organisational development, improvement, quality assurance or workplace health and safety investigation units
- outsourcing investigative functions, including:
  - regional resource-sharing with other agencies
  - partnering with the local offices of other agencies with expertise or resources in investigations
  - engaging external service providers as required.

## Other factors to consider

### What if circumstances change?

At any point during the course of dealing with the allegations made in a complaint, information about more complex or serious instances of the alleged corrupt conduct, or about different corrupt conduct, may be revealed. If you suspect possible corrupt conduct in relation to these new allegations, you must immediately notify the CCC so that it can assess the appropriate action to take. It may be that the CCC will need to assume responsibility for the investigation of these new allegations, investigate them jointly with you, or change the nature of its monitoring. If serious criminal offences are detected, the investigation may need to be referred to the QPS (see also “Criminal conduct” below).



## Criminal conduct

Corrupt conduct will often also involve criminal conduct. This means that an incident can at the same time be within the jurisdiction of the CCC, your UPA and the QPS, and therefore the actions and decisions of one agency will have an impact on those of the other agencies.

For example:

- The QPS may advise the CCC of a criminal case under investigation that also involves possible corrupt conduct.
- The QPS may advise you of a criminal case involving one of your employees. You still need to report the allegations to the CCC.
- The CCC may refer a complaint to both the QPS and to you to deal with — the QPS to deal with the criminal aspects and you to deal with disciplinary aspects and systemic issues.
- The CCC may refer a complaint to the QPS only, deferring the decision about how to deal with the disciplinary aspects of the case until the outcome of the police investigation (e.g. the conduct involved is very serious and may warrant instituting disciplinary proceedings before QCAT if the criminal prosecution fails).
- The CCC may refer a complaint that is of a minor criminal nature to you to deal with, leaving it up to you to decide whether to report it to the QPS as well (e.g. minor theft).

Where a disciplinary investigation arises out of alleged criminal conduct, you will need to take into account any criminal proceedings. If the evidence is clear and admissions have been made, you may start disciplinary action immediately. You should consult the industrial relations section of your agency, and seek the view of police investigators on how your investigation may affect, or be affected by, the police investigation.

You can take disciplinary action before the criminal investigation or prosecution is completed, provided you liaise with the QPS. Whether disciplinary proceedings should await the outcome of criminal proceedings will need to be determined on a case-by-case basis. You may decide to hold off on disciplinary action until the outcome of the prosecution is known so that if it fails, you can still institute disciplinary proceedings (see “Rules of evidence and standards of proof” in chapter 7, and “Failure to identify unrelated criminal matters” in chapter 10).

## Subject officer’s employment opportunities during investigation

You need to consider whether the subject officer should be precluded from relieving, promotion and development opportunities due to the nature of the allegations against them, the extent of the evidence gathered, and the possible impact on the workplace and on other officers.

Similarly, in maintaining ethical standards in the workplace, you should consider the existence of an investigation when making decisions in relation to leave arrangements and secondments.

## Subject officer’s resignation

There may also be cases where a complaint referred to your UPA clearly requires an investigation, but the subject officer has already resigned. You might think that is the end of the matter, but not necessarily. System failures may have contributed to the complaint being made, and this would be an opportunity for you to review your systems and make improvements to reduce the likelihood of a similar complaint occurring in the future.

You should also consider whether a disciplinary declaration is appropriate under section 219IA of the CC Act or section 188A of the *Public Service Act 2008*, or whether you should make a criminal complaint.

The case study below shows how positive results can still be obtained even if the subject officer has already resigned.

Allegations made	The investigation	Resignation of subject officer
An allegation was made that a substantial amount of sexually explicit material was stored on a computer, and numerous CDs containing similar explicit material, downloaded from the internet, had been found at a workstation within the IT section. The workstation concerned was used principally by an IT support services officer who at various times acted as the IT section manager. The officer was also responsible for liaison with external suppliers and for minor software and hardware purchases. The alleged internet misuse was uncovered while the officer was on leave.	In addition to the original allegations, the investigation also disclosed discrepancies between purchasing records, asset registers and the results of a physical stocktake of minor hardware items within the IT section. A small number of computer hardware items appeared to be missing, but these items could not be identified due to inconclusive purchasing records and an absence of accurate asset register details. The investigation also disclosed email records containing dialogue with an external party concerning passwords to sexually explicit websites and covering other potentially unlawful actions.	<p>The officer resigned before the investigation was completed. Regardless of whether a post-separation disciplinary declaration or criminal complaint is made, the investigation can highlight a number of areas that are subject to risk and would benefit from a corruption risk management strategy. A strategy was designed and implemented by the agency and included:</p> <ul style="list-style-type: none"> <li>• a comprehensive review of the agency's exposure to corruption and security risk, particularly in relation to IT systems</li> <li>• implementation of risk management procedures</li> <li>• a review of human resource programs (e.g. staff induction and development programs)</li> <li>• regular refresher training in the practical application of the agency's code of conduct and acceptable standards of ethical behaviour</li> <li>• a review of work practices</li> <li>• a review of procurement activities</li> <li>• an examination of inventory and asset management practices</li> <li>• publication of the outcomes of the investigation to promote greater awareness of the requirements for appropriate use of the internet and email, and of government resources generally.</li> </ul>

## CCC audits

One of the key ways the CCC ensures that complaints about, or information or matter involving, corruption are dealt with appropriately is to audit complaints referred to UPAs (see "How the CCC ensures complaints are dealt with appropriately" in chapter 1).

The CCC's audit program will review the systems and practices in place for dealing with corrupt conduct within UPAs, as well as looking more specifically at:

- classes of complaints at an agency or sector-wide level that warrant examination
- complaints that you dealt with under a section 40 direction without notifying the CCC, or which were referred with an RNFA option

- public interest topics that might be relevant to a single UPA, a group of UPAs or a sector as a whole, and which have been identified by the CCC or via a research directive.

Classes of complaints that warrant audit may be within a particular agency or across the public sector, and may include complaints concerning:

- allegation types of increasing prevalence and concern (e.g. misuse of facilities, process corruption)
- particular types of complainants (e.g. people making a public interest disclosure)
- individual public sector officers or general public sector positions that have a significant complaints history (e.g. white collar positions, purchasing officers)
- workplaces, business units, areas, regions of an agency or an agency itself which have been the subject of a considerable number of significant complaints and/or type of allegation.

In most cases, the CCC will advise you of its intention to conduct an audit in advance, but be aware that at any time, the CCC can seek to review an individual file, even if you have not been given prior notice.

CCC auditors will require access to complaint files. Depending on the size of your UPA, these audits can be done on site or off site. Section 40 directions issued to you will stipulate what records you must keep to facilitate CCC audits.

## Reporting back to the CCC

When the CCC refers a complaint to you to deal with, you will be advised of what, when and how to report back to the CCC. The CCC will also provide you with a checklist of the information you will be required to address for each allegation.

In all cases, this guide should be used to plan and prepare your report (see chapter 9).

## Responding to the complainant

Whatever action you take, section 44(5) of the CC Act obliges you to tell the complainant the reason the action taken was appropriate in the circumstances — including a decision to take no action or discontinue action — and any results of the action known at the time you contact the complainant.

This means that at the end of any investigation you should tell the complainant:

- if the complaint was not substantiated, why (e.g. there were no witnesses to corroborate the complainant's version)
- if the complaint was substantiated, what action you propose to take, without being specific, (e.g. if you intend to initiate management action, tell them so without going into details about the precise nature of the management action you intend to take).

The Queensland Ombudsman has guides available at <[www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)> on how to communicate decisions to complainants, members of the public and disclosers.

## Privacy principles

If you are unsure as to the level of detail that you can provide to a complainant, you should seek advice from your UPA's legal unit or Crown Law.

The *Information Privacy Act 2009* (IP Act) establishes a framework for the collection and management of personal information in the Queensland public sector. It is important to note that personal information can only be disclosed to the individual to whom that personal information belongs.

In the event of a request for information under the IP Act or the *Right to Information Act 2009*, you should contact your RTI unit for guidance, or the Office of the Information Commissioner will be able to provide clear advice.



## Scenarios

These scenarios have been prepared to show you the different options available for dealing with a complaint.

Scenario	Action that could be taken
An allegation of corruption made to the CCC against your UPA by an unsuccessful tenderer has been referred to you to deal with. The complainant has not provided any evidence to support the allegation. Preliminary enquiries, including an audit of your procurement procedures, reveal evidence that a departmental officer did not strictly follow departmental policies and procedures, and did not provide information that the tenderer should have received. If the information had been given to the tenderer, it is unlikely that the allegation would have been made. There is no evidence found to suggest that any decisions made were corrupt.	<p><b>Performance improvement</b></p> <p>Rather than formally disciplining the officer, a performance improvement strategy may be more appropriate. Give the subject officer guidance about the lack of communication and the failure to follow policy and procedures, and perhaps get the officer to undergo further training and education. Give the complainant the information they should have received in the first place. Explain to them the policies and procedures that should have been followed, and tell them that you will be speaking with the officer involved and recommending that the officer be further trained.</p>
A case has been referred to your UPA to deal with. Preliminary enquiries show that it is not corrupt conduct because there was no intent to be dishonest, but there is evidence of poor decision-making by an officer, which has resulted in an undesirable outcome. It is not possible to undo the undesirable outcome.	<p><b>Preventive action</b></p> <p>The best thing you can do now is to prevent a recurrence of the poor decision-making. The officer, with the assistance of senior staff with expertise in the area and any other relevant staff, could be asked to develop and present a workshop that uses the undesirable outcome as a “lesson learned” scenario to train current and future staff.</p>
An allegation has been referred to you by the CCC that emergency services officers failed to adequately respond to a patient resulting in an adverse outcome for the patient. Preliminary enquiries reveal that the request for assistance was cancelled by a family member saying that the patient was no longer exhibiting symptoms and was fine. While the emergency services officers still responded, the urgency was downgraded because the information suggested the patient was no longer in need of emergency treatment.	<p><b>Explanation</b></p> <p>This case could possibly be dealt with by speaking with the family and patient and explaining the circumstances and the reasons for particular decisions being made (assuming that all relevant protocols were followed). Apologies could be offered, if appropriate.</p>
An allegation has been referred to your UPA that a senior manager has given an unfair advantage to his wife’s company by awarding that company a training contract. Preliminary enquiries reveal that the manager’s wife does own the company named in the complaint, and it was recently awarded a \$30 000 contract by your UPA for which the manager was the decision-maker.	<p><b>Investigation</b></p> <p>Given the serious nature of the allegation — if proved, it could warrant the dismissal of the senior manager and raise systemic deficiencies that require remedy — this is an allegation that needs to be investigated. It could not be dealt with by managerial response or mediation.</p>

## 4 Local government

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### Corrupt conduct in local government

As outlined in chapter 2, section 38 of the CC Act obliges you to notify the CCC if you reasonably suspect that a complaint, information or matter involves, or may involve, corrupt conduct. Although many of the provisions governing how you deal with corrupt conduct are the same as for all other public officials — for example, what constitutes a reasonable suspicion, when to notify the CCC, what actions you may take — there are some important distinctions that relate only to local government, and this chapter will outline those for you.

Under the CC Act, the responsibility for dealing with suspected corrupt conduct on the part of a council employee or a councillor may rest with:

- the CCC
- you as CEO (for complaints about council employees)
- the CEO or the Director-General of the Department of Local Government, Racing and Multicultural Affairs (the Department) (for complaints about councillors in the Brisbane City Council)
- the Independent Assessor (established under section 150CT of the *Local Government Act 2009*) (for complaints about councillors in other councils).

At the same time — in the interest of maintaining community confidence in the integrity of their council — councillors (including mayors) also need to take some responsibility for preventing corrupt conduct. They need to support you in setting a tone of openness, accountability, transparency and integrity in all council dealings (see chapter 11).

Although the CCC must be notified of all complaints that may involve corrupt conduct, in the majority of cases involving council employees, these will be referred back to you to deal with in accordance with any directions from the CCC (see also “Section 40 directions” below), and may be subject to CCC monitoring (see “How the CCC ensures complaints are dealt with appropriately” in chapter 1).

### Misconduct and corrupt conduct

The terms “misconduct” and “corrupt conduct” may cause confusion because, although they share some similar concepts, they are defined differently in the *Local Government Act 2009* (LG Act) [s. 150L] and the CC Act.

#### Misconduct

In the LG Act, “misconduct” applies only to councillors, and is conduct of or by a councillor that:

- adversely affects, directly or indirectly, the honest and impartial performance of the councillor’s functions or the exercise of the councillor’s powers; or
- is or involves—
  - a breach of the trust placed in the councillor, either knowingly or recklessly; or
  - a misuse of information or material acquired in, or in connection with, the performance of the councillor’s functions, whether the misuse is for the benefit of the councillor or someone else, or to the detriment of someone else; or

- contravenes—
  - an order of the local government or the conduct tribunal; or
  - the acceptable requests guidelines of the local government under section 170A; or
  - a policy of the local government about the reimbursement of expenses; or
  - section 150R, 170(2), 171(3) or 175G; or
- is part of a course of conduct leading to the local government deciding to take action (under section 150AG) to discipline the councillor for inappropriate conduct on three occasions within a year; or
- is of the same type stated in an order of the local government that if the councillor engages in the same type of conduct again, it will be dealt with as misconduct.

Note that a different definition of misconduct applies to councillors from the Brisbane City Council [section 178(3) of the *City of Brisbane Act 2010*].

If, in assessing or investigating a complaint about corrupt conduct against a councillor, the CCC becomes aware of potential misconduct under the LG Act as well, it will consider referring these allegations to the Office of the Independent Assessor (OIA) (or, if the councillor is from the Brisbane City Council, the Director-General of the Department or the council's CEO). As explained in the text box below, the OIA is responsible for assessing and investigating certain types of councillor conduct complaints.

If the CCC receives a complaint that does not involve possible corrupt conduct, but does involve potential councillor misconduct, the complainant will be advised to lodge their complaint directly with the OIA (or, if the councillor is from the Brisbane City Council, the Director-General of the Department or the council).

### **Councillor conduct complaints and the Office of the Independent Assessor (OIA)**

The OIA was established in December 2018 to assess and investigate complaints about the conduct of councillors ("councillor conduct complaints"). The OIA has jurisdiction to investigate and prosecute complaints made against councillors from all local governments in Queensland, except the Brisbane City Council.

There are three types of councillor conduct complaints the OIA deals with.

#### **1. Complaints about inappropriate conduct**

Inappropriate conduct must be referred by councils to the Independent Assessor. It is inappropriate conduct when a councillor contravenes a behavioural standard (a breach of the councillor code of conduct), or a policy, procedure or resolution of council, or an order of the chairperson of a council meeting to leave and stay away, or when a councillor receives orders for unsuitable meeting conduct three times in one year.

#### **2. Complaints about misconduct**

Misconduct, as defined above, is dealt with by the Independent Assessor, with complaints heard by the Councillor Conduct Tribunal.

#### **3. Complaints about corrupt conduct**

Suspected corrupt conduct by councillors must be referred to the CCC. The CCC may refer some allegations of corrupt conduct by councillors to the Independent Assessor to deal with. This is because, under the CC Act, the Independent Assessor is the public official responsible for dealing with complaints about corrupt conduct by councillors.

## **Corrupt conduct**

Corrupt conduct under the CC Act has a broader application. The definition of corrupt conduct is provided in chapter 1. From a local council perspective, corrupt conduct can apply to both:

- elected councillors, including mayors (conduct that would, if proved, be a criminal offence only)



- council staff (conduct that would, if proved, be a criminal offence or reasonable grounds for dismissal).

Corrupt conduct as it relates to councillors is limited to conduct that would amount to a criminal offence because they are elected officials, and therefore not subject to a disciplinary regime involving “a disciplinary breach providing reasonable grounds for dismissal”.

In considering whether conduct would, if proven, amount to a criminal offence, you need to bear in mind that criminal offences are not limited to offences contained in the Criminal Code or the LG Act. There are numerous other Acts that contain criminal offences and have particular relevance for local government, including:

- *Local Government Electoral Act 2011*
- *Building Act 1975*
- *Environmental Protection Act 1994*
- *Invasion of Privacy Act 1971*
- *Plumbing and Drainage Act 2002*
- *Regional Planning Interests Act 2014*
- *Water Act 2000*
- *Planning Act 2016*
- *Liquor Act 1992*
- *Public Interest Disclosure Act 2010*
- *Electoral Act 1992*.

The scenario below illustrates how a *councillor’s* conduct may be misconduct without being corrupt conduct, and provides an example of what further elements might lift it over the threshold to corrupt conduct.

Scenario	Not corrupt conduct because...	Might become corrupt conduct if...
A councillor relates a confidential decision about future zoning, made at a recent council meeting she attended, to friends at a barbecue.	This would be misconduct, as it involves the councillor disclosing information that came to her knowledge by virtue of her position as a councillor, and that she knows is confidential. It is not corrupt conduct because it is not a criminal offence.	The friends at the barbecue are local developers who regularly provide hospitality and gifts to the councillor, and who will benefit from advance knowledge of the new zoning.  The three elements of corrupt conduct would now be present because it is an offence under the Criminal Code for a councillor to disclose confidential information with the intention of dishonestly obtaining a benefit for another person.

Similarly, conduct by one of your *employees* could require disciplinary action on your part without being corrupt conduct, as in the next scenario, which again provides an example of what further elements might lift it over the threshold to corrupt conduct.

Scenario	Not corrupt conduct because...	Might become corrupt conduct if...
A council client services officer abuses a customer in front of witnesses.	The conduct is not a criminal offence or serious enough to warrant dismissal, but is inappropriate, and reflects adversely on your council.	<p>The officer knowingly shreds development application documents lodged by the customer, delaying the customer's application and resulting in additional cost to the customer.</p> <p>The three elements of corrupt conduct would now be present because it is an offence under the Criminal Code (Misconduct in relation to public office – section 92A) for the officer to fail to perform a function of their office with the intention of dishonestly causing a detriment to another person.</p>

There are other scenarios at the end of this chapter that may provide you with some clarity around determining whether conduct constitutes corrupt conduct.

## Section 40 directions

The procedure for notifying the CCC about suspected corrupt conduct is set out in chapter 2.

As discussed in chapter 2, conduct that might appear quite minor in nature can still be corrupt conduct (e.g. an employee pilfering a small amount of money from petty cash). Your obligation to notify the CCC remains, regardless of how serious or otherwise the corrupt conduct is. However, this obligation is subject to any directions issued to you by the CCC under section 40 of the CC Act, which tell you:

- the kinds of complaints that must be notified to the CCC
- how and when this notification must be made
- the kinds of complaints that you can immediately start dealing with without notifying the CCC at all
- those cases that only need to be reported to the CCC on a routine basis (e.g. some may only need to be reported on a monthly basis).

It is important that you understand what needs to be notified and what doesn't before you take any action to deal with it (see "Actions before notification" in chapter 2).

## Informing the council

You are not required to seek any approval from the council or the mayor before notifying the CCC of any suspected corrupt conduct — the obligation to notify rests with you alone.

After notification, a council's right to be informed of matters is specified in the LG Act, and may also be set out in policies and procedures adopted by your particular council.

Where the CCC has indicated that a communication is regarded as "Confidential" or "In confidence", its contents should not be revealed unless the CCC advises otherwise. If you are unsure whether a communication is covered by the confidentiality provisions of the CC Act, contact the CCC.

## Other factors to consider

- As well as referring complaints, you are obliged to report any other information or matter that may suggest corrupt conduct, such as the findings of an internal audit report or a matter that arises in the course of resolving a grievance.
- You can assign your responsibility to notify the CCC about corrupt conduct to another council officer. This assignment can be for all complaints, or be limited to certain complaints (e.g. complaints against you) (see chapter 2).
- Your obligation to notify the CCC immediately if you reasonably suspect corrupt conduct is further compounded by section 243 of the LG Act (or section 225 of the City of Brisbane Act), which limits the time within which some criminal proceedings can be started. If there is a delay in notifying the CCC about suspected corrupt conduct until close to the time limit for bringing a criminal prosecution, the possibility of taking that course of action may be denied. In some cases this will mean that the only action available is a disciplinary charge or, if the officer has left the council, no action at all, which in serious cases is a concern.
- Allegations about corrupt conduct, whether true or not, can cause unwarranted damage to the reputation of the council, a councillor or a council employee within the local community — particularly those complaints that are aired in the local newspaper. Your council should employ strategies to combat any perception within the community of “guilty until proven innocent” that may result from the public airing of complaints (see also “Determining if a complaint is frivolous, vexatious or not made in good faith” in chapter 3).
- You should resist pressure from council or the community to get a quick result.
- You should review your council’s local laws, subordinate local laws, policies and procedures (including complaints management and records management systems) to ensure that they comply with your obligations under the CC Act for dealing with corrupt conduct.

## Scenarios

These scenarios illustrate how conduct may require disciplinary action against council employees without being corrupt conduct, and provide examples of what further elements might lift them over the threshold to corrupt conduct.



Scenario	Not corrupt conduct because...	Might become corrupt conduct if...
An allegation has been received that a council supervisor delivered a quantity of timber to his son's private residence in a council utility, and the timber was used for renovations to that residence.	On the information available, the conduct is not a criminal offence or conduct that would warrant dismissal — the supervisor is authorised to use the utility for private purposes outside of working hours, and there is no evidence linking the timber to the council.	<p>The allegation coincides with an audit report about the loss of a quantity of timber to the value of \$750 from council stores to which the supervisor has access.</p> <p>This raises the reasonable suspicion that the supervisor may be guilty of a criminal offence (i.e. theft) which would be corrupt conduct.</p>
You receive an allegation from someone who witnessed an incident at a job site in which one council employee punched another, who sustained a split lip. The person also informs you that the employee who was assaulted does not want it reported to the police.	The conduct may have been the result of a personal confrontation, unrelated to either employee's position. Although it is not corrupt conduct, it could still warrant disciplinary action under your policies and procedures.	<p>Evidence suggests the assault was an attempt by one employee to intimidate his supervisor out of reporting his theft of council property.</p> <p>This would amount to corrupt conduct because it is connected to the performance of official duties, and could result in criminal charges.</p> <p>The victim's decision not to report the assault to the police has no bearing on your notifying obligation.</p>

## 5 Key considerations for public officials and investigators

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### Confidentiality

Public officials and investigators have a duty of confidentiality in relation to complaints about corrupt conduct under various statutory and contractual provisions. Unauthorised disclosure of confidential information will also generally be proscribed by your UPA's code of conduct.

Your confidentiality obligation extends to the identity of the person making the complaint, the person who is the subject of the complaint, and sometimes even the existence of the complaint.

You may also need to consider whether the complainant is making a public interest disclosure, and is therefore subject to the provisions of the *Public Interest Disclosure Act 2010* (see "Public interest disclosures" below).

### What to keep confidential

You should do everything in your power to keep confidential:

- **The identity of the source of information (including the names of any disclosers)**  
This means taking care not to release any information that might reveal that person's identity, including indirect information such as a physical description, location or other personal data unique to the person. Doing so can have detrimental effects on the source and may reduce the trust that people have in you. Discuss with the source any fears they may have if their identity is revealed, for example, as part of a criminal prosecution (see also "No guarantees" below). Even if the source consents to their identity being revealed, keep it confidential wherever possible.
- **The identity of those involved in the investigation, especially the person under investigation and witnesses**  
The identity of the person under investigation, any other person involved in the investigation, and even the subject of the investigation should be kept confidential. While it may be necessary during the course of the investigation to discuss aspects with different witnesses, you must never lose sight of the fact that the enquiry is not complete until a report is prepared.
- **Any documents gathered during the course of the investigation**  
This includes details of a complaint and records of interview taken during any investigation. Some internal documents may also be confidential (e.g. personnel records). It is important not to misuse any information that is gathered during an investigation (see "Documents" in chapter 7).

Preserving confidentiality is important because it minimises the risk of harm to all parties involved, including the workplace — and, in some rural and regional areas, the local community — and ensures the integrity of any investigation. If a potential witness feels that they are unable to trust your discretion, they will be more reluctant to come forward with relevant information. Keeping material confidential reduces the risk of contamination of evidence. Accordingly, before interviewing any witness, ask whether that person has discussed the case with anyone else, and advise them not to discuss it with other witnesses or third parties after the interview.

This does not necessarily mean that you should exclude the manager of the relevant workplace from the process — unless the manager is also a subject of the investigation. In most cases, the manager will need to be made aware of the complaint so that they can deal in a timely way with any workplace issues that arise from the complaint, for example, workplace health and safety issues, or workplace standards that need to be re-established through appropriate training.



## No guarantees

Although you must try to maintain confidentiality at all times, you must not promise anonymity to the person who has made the complaint or to any witnesses. At some stage their names may need to be disclosed, for example:

- in a criminal prosecution
- under right to information legislation
- because procedural fairness requires it (see “Procedural fairness” below).

Despite your best efforts, the fact that a complaint has been made may become known within your workplace or to people outside. It is important for you to manage this by giving careful consideration to what you can tell different stakeholders (e.g. complainant, subject officer, discloser).

### Risks to confidentiality

Avoid:

- putting information on an unsecured computer
- interviewing people where they can be seen or heard
- giving confidential information to others to copy or type, or to address or send
- leaving names, addresses or phone numbers on some documents when they should have been blacked out
- leaving messages on desks or a phone service
- sending sensitive material by mail
- leaving documents on the photocopier or fax machine.

## If and when to tell the subject officer

### Before an investigation

It is not appropriate to inform the subject officer before notifying the CCC. Indeed, it is not necessary to tell the subject officer anything before starting an investigation — “natural justice” does not require you to do so (see “Procedural fairness” below).

When referring a complaint to you, the CCC may include advice on when it will be appropriate to advise the subject officer and what you can tell them. Otherwise, you can seek advice directly from the CCC.

### During an investigation

Whether the investigator should inform the subject officer of the allegations will depend on the scope of the brief.

If you are the investigator, and you are only collecting information to give to a final decision-maker, the investigation itself will not directly affect the subject officer’s rights or interests so there is no need to inform them. However, if the scope of your investigation includes making findings and recommendations about the case, you need to consider procedural fairness (see “Procedural fairness” below).

Certainly, no final decision can be made affecting a person’s rights, interests or legitimate expectations without first providing them with an opportunity to respond. The right to be informed about the substance of allegations or adverse comment, and the opportunity to be heard, must be given before any final decision is made, or any detrimental document is placed on the person’s file (see “Detrimental employee records” and “Procedural fairness” below).

So when the subject officer is informed of the allegations will depend on the circumstances of each case (see also “Interviewing the subject officer” in chapter 8).

In the absence of clear statutory direction, the CCC suggests that the following basic principles be followed:

- In circumstances where preliminary enquiries or the early stages of an investigation reveal that there is no case to answer, it may not be necessary to inform the subject officer at all if they are unaware of the investigation. This may save the person from suffering unnecessary stress. However, if anything is to be recorded on their file, they may need to be told.
- In circumstances where a complaint alleges wrongdoing, but the identity of the alleged wrongdoer is unknown, no-one needs to be notified of the allegations, unless evidence emerges against a particular officer.
- Where the subject officer is to be interviewed, there is no requirement to provide them with all, or specific, details of the allegations before the interview. It could be appropriate to delay informing them of the substance of the allegations until the interview, if it appears that evidence could be tampered with or witnesses approached (see also “Preserving evidence” in chapter 6).

## Detrimental employee records

Section 17 of the Public Service Regulation 2008 states that detrimental employee records cannot be used or placed on an employee’s file without the employee having an opportunity to read the record and respond to its contents. However, section 15(2)(d) of the Regulation states that a document about the employee concerning suspected corrupt conduct under the CC Act, or its investigation, is not an employee record, and therefore does not go on the employee’s file.

It is important to note that the exemption under the Regulation relates to documents about an employee’s *suspected*, as opposed to *established*, corrupt conduct.

This view should not be confused with access to any information held about an employee under the *Right to Information Act 2009*. Any request in accordance with that Act should be treated on its merits and in accordance with the provisions of that Act.

## Public interest disclosures

You may need to consider whether the complainant is making a public interest disclosure (PID) under the provisions of the *Public Interest Disclosure Act 2010* (PID Act). A person does not have to declare that they are a discloser or are making a PID to come within the provisions of the Act.

You should have procedures for dealing with PIDs and strategies to protect the discloser, as severe penalties apply for breaches of the PID Act.

You should take care to manage a complaint of a discloser. A poorly managed PID can take years to resolve, incur a considerable financial burden and have an adverse effect both on the discloser and on the workplace. It may also result in a loss of public confidence in your UPA.

The Queensland Ombudsman has responsibility for administering the PID Act. In that role, the Ombudsman reviews the management of PIDs; reviews the way public sector entities deal with PIDs; and undertakes an educational and advisory role about PIDs.

More information about PIDs can be found on the Ombudsman’s website at [www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au).

## Conflicts of interest

All complaints must be dealt with, and investigations conducted, impartially. You must not have, and must not be perceived to have, any conflict of interest in relation to the complaint, or to the people, the conduct, or the policies and procedures that are the subject of the complaint.

Generally speaking, there can be no confidence in the outcome of an investigation where the process is tainted by actual or perceived conflict of interest. Arguments made by the subject officer or the complainant about the integrity of the process can never be satisfactorily or totally rebutted.

Conflicts of interest can occur, or be perceived, on the part of either the investigator or the decision-maker. The allegation may be that, as a result of the conflict of interest, the investigator failed to collect all relevant facts, or ask the necessary questions, or otherwise carry out a proper investigation. Alternatively, it could be alleged that the decision-maker ignored or overlooked key evidence, or was too lenient (or too harsh) in the final decision.

It is not always easy to identify a conflict of interest, particularly where the conflict is such that it may produce bias (see “Avoiding bias” below.) It is not realistic to expect that you will be totally independent with no prior connection with the subject officer.

Simple acquaintance with the person being investigated or the fact that you have worked with that person (whether in a supervisory or other capacity) are not sufficient to justify an allegation of conflict — it must be based on something particular to the investigation.

As noted in earlier chapters, to avoid any suggestion of conflict of interest, you should think carefully before appointing the subject officer’s supervisor as the investigator, and you should not deal with any complaint against yourself if you are the public official.

If you are in doubt about whether a conflict exists, you should seek advice from a supervisor or manager, or from your legal unit, and ensure that the process is documented. If you have been asked to investigate a complaint or make a decision and do not believe you are an appropriate person to do this, somebody else should be assigned (see also “Actual or perceived conflict of interest” in chapter 10 in relation to retrieving an investigation when a conflict of interest becomes apparent).

Be aware that, even if you step down from the position of investigator or decision-maker, you may still be bound by confidentiality provisions for information received from the complainant or other sources.

## Procedural fairness

### What is procedural fairness?

Procedural fairness — also referred to as “natural justice” — applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. Procedural fairness is, at law, a safeguard applying to the individual whose rights or interests are being affected (see also “Failure of procedural fairness” in chapter 10 in relation to retrieving an investigation when natural justice is not adhered to).

As a public official or investigator, procedural fairness is an integral element in the way you deal with complaints, and serves a number of related functions:

- It is an important means of checking facts and identifying issues.
- The comments made by the subject officer might expose weaknesses in the investigation.
- It also provides advance warning of the basis on which the investigation report is likely to be challenged.

Depending on the circumstances, procedural fairness may require you to:

- inform people against whose interests a decision may be made of the substance of any allegations against them, or grounds for adverse comment about them
- give people a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise
- hear all relevant parties and consider submissions from them
- make reasonable enquiries or investigations before making a decision
- ensure that no person decides a case in which they have a direct interest
- act fairly and without bias
- conduct any investigation without undue delay.

## The rules of procedural fairness

The rules of procedural fairness, which have been developed to ensure that decision-making is fair and reasonable, are simple:

- Avoid bias.
- Give a fair hearing.

### Avoid bias

Being unbiased is a crucial aspect of procedural fairness. Bias can arise in a number of ways, including:

- being partial (favouring one person over another)
- being closed-minded (not listening to or taking into account what someone has to say)
- potentially gaining some personal advantage or avoiding a personal disadvantage based on the outcome of the investigation (see also “Conflicts of interest” above).

However, the law goes beyond looking for actual bias — it also looks for the perception of bias by asking: “Is there anything about the investigator or decision-maker, or their conduct, that might give rise (in the mind of a fair-minded member of the public) to a reasonable suspicion that the investigator or decision-maker may draw a conclusion based on self-interest?” If so, the law will generally state that the person should not conduct the investigation or make the decision.

During an investigation, circumstances may become apparent that increase the potential for bias on your part. It is important for you to recognise such potential, and remove yourself from the case as early as possible. Record your reasons and provide that record to your supervisor, or the officer who appointed you to investigate. Make sure this record is kept secure with the investigation material.

To avoid allegations that you are biased because of prejudice or prejudgment, and in the interests of confidentiality, do not comment on the case or engage in idle conversation about any aspect. If you don’t say anything during the investigation about those involved (except, of course, when you interview or write a report), then people won’t be able to make allegations that you said something that indicates bias on your part.

To ensure an impartial decision, the roles of decision-maker and investigator should be undertaken by different people.



### Risks to an impartial investigation

Be mindful of the potential for bias or a conflict of interest between your role in the case and matters personal to you. Ask yourself:

- Do I have a personal or professional relationship with any of the people involved that might make me an inappropriate person to investigate this case or make a decision? Mere knowledge of a person, or the fact that you have worked with them, is not enough to make out a case of bias on your part. You should look to see whether your personal relationship with the person is based on a close friendship and favouritism, or based on animosity.
- Am I prejudiced in any way towards or against a person involved, or does my behaviour or comment suggest that I may have prejudged issues or people?
- Would I, or anyone associated with me, benefit or suffer from any findings resulting from this investigation?
- Was I a participant in any of the issues involved? If you witnessed something, or managed or supervised the area concerned, you should not be enquiring into those issues.
- Do I have a financial interest in anything involved? If you or family members are likely to gain or lose money from a decision you make or a finding of your investigation, you should not be a part of it.
- Was I directly involved in developing or approving policies, procedures or practices that are the subject of this complaint?

### Give a fair hearing to the subject officer

The law of procedural fairness requires a decision-maker to listen to, and take into account, someone's point of view on anything that adversely affects them. A corrupt conduct allegation can certainly affect an individual, especially in relation to their reputation and their employment. In order to comply with the law, as a decision-maker or investigator, you will usually need to seek out a person's version of events and give them a chance to comment on any facts that might be detrimental or adverse to them (see also "If and when to tell the subject officer").

In considering a case involving disciplinary proceedings against a public service employee, the Queensland Supreme Court stated that natural justice does not require that the subject of an investigation be given access to every document seen by, or information given to, an external investigator, but it did say that a person must be made "aware of what he or she is accused of and by whom, with sufficient particularity to be able to answer the allegations, and be given the opportunity to answer the allegations" (*Ivers v McCubbin* [2004] QSC 342 at paragraph 31). (A subsequent appeal on this decision concerned matters unrelated to this principle – *Ivers v McCubbin & Ors* [2005] QCA 200).

So if your investigation report contains adverse comment about a person, or if, as decision-maker, you have been provided with such a report for a final decision, procedural fairness requires that the subject officer must at the very least know the case against them and be given an opportunity to respond to those adverse comments before any decision is made.

If this information has been put to the person during an interview, it is not necessary to do this again before finalising the report or making the decision. However, if the subject officer has only been told some of the grounds, or if any significant changes to the grounds have occurred since the interview, you must make them aware of the other grounds being relied on, as their response may influence your recommendations or suggest other avenues of enquiry.

The natural justice right of the subject officer to be told *who* has made the allegations needs to be balanced against the confidentiality and PID provisions discussed earlier in this chapter. It may not be necessary to disclose the name of the complainant or "whistleblower" if the evidence relied on does not come directly from that person — it will depend on the nature of the allegations and the grounds or evidence relied on.

Therefore each case should be considered on its merits, with particular weight being given to the information or documents that would best enable the subject officer to answer the allegations against them.

## Managing the impact of a corrupt conduct investigation

Very few investigations will have a major impact on your UPA, but whether an investigation ultimately uncovers corrupt conduct or not, they all require action on the part of your UPA's managers and supervisors, particularly within the work unit where the subject officer works, or where the corrupt conduct is alleged to have occurred.

Agencies differ, as do the circumstances of each investigation, so it is not possible to provide an all-purpose strategy. However, there are two key questions for you to consider when preparing a strategy to handle any particular investigation: "What factors can influence the impact of an investigation on my agency?" and "How are staff likely to react to the investigation?"

Managing the impact means:

- anticipating where the impact will be greatest
- considering how the investigation is likely to affect staff
- devising strategies to minimise the adverse effects.

## Factors influencing the impact of an investigation

There are many factors, but some important ones are:

- the nature and extent of the allegations being investigated
- the extent to which staff knew of the allegations before the investigation began
- who is implicated, and what their relationship is with the rest of the staff and with the community
- the nature and breadth of the investigation
- the culture of your UPA
- the attitudes of you and your senior officers
- the outcome of the investigation
- staff perceptions of how their managers have handled the investigation process
- the expectation that things will change as a result of the investigation, or that they will go on as before.

As an investigator, you may need access to material from the work unit — such as files, data, other documents and electronic systems — that are used on a daily basis. This may cause some temporary disruption to work in that area, and you should liaise with management from the unit about ways to minimise this disruption, including:

- notifying managers of any intended visit to give them time to collect the records they require and to make arrangements for handling the impact
- making arrangements to ensure that the staff have access to material that is essential for day-to-day operations
- making photocopies of documents or creating a backup of a computer's hard drive contents before it is removed.

## The release of information

Subject to any confidentiality requirements, you may well have to inform staff generally about allegations being investigated at some point during or after the investigation. Importantly, if the information is going to become public, all staff should be told before the media reports it.

Be fully prepared with detailed information and support structures. Consider setting up an internal group with representatives from legal, internal audit, policy, misconduct prevention, unions and any other relevant areas.

Alert staff to the release of any public final report and give them a copy. In many cases, it is not until the report on the investigation is released that staff are convinced there is evidence of the subject officer's corrupt conduct, or conversely that the subject officer is innocent of the allegations.

It is also a good idea to provide staff with a formal response from management to the key issues and recommendations of the report. A media statement will also show both staff and the community at large that you have identified, and are managing, the conditions that allowed the corrupt conduct to occur.

For the agency as a whole, the impact of an investigation may be such that specific public relations strategies should be developed. If the report is made public, you may experience some difficulties in recruiting staff or securing contracts for services, and will need to work out a plan for dealing with these issues.

## Investigations conducted by the CCC

The CCC does not investigate many complaints of corrupt conduct by itself because of the requirement to focus on the more serious or systemic cases of corrupt conduct [section 35(3) of the CC Act] . Nevertheless, these investigations, when they do happen, also need to be managed to minimise disruption and maximise benefits. When you are informed that a CCC investigation is taking place in your UPA, you will also be informed of the person to contact at the CCC for information about the investigation.

The same issues that arise with any internal investigation will arise with a CCC investigation of your UPA, and wherever possible, CCC investigators will try to minimise disruption by liaising with management, just as an internal investigator might. At any point during the investigation, you may consult officers from the CCC investigation team if you are unclear about whether any proposed management strategies might compromise the investigation.

If an investigation is likely to become public knowledge — for example, a public hearing is to be conducted or a public report is to be released — the CCC will discuss with you when and how to inform staff. This may include arranging to have sufficient CCC information available to staff when they are first briefed, or arranging for CCC officers to brief staff in person about what stages are involved, what powers are available to the CCC and how it uses them, and how staff can assist the investigation.

Some staff may consider the involvement of the CCC as an imposition, while others will experience relief at the CCC's involvement, seeing it as a sign that something is finally being done.

In those rare instances when a CCC investigation progresses to a public hearing, the impact on the workplace will be greater because a public hearing will increase community, parliamentary and media scrutiny of your UPA.

As with internal investigations, if the CCC is to report publicly on the outcome of an investigation, be sure to alert staff to the release of the final report and provide adequate access to a copy. A media statement is again a good idea, although you should consult the CCC on the nature and timing of the statement. In some cases it may be appropriate for both the CCC and your UPA to issue a media release. This will demonstrate that problems are being dealt with collaboratively.

## Managing the end of the investigation

An investigation report — either internal or CCC — may recommend remedial action that your UPA should take to reduce the opportunity for corruption to recur. Even if there is no evidence of corruption, the report may reveal evidence of poor administrative procedures, and recommend cultural and procedural improvements.

To allow smooth implementation of any recommendations, you should:

- identify the kinds of changes required to satisfy the recommendations
- plan and manage the change process
- communicate honestly and openly with all those likely to be affected by the changes
- encourage participation by those who will be affected, which can reduce staff resistance to change.



## 6 Planning an investigation

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### Scope and purpose

You have been tasked with carrying out an investigation on behalf of your UPA, which means that you are responsible for gathering all the relevant evidence or information and using this to find the facts.

In many cases, your CEO (or someone assigned the responsibility) will have developed the scope and purpose (terms of reference) for this investigation. In other cases, you may be asked to do it and have it endorsed by the CEO. If so, you should consult the guidelines set down in chapter 3.

Regardless of who develops the scope and purpose, you need to be clear on the boundaries of the investigation:

- what it is you have to investigate
- what authority you have to conduct the investigation
- what period of time your investigation should cover (i.e. are you looking at a specific incident, or events leading up to, or after, the incident)
- who you must report to
- when the investigation should be completed and the final report be submitted.

If at any stage during the investigation you think that the scope and purpose need to be changed, seek prior approval from the CEO. If you don't, you may find yourself investigating complaints without proper authorisation, and the CEO may disagree with the actions you have taken as a result.

A common pitfall of investigations is to lose focus by enquiring into interesting but irrelevant issues. If something does not fit within your scope and purpose, you should either seek approval to change your scope and purpose or omit it from your investigation.

### Authority and investigation powers

#### Gaining authorisation

You should make sure that you have a written authority from your CEO to conduct the investigation, including any powers that are available for you to adequately enquire into the allegations.

You could also check with your legal unit for any additional authority that may be contained in:

- your UPA's legislation and regulations
- employment agreements or awards
- contracts
- codes of conduct
- employment law and common law.

If an investigation arises out of a PID, check with your UPA's internal procedures for dealing with PIDs to ensure that they have been complied with (see also "Public interest disclosures" in chapter 5).

Section 219A of the *Public Service Act 2008* requires departments to establish and implement a system for dealing with customer complaints, and the process of authorisation should be dealt with in your UPA's complaints system.

## Authority to collect evidence

Your three most likely sources of information will be:

- witnesses
- experts or other people with relevant knowledge or information
- electronic and hard copy records from your UPA or external sources.

At the outset, you will need to ask yourself what authority you have and, in particular, whether you have the necessary authority to:

- get witnesses to talk to you about relevant events
- obtain information from people about policies, procedures and practices
- access relevant records.

## Preserving evidence

As soon as you are sure of your investigation powers, you should consider whether any potential evidence is at risk, and if so, take discreet steps to ensure that it is preserved and made secure. You might seek advice from the relevant experts, such as your IT section.

Potential risks to the security of evidence include where:

- documents may be destroyed
- records may be modified
- postdated records may be produced
- collusion may take place, particularly where more than one person is involved
- a vital witness is in a position to be pressured or influenced (e.g. a subordinate of the person under investigation).

## Accessing documents

You need to determine what authority you have to get access to relevant documents. If these documents belong to the department and are stored in areas where employees normally have access, you should have no trouble getting them. It would be preferable if your CEO makes reference to the seizure of documents and the like in your scope and purpose or authority.

You need to be more cautious if the documents are stored in an employee's personal work area. This may include a personal locker, locked drawer or filing cabinet. If your authority does not specifically cover these areas, you should seek guidance from your investigation manager (or equivalent) or your UPA's legal unit.

Specific authority may also be required for evidence contained on computers and other electronic media, including mobile devices (see "Digital evidence" in chapter 7).

## Questioning witnesses

You also need to determine what authority you have to question witnesses, both internal and external (e.g. contractors, customers). In this context, it is important to distinguish between the right to ask and the power to demand. You may have the right to request people to answer questions and provide relevant documents, but if witnesses refuse to be interviewed, or access to documents is refused, you may not have the legal power to compel witnesses to provide information.

There will be strong pressure on any employee of the UPA to cooperate with the investigation. You may have the power to request that any employee answer a reasonable question or provide a document that relates to the work of the UPA. Contractors can also be asked about the performance of a contract.

If employees wilfully refuse to answer or hand over documents, it may be grounds for disciplinary action (see “Difficult or uncooperative people” in chapter 7). However, refusal to answer or provide documents does not help you gather evidence. If a person fails to answer a reasonable question, take that into account when assessing their credibility.

## Sources external to the UPA

Where people outside your UPA appear to be key witnesses or hold relevant records, they may be reluctant to cooperate, and the absence of the necessary legal authority may stall the investigation. You may like to contact the CCC to discuss whether a cooperative investigation is warranted.

Most UPAs do not have extensive or coercive powers to gather information, but the CCC has the power to conduct coercive hearings, including the legal authority to compel witnesses to attend and give evidence under oath and to produce documents (see sections 75 and 82 of the CC Act). The CCC also has the power to require a person to answer self-incriminating questions.

## Planning an investigation

More investigations suffer because of poor planning than for any other single reason. A good investigation starts with careful planning and preparation, with a clear understanding of the parameters of the investigation.

Planning is essential to ensure that:

- the investigation is carried out methodically and in a professional manner
- resources are used to best effect
- additional resources can be made available if required
- sources of evidence are not overlooked
- opportunities for people to remove, destroy or alter evidence are minimised.

You should complete your investigation plan before you conduct any enquiries to clarify the approach you will take. The plan will allow you to stay focused on the job and alert you to any potential problems before you encounter them.

An investigation plan also facilitates effective supervision by informing investigation managers of proposed investigative strategies and timelines in advance, and during the course of an investigation.

## The investigation plan

There are a number of ways in which you may draw up your investigation plan. Some UPAs may already have a template, but an example of how you may present your plan is set out below.

An investigation plan will define what you do, why you do it and when you do it. For best results, the plan should work from the general to the specific and be updated regularly. Before you do any task, see where it fits within the plan.

It may be useful to develop your investigation plan in consultation with whoever authorised you to conduct the investigation, to ensure that it reflects accurately the brief you have been given.

While it is important that you start with a plan, investigations rarely proceed as originally predicted. You should therefore be ready to revise your plan, perhaps drastically, as new information emerges during the course of an investigation. Always follow the facts, rather than trying to make the facts fit into your plan.

## Investigation plan template (see sample plan at the end of the chapter)

<b>File no:</b> This should be an internally generated number					
<b>Investigator:</b> Your name and position, and the name and position of the officer authorising you to conduct the investigation					
<b>Overview/background:</b> You should state how the information came to your UPA's attention, the general ambit of the investigation, the general details given by the source of the initial information, and any other relevant information. If initial enquiries have been conducted by you or someone else, detail them here.					
<b>Scope of investigation:</b> Include the statement of scope and purpose as approved by your CEO, as this should clarify exactly what was alleged in the complaint.					
<b>Allegation/s:</b> A single complaint may contain a number of separate allegations, and these need to be dealt with individually. The CCC will usually have listed the separate allegations in its referral to your agency. The investigation plan should include only those allegations that are to be investigated.					
<b>Risks to investigation:</b> Mention any issues up front in the plan. For example: <ul style="list-style-type: none"> <li>• "The source is a public official who has made a public interest disclosure."</li> <li>• "Fears exist that documents might be destroyed."</li> <li>• "Certain people might release information to others."</li> <li>• "The media may take an interest if the case becomes public."</li> <li>• "A conflict of interest may be involved."</li> </ul> In respect of public interest disclosures, the investigation plan should incorporate strategies to protect the identity of the person making the disclosure.					
Actions to be taken					
Facts at issue	Action	Resources needed	Responsible person	Completion date	Outcome
What facts need to be established to prove or disprove the allegation (see below)?	Identify the potential sources of information that will help you establish the facts at issue by means of interviewing specific witnesses, examining documents and so on (see below).	What resources do you need, for example: <ul style="list-style-type: none"> <li>• people required</li> <li>• computer facilities</li> <li>• electronic or video recording equipment</li> <li>• stationery</li> <li>• storage facilities</li> <li>• vehicles.</li> </ul>	Who will perform the specific actions based on the avenues of enquiry? This will usually be you, but you may need to delegate a task to another officer.	Estimate the completion date for each task. It can never be set in concrete, but you need to ensure a timely conclusion to your enquiry, while at the same time making sure that the process is fair.	Does the evidence obtained through each action confirm or refute the facts at issue?



## The facts at issue

In cases involving a complaint about the conduct of an individual, the facts at issue will usually include:

- the identity of the person alleged to have engaged in the conduct
- the place and the date that the alleged conduct occurred
- whether the alleged conduct actually occurred
- if the alleged conduct did not occur, what conduct did actually occur
- whether the actual conduct itself is wrong
- whether the person did the thing alleged
- whether the person had authority to engage in the conduct.

As well, the relevant legislation or procedures alleged to have been breached may contain specific requirements or elements that must all be satisfied in order for a breach to be made out. All of these elements or requirements comprise the facts at issue or proofs.

## Sources of information

It is useful to break down the sources into:

- documents (both hard copy and electronic) that should exist or that might be obtained
- things that might have been used or created
- people who might have witnessed events, created documents or handled things (see “Deciding who should be interviewed” below).

Your focus should not be on trying to prove or disprove something, but on thinking broadly about all possible sources of information about a case. The sources may come from within your agency or from outside it.

## Deciding who should be interviewed

People are a valuable source of information during an enquiry because:

- they may have directly perceived something with their senses (e.g. “I saw”, “I heard”, “I touched”, “I smelt”, “I tasted”)
- they may have created a document (either electronic or hard copy)
- they may have used something
- they may have left a trace (e.g. a computer audit trail) when using something.

All witnesses who are relevant to the investigation should be interviewed. As part of the process of preparing the investigation plan, you should identify those people who can assist in the enquiry by asking yourself: “What people may have information or have created documents or used things relating to the subject of my enquiry?” If other witnesses become apparent during the investigation, revise your investigation plan accordingly.

## Deciding the order of interviews

The first interview in an investigation usually occurs with the complainant as part of the initial enquiries and planning. The order in which the remaining witnesses are interviewed will depend on:

- the importance of their evidence
- their degree of association with the person who is the subject of the complaint
- their availability.

As a general rule, the subject officer should be interviewed last. This will allow you to collect as much information as possible from other sources first, putting you in a good position to determine the appropriate questions to ask. It also minimises the risk of evidence being tampered with or witnesses being intimidated. (See also “If and when to tell the subject officer” in chapter 5 and “Interviewing the subject officer” in chapter 8 for more information.)

### **Arranging for an interpreter to be present**

Where you identify a potential witness who does not have a working command of English, or is deaf or has a speech disorder, you should also make allowances in your plan for the use of an accredited interpreter (see chapter 8 for advice on how to use interpreters when conducting interviews).

## **Seeking help**

Although you have been tasked with carrying out the investigation, there are many people within your UPA who can help you or offer advice, including:

- audit staff
- human resources staff
- legal staff
- information technology staff.

## Sample investigation plan

<b>File no:</b> 132/07/123					
<b>Investigator:</b> Michael Good, Area Manager (Authorised by Director ESU)					
<b>Overview/background:</b> At 10.00 am on 5 January 2014 an anonymous telephone call was received at the Ethical Standards Unit advising that on 20 December 2013 Ms Andrews, the agency's procurement manager, had awarded a three year contract to provide the agency's information technology support services to a business that is owned and operated by her husband. Additional information is that a proper tender process was not undertaken and that there are similar businesses in the marketplace.					
<b>Scope of investigation:</b> An investigation is to be commenced to establish if Ms Andrews failed to follow the agency's procurement policy in awarding a supply contract to her husband's business.					
<b>Allegation/s:</b> That on or about 20 December 2013 Ms Andrews had acted corruptly in awarding a supply contract to her husband's business.					
<b>Risks to investigation:</b> It is necessary to keep this information confidential and to act promptly in order to minimise loss of material from the subject officer's workplace.					
Actions to be taken					
Facts at issue	Action	Resources needed	Responsible person	Completion date	Outcome
Was a new contract required	Check contracts held by agency	Enquiries with relevant IT manager	Investigator and Manager, IT Section	6.1.2014	Enquiries to show whether new contract was required
Was there a tender process followed	Check agency website and records to ascertain calling of tenders	Enquiries with relevant IT manager	Investigator	7.1.14	Enquiries to show any calling of tenders
Correspondence with selected tenderers	Check tender file and emails	Enquiries with relevant IT manager and records manager	Investigator and Manager, IT Section	10.1.14	Enquiries to show if tender process was appropriate
Available contract documents	Seize all relevant contract documents	Enquiries in workplace	Investigator	10.1.14	Documents to show any process followed to award contract
Version of subject officer	Interview	Electronic recording of interview	Investigator	20.1.14	Version of subject officer to be assessed

## 7 Conducting an investigation

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### Types of evidence

Your job as investigator is to collect the evidence available and assess it impartially.

Evidence relevant to the complaint can be:

- direct evidence — what a person actually said, did or perceived through any of their five senses
- circumstantial evidence — evidence from which facts may be inferred (some degree of probability of being true can be concluded from it)
- indirect evidence — when a witness starts telling you what other people said they had seen or done (see “Hearsay evidence” below). Sometimes indirect evidence may be all you can find, so assess it by asking yourself: “What is the likelihood of the evidence being reliable?”

### Sources of evidence

In an investigation, the main sources of evidence are:

- oral evidence (personal recollections)
- documentary evidence (both electronic and hard copy records)
- things that might have been used or created
- expert evidence (technical advice)
- evidence from a site inspection.

While the oral evidence of witnesses and documentary evidence are the most common sources, the relative importance of each source will vary according to the nature of the complaint. For example, if you are investigating financial misconduct, documentary evidence such as accounting records could become very important, and you may also need to obtain expert evidence.

All evidence collected should be reliable and relevant to the aims of your investigation. You should avoid being diverted by extraneous information. To ensure that the investigation remains focused, refer constantly to your investigation plan to remind yourself that the purpose of obtaining information is to establish proofs or resolve the facts at issue.

It is often useful to look at what happened before and after the conduct in question. For example, you might look at other transactions that occurred around the time of a transaction of interest and try to find similarities or differences, and determine whether there is a pattern of behaviour.

### Forensic evidence

Depending on the nature of the allegations and the evidence you obtain during an investigation, that evidence may become “forensic” evidence at a later stage, meaning evidence used in, or connected with, a court of law or a tribunal.

If you are conducting an investigation, it is likely that your CEO has chosen this course of action because the allegations are sufficiently serious that, if substantiated, they would mean the subject officer’s dismissal or prosecution. Therefore the likelihood of evidence being or becoming forensic in nature is high, and you need to take considerable care in the way you obtain and record the evidence.

Perhaps the most important consequence of forensic evidence is the application of the rules of evidence, as discussed in the following section. Disputes about evidence are heard in courts every single day of a hearing or trial. Therefore, non-lawyers who are responsible for an investigation of such allegations may need to get professional legal advice.



## Rules of evidence and standards of proof

Regardless of whether a complaint ultimately becomes the subject of legal proceedings, you should be familiar with the rules of evidence because they are based on principles that can assist your investigation by directing you to the best evidence.

For any evidence, the most fundamental consideration is relevance. There must be some logical connection between the evidence and the facts at issue. The test of relevance is equally applicable to investigations as to court proceedings. However, where the rules of evidence apply, even evidence that is relevant may be inadmissible in proceedings. Two of the more important rules of exclusionary evidence are hearsay evidence and opinion evidence.

### Hearsay evidence

Hearsay evidence is “evidence based on what has been reported to a witness by others, rather than what he or she has heard himself or herself”. For example, a witness who says, “Bill told me that he saw Mary take the money” is giving hearsay evidence.

Hearsay evidence is generally inadmissible, but you should not totally discount it. The rule against hearsay applies only where the rules of evidence apply, but in an investigation, it can be a useful source of leads to other relevant witnesses. The importance of the rule against hearsay is that it alerts you to the need to go to the source itself, rather than relying on what others say. Put another way, hearsay evidence carries less weight than direct evidence; whenever the primary source is available, you should use it in preference to hearsay evidence. If this is not possible (e.g. because the source of the direct evidence refuses to be interviewed) then your report should record this.

There are a number of exceptions to the rule against hearsay, including statements made by alleged wrongdoers where they admit their wrongdoing. This is based on the assumption that people don’t tend to make damaging confessions against their self-interest, therefore, any damaging confession is inherently likely to be true. If Bill from the earlier example said to you as investigator: “Mary told me that she took the money”, this would carry some weight.

### Opinion evidence

A witness’s opinions about a person, or about what happened or should have happened, are irrelevant to your enquiry. Therefore, as a general rule, witnesses should be steered away from expressions of opinion about something or someone, unless the witness is an expert who has been asked to provide an expert opinion. Get the person to describe in detail what they actually perceived with their senses (i.e. saw, heard, felt, tasted or smelt).

As with hearsay evidence, there are exceptions to the general rule: opinion evidence may be admissible if it is based on what a person saw, heard or otherwise perceived, and it is necessary to convey an adequate understanding of the witness’s perception (e.g. “He looked upset to me”). Similarly, where witnesses have acquired considerable practical knowledge about something through life experience, they may be able to express an opinion about it even if they are not an expert.

### Standards of proof

In disciplinary investigations, the civil standard of proof applies — that is, the allegations must be proved on the balance of probabilities. This is a lower standard of proof than that required in criminal matters, where allegations must be proved beyond reasonable doubt.

Due to the different standard of proof and different evidence that may be relied on, an acquittal in criminal proceedings will not necessarily mean that disciplinary proceedings are prevented or should be discontinued.

For a case to be proved on the balance of probabilities, the evidence must establish that it is more probable than not that the alleged conduct occurred.

The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the:

- relevance of the evidence to the allegations
- seriousness of the allegations
- inherent likelihood (or improbability) of a particular thing occurring, and
- gravity of the consequences flowing from a particular finding.

This is known as the “Briginshaw test” (*Briginshaw v Briginshaw* (1938) 60 CLR 336).

For example, where disciplinary action will have serious consequences for the subject officer, a decision-maker may be less likely to rely on hearsay evidence about key issues in dispute, or statements from witnesses who have not been sworn and their evidence tested regarding key issues in dispute, than if the case involved a minor disciplinary breach.

It is the strength of the evidence necessary to establish a fact or facts — particularly key facts in dispute — and not the standard of proof that may vary according to the seriousness of the allegations and the outcome.

## Documents

If it has not been done before notifying the CCC to preserve evidence (see chapter 2), you should secure any relevant documentary evidence — all relevant files, diaries, flash drives and the like — as a priority. If this is done, anyone with a personal interest in distorting the outcome of the investigation will be prevented from destroying or removing them.

This should also prevent the file being amended by the addition of retrospectively concocted documents. Any documentary material that is produced after the file has been taken into your possession or control should be regarded with suspicion.

You should record the time and date when you took possession of documents, as well as the place from which you took the documents, how you took possession, and how the documents are stored. This can be important if accusations are made at a later stage that you mishandled documents, or allowed them to be mishandled, during the course of the investigation.

You should always take original documents rather than accept photocopies. Useful information is often written in pencil in the margins of documents or appears on Post-it notes. By taking the originals, you will have access to this extra information.

Having taken possession of the originals, you should have them photocopied (including copies of notes or Post-its) and then use the photocopies during the course of the investigation to avoid marking or damaging the originals. The original documents should be kept secure.

Where appropriate, verify the authenticity of the documents with the person indicated as being the author.

Whenever you take documents, provide a receipt or other record of this, together with your contact details in case anyone needs to access the documents. If the documents relate to ongoing everyday issues for the agency, you will need to give either a complete copy, or a copy of the pages relating to the current period, to the person who held them. In some cases the item (e.g. a sign-on book) can be removed if a new one is made available.

## Digital evidence

More and more, the documentary evidence you need is likely to be in digital form (e.g. letters, purchase orders, emails) stored on computers, CDs or flash drives, and evidence can also be available on mobile devices. Although the basic rules for gathering evidence apply, you need to take extra care with digital evidence to ensure that:

- you have the appropriate authority to search and, if necessary, seize any electronic equipment that might contain evidence
- you do not inadvertently alter the evidence (e.g. through keystrokes or mouse clicks)
- you maintain an audit trail of all actions you take in connection with the equipment (e.g. the condition in which you found the equipment, disconnecting the equipment).

You should obtain forensic computing advice before you take any action in relation to digital evidence, and anyone accessing original data held on a computer or storage media should be competent to do so, and to give evidence explaining the relevance and implications of their actions. If this expertise is not available within your UPA, then you may need to seek external advice.

## Expert evidence

An investigation may be assisted by the use of professional experts such as accountants, valuers or engineers. Experts are commonly required for advice on:

- medical, psychiatric or psychological illnesses
- accounting or financial matters
- points of law
- documents and handwriting
- computer or machine functioning
- scientific analysis of documents or other things.

## Document examiners and handwriting experts

Depending on the nature of the investigation, you may require the services of a document examiner or handwriting expert, for example, to establish when documents came into existence, whether they are forged and, if they are, the identity of the forger.

If such an expert is required, the person should be contacted as soon as possible for guidance and assistance about the proper storage and dispatch of the documents (see “Obtaining professional help” below).

Generally, when handwriting on a particular document is at issue, the identity of the author may be established by:

- the author giving evidence to the effect that they wrote it
- evidence from a person who has knowledge of the author’s handwriting from long acquaintance with it
- evidence from a person who saw the document being written
- evidence from an expert in the field of handwriting comparison who has formed the opinion that the writing is, or is not, that of a particular person.

## Obtaining professional help

There is no foolproof formula for selecting an expert. If you do not have the expertise within your UPA, you can:

- ask internal and external contacts who may have required the use of such an expert previously, and may be able to attest to their abilities
- contact a professional association which may be able to provide the names of highly recommended members
- contact the relevant department of a university or TAFE, where relatively affordable and independent expertise may be available among the faculty
- use internet listings or the telephone book, although there is a risk if you are unable to check the credentials of an expert sourced this way.

An expert's report should contain details of:

- their area of expertise
- their qualifications in relation to this area of expertise
- what information was given to them on which to base an opinion
- what their expert opinion is in relation to the evidence.

## Site inspections

Where visual information or the physical context is important in terms of the allegation or an understanding of the issues, you may have to make a site inspection. When inspecting a site:

- be clear about why you are doing so (e.g. to confirm lines of sight)
- arrange an appointment time (preferably for the time of day when the original event took place) and explain the purpose
- take photographs, detailed notes and draw diagrams
- make best use of the time by also taking the opportunity to interview witnesses where this is appropriate
- be discreet about the site inspection to minimise the knowledge of outside parties
- take care not to be drawn into too much informality with parties working at the site
- store any site photographs, diagrams, drawings or other evidence in the secure file.

## Escalation of complaint severity

Your CEO will have appointed you as investigator based on your skills to handle the relative seriousness of the complaint. However, during the course of your investigation, you may discover that the allegations you are investigating are more serious than originally assessed, or may involve unanticipated criminal allegations. You should terminate or suspend your investigation and seek advice from your UPA's legal section. If serious criminal offences are detected and you do not discontinue your investigation, there may be a risk of evidence being contaminated, thereby jeopardising any subsequent criminal investigation.

In some cases, you may be required to notify the CCC of this new information, especially if it changes the level of seriousness of the case being investigated. It may become appropriate for the CCC to assume responsibility for the investigation.

Any decision by the CCC to work cooperatively with an agency or assume responsibility for an investigation will be made on a case-by-case basis, within the CCC's legislative obligation to focus on more serious or systemic corrupt conduct.



## Difficult or uncooperative people

The degree of cooperation from people will vary — some people will be forthcoming in their responses, some will be more reticent, and others will actively seek to withhold information.

There will be times when you encounter difficult people, for example, interviewees who:

- are obsessive or irrational
- are anxious or aggressive
- are unfocused and continually change the subject
- stay silent or refuse to answer certain questions
- never stop talking, or embroider their answers with unnecessary detail or gossip
- trivialise the issues or attempt to undermine your authority.

Some people may refuse to provide documents relevant to the investigation, or allow you access to systems.

You must control the process, but you must also take great care to sift through each witness's evidence to ensure that you do not miss genuine allegations, admissions or rebuttals.

Resist any temptation to enter into discussion or argument with any person being interviewed; remain calm and professional, and maintain your objectivity.

If a person insists on offering a defence of "I wasn't there, I didn't do it, nobody saw me do it, you can't prove a thing", then you will ultimately have to look elsewhere for evidence to assist the investigation. In administrative proceedings there is no absolute prohibition on drawing adverse inferences from a person's refusal to answer. Statements from relevant people are useful but they are not necessarily essential.

No matter how skilful an investigator you are, you will not always be able to overcome those people who are determined to be uncooperative. However, where a person is not cooperating, you are not necessarily devoid of any recourse.

Despite changes to legislation, Crown Law has previously advised in principle that an employee is under a legal obligation to comply with a lawful direction (as found in relevant codes of conduct issued under the *Public Sector Ethics Act 1994*), and it will be a disciplinary offence for that employee to ignore a direction given under that provision by a person who has the authority to give that direction (see section 187 of the *Public Service Act 2008*). Consequently, an employee who refuses to answer questions that he or she has been lawfully directed to answer by the CEO or an authorised superior officer may incur disciplinary action.

Depending upon the legislation governing your agency, the common law privilege that a person is not bound to answer any question that might tend to expose him or her to the risk of prosecution or penalty may not be available in the context of internal enquiries associated with disciplinary matters. In any event the CEO or an authorised superior officer may direct a subordinate to answer questions concerning the performance of the subordinate's duties, regardless of the possibility that, in answering the questions, the subordinate officer might tend to incriminate himself or herself. In the event of a refusal to comply, disciplinary action may be taken.

## False information

People's personal feelings affect the reliability of the information they are providing. This may happen, to varying degrees, without any intent by the person to lie. However, you must be aware that some interviewees will intentionally supply false information. They may answer some answers truthfully, and lie in response to others.

## Recording and storing evidence

### The file

You should promptly put all information, including original documents and other evidence to be examined during the investigation, on a central file that is maintained in a locked cabinet. It is essential to prevent unauthorised access to the file, especially by anyone who is the subject of the complaint, or their associates.

Store all documents in a way that maintains their original condition. Do not staple, fold, excessively handle or in any way mutilate the documents. Put them in a plastic bag or envelope with an identifying label on the bag, not on the document. Avoid storing documents in sealed plastic bags, because they could be damaged by trapped moisture. Keep any seized electronic equipment away from magnets, heat, moisture and radios.

Confidentiality requirements (see chapter 5) mean that strict security should surround the conduct of any investigation into a complaint, including the storage of evidence. This is particularly important in handling cases based on public interest disclosures.

### File notes

It is essential to make notes of all discussions, phone calls and interviews at the time that they take place. Your file notes should:

- be legible
- include relevant dates, times, places and people spoken to
- clearly identify you as the author of the note
- contain a file reference in case the note becomes detached from the main file.

Every person who has been told about the complaint in the course of your investigation should be able to be identified from these records.

### The running sheet

A valuable practice for investigators is to maintain a “running sheet” or “log” for every investigation. A running sheet is a chronological record of events that have taken place in the investigation, which can be maintained manually on the inside cover of the file or electronically on a computer. At a minimum, running sheets provide a record that can be easily audited for who did what and when. They are particularly useful where:

- an investigation is long running, is complicated, involves a range of issues or comprises several strands
- there is more than one investigator
- there is a transition in staff during the course of the investigation and a new investigator takes over.

Maintaining running sheets electronically is the recommended method, as it also allows you to link to digital recordings and other documents for easy access.

The importance of preserving a record of information obtained during an investigation is reinforced by the provisions of the *Public Records Act 2002*, which require that:

- each public office make and keep full and accurate records of the activities of the office
- state records be kept under safe custody and proper preservation.

## 8 Interviews

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### Interview rules

The way an interview is conducted can significantly affect both the extent and the quality of information obtained. While methods may vary depending on whether the interviewee is a witness, the victim or the subject officer, to obtain oral evidence that is as complete, accurate and reliable as possible, you should follow some basic rules:

- Be prepared — plan your interview schedule carefully.
- As with every other aspect of your investigation — be impartial.
- Establish a rapport with the interviewee and inform them of the reason for the interview.
- Question effectively and listen attentively — avoid making assumptions; if in doubt, ask further questions.
- Avoid making any statements that cause a witness to believe that they will obtain any privilege, concession or immunity from official action.

### Planning an interview

Make sure you set objectives for each interview, prepare a list of essential issues to be covered, and familiarise yourself with the details of the case.

Your investigation plan will identify who needs to be interviewed, and the order in which they should be interviewed (see chapter 6). When witnesses are interviewed sequentially, you should avoid delays between one interview and the next to minimise the opportunity for collusion.

If you are working with another investigator, decide on your respective roles before you start the interview — for example, who is going to ask which questions and who is going to take notes, produce the documents, operate the recorder and so on.

As part of the planning process, you should anticipate how to deal with difficulties that may arise during the course of the interview, such as:

- emotional, hostile or resistant witnesses (see “Difficult or uncooperative people” in chapter 7)
- irrelevancies
- getting off the track
- disruptions
- the answers leading in an unexpected but important and relevant direction.

### Arranging interviews

In determining the most appropriate way to contact interviewees, you should take note of any established protocols, and of the need to protect the confidentiality of the person. People should ordinarily be contacted at their workplace. If your organisation has a procedure such as a written notice to attend an interview, you should comply with that procedure.

Never interview witnesses together. Always interview people separately and ask them to keep it confidential. A witness’s evidence can become corrupted — either deliberately or inadvertently — if that person learns what other witnesses have said or done. It can cause some people to change their version of events or alter their perceptions about an event.

It is wise to consider any special cultural, gender or other factors relating to the individual interviewee.

## Choosing an interview setting

You will need to choose a suitable interview setting. The choice of setting will vary according to the person being interviewed, but you should always have control over the setting. Location and timing should be discreet, so that the person does not have to explain their whereabouts to colleagues.

The room should be free of external distractions (such as public address systems, the comings and goings of other staff, or activity seen or heard through windows or partitions) and internal distractions (such as telephones, personal mobile telephones or an office full of papers that can easily allow a person's focus to become distracted).

There may be occasions when you have to conduct the interview at an outside location if no private meeting room is available at the person's workplace.

## Arranging an interpreter

Where an interviewee does not have a working command of English, or is deaf or has a speech disorder, you should use a specialised interpreter for their primary language or relevant disability. This need should be anticipated as part of the planning stage so that it does not arise unexpectedly.

Where the substance of an interview may be considered as evidence — or is to be relied on in any legal sense — and an interpreter is viewed as necessary to communicate with the interviewee, you should only use an accredited interpreter. This will reduce the opportunities for witnesses to later resile from their statement on the basis that they had not properly understood the questions.

Accredited interpreters are able to give evidence about the substance of the interview, as they are regarded as legally qualified to interpret.

You might consider allowing a third party with some ability in the interviewee's language to act as an intermediary — for example, someone in the workplace — if:

- what is required from the witness is simply some basic information, as opposed to evidentiary material
- the conversation is intended only as a preliminary stage before a full interview is considered or
- there is an urgent need to talk to the person.

However, this intermediary has no legal or evidentiary standing to interpret, and where an investigation involves a fellow member of staff, you should be very circumspect in the use of workplace interpreters, as it raises issues such as breach of confidentiality and potential bias — either in favour of or against the witness — on the part of the interpreter. The witness may also be reluctant to provide information in front of a colleague.

Avoid using family or friends of an interviewee as interpreters, because there is a very real danger that the interpreter will empathise with the interviewee to the extent that objectivity is lost and the responses are prompted, coached or inaccurately interpreted.

You should clearly outline to any amateur interpreter what their role is — make it clear that they should interpret what is said exactly, and they are not to add interpretations or clarifications. Strongly impress upon the interpreter the need for confidentiality and impartiality (see also "Third parties" below).

## Developing the questions

Before an interview, you should prepare the questions that you need to ask to prove or resolve the facts at issue identified in your investigation plan, covering all the ground that needs to be covered.



The benefit of doing a proper investigation plan at the start of the investigation, as outlined in chapter 6, is that it will help you to identify those questions and issues about which you will need professional legal (and other expert) advice.

As with other evidence, it is often useful to establish behaviour and events before or after the conduct in question. To assist with this, questions should generally be asked in chronological order. However, people do not always recall events clearly in a perfect chronological order, so you may wish to begin the interview with some general questions about the person's recollection of events relevant to the investigation, then become more specific.

Different people will respond in different ways to particular forms and styles of questioning, and you will need to be alert to how they are responding and adapt accordingly.

### Open-ended questions

Open-ended questions begin with "Who?", "What?", "When?", "Where?", "How?" and "Why?", and allow the witness to provide a free and full answer without leading them in any particular direction. Open-ended questions such as "What happened then?" are particularly useful where it is important that the information being provided by the witness is not contaminated by things that are not known to them.

Closed questions should be asked only after witnesses have told their story, unless you are having difficulty in extracting information. Closed questions are those to which the answers are "yes" or "no". They are useful to confirm or expand on information obtained, but tend to restrict the opportunity for witnesses to articulate positions for themselves.

**Note the difference in these examples:**

**Closed questions**

"Did you go to the records room at lunchtime?"  
"Was it a blue file?"  
"It was Jones, wasn't it?"

**Open-ended questions**

"Where did you go at lunchtime?"  
"What colour was the file?"  
"Who was it?"

In a court, closed or leading questions are generally only permissible in cross-examination. Although this rule does not apply in investigations, persistent and continued use of such questions is not recommended.

### Concise questions

Long, drawn-out or convoluted questions should be avoided, and multiple questions should not be asked as a single question — for example:

*Did you access the email system and use it to send inappropriate material to other employees, hoping they would find them amusing and expecting them to delete them, but not realising that they would be intercepted by the email manager and reported to the director?*

A question like this only serves to confuse the issues and the interviewee, and does nothing to establish the facts. A more effective method would be to clearly address one point at a time:

*Do you have access to the department's internal email system?*  
*How do you gain access?*  
*On [specific date] did you access the email system using that password?*  
*What emails did you send?*  
*What did you attach?*  
*Why did you send them to those people?*  
*What did you think they would do with them?*

*Are you aware of the department's email policy?*

*Are you aware that emails are audited?*

## Difficult questions

As your principal function is to get at the truth of the case, you must sometimes ask difficult questions. It may be useful in some circumstances to preface the question with an explanation such as: "I'm sorry if the question I am going to ask is upsetting to you, but I have to ask it in order to investigate these allegations properly."

You may also need to ask appropriate supplementary questions to test the credibility and reliability of a witness's answers, especially as it is not unknown for people being interviewed to be "economical with the truth".

## Follow-up questions

If new relevant lines of questioning arise during an interview, you must be open to asking follow-up questions. As part of planning, you should anticipate possible responses and decide on further questions to test these responses.

## Interview structure

There is no single correct formula for conducting an interview, but the interview will generally flow better and be more structured if it follows a logical path, such as:

The introduction

A "What happened?" component

Specific questions

Closing the interview.

### 1. The introduction

This includes:

- time, date and place of the interview
- details of everyone present at the interview (including you and any support person)
- voice identification
- purpose of the interview
- a short explanation of how the interview is going to be conducted
- details of the witness being interviewed — full name, date of birth, address and occupation
- ask the person whether they have any questions before beginning the interview. For example:

*I am Joe Bloggs and this is Fred Smith. We are at [...]. The date and time are [...]. Also present is Ms Brown, your union representative. For voice identification would each person present state their name and position [...].*

*Mr Smith and I are making inquiries about [allegation]. I would like to ask you some questions about this case, and my questions, together with your answers, will be recorded on this [equipment].*

*Just to confirm with you: your full name is [...], your date of birth is [...], your address and occupation are [...]. Do you have any questions before we continue?*

### 2. The "What happened?" component

Here you ask some open-ended questions that allow the witness to describe events in their own words (see "Open-ended questions" above).

### 3. Specific questions

You can ask this type of question to clear up any ambiguities or to deal with facts at issue that have not yet been covered. For example:

*Q: You said earlier that you put the money in your pocket. Had you first put the money in the cash register?*

*A: No, I left the money on the ledge above the cash tray and when the woman left the counter I put it in my pocket.*

*Q: You said you went down to relieve [name] at the front counter. Do you recall what time it was?*

*A: I had the early lunch break, so it would have been about 1 o'clock.*

### 4. Closing the interview

Towards the end of the interview you should summarise the issues raised by the person. This can often be used to bring the interview to a close, with the person feeling confident that they have been heard and understood.

## The interview

Make sure you are properly prepared for the interview by asking yourself these questions:

- Do I feel confident about conducting the interview? If not, don't do it. You could seek the approval of senior management to obtain the services of an experienced investigator.
- Is senior management confident that I am the appropriate person to conduct the interview? If unsure, check, but it is unlikely that they would have appointed you to investigate if they did not think you equal to the tasks required.

The most important rule when oral evidence is being taken is that it be recorded accurately, so consider how the interview is going to be recorded and make the necessary arrangements.

### Electronic recording

The CCC's preferred method of recording oral evidence is electronic recording, which is the most reliable way of ensuring accuracy.

If you are recording electronically:

- test the quality of the recording before starting, for example, by saying something like "1, 2, 3" into the recorder and then playing it back
- where possible, use two recorders in case one malfunctions
- speak clearly and audibly
- do not talk over the witness or let the witness talk over you
- do not handle documents while asking questions or let the witness handle documents while talking, as the shuffling noise may obscure the sound of the voices on the recording.

### Should I give the interviewee a copy of the recording?

A person who is the subject of complaint should always be given a copy of the recording of their interview as soon as practicable. In cases where it might compromise the investigation, this might not be until the investigation is finished.

Other interviewees might ask if they can get a copy of the recording, or of your notes. These requests should also be granted unless the confidentiality of the investigation is put at risk. This is something that you must consider carefully. You may decide it best to wait until after all interviews have been conducted, or at least those involving people who are to corroborate the evidence of a particular person.

## Other methods of recording

Sometimes electronic recording is simply not possible because:

- background noise might make recording impractical
- your recording device might break down, or not be readily available
- a witness might refuse to speak on a recording.

In such circumstances, you will have to keep a written record of interview by taking meticulous notes of the questions asked and the answers given. You should have the person read over the notes you have taken and sign off on the notes to indicate that they are accurate (see also “Alternatives to face-to-face interviews” below).

## Third parties

Interviewees will sometimes ask if they can have another party present during the interview, for example:

- a lawyer or union representative
- a family member or friend
- a specialised interpreter (see “Arranging an interpreter” above).

The right of interviewees to have a support person of their choice present must be balanced against the need for confidentiality. Where the intervention of third parties may jeopardise the confidentiality of the process, you must direct them not to discuss the issues raised away from the interview. This could take the form of a formal direction from your CEO for any third party who is also an employee of your UPA, who would then risk sanction if the direction was breached. You should consult your UPA’s policy on third parties.

When dealing with third parties, make sure they understand that:

- their role is simply to observe, not to take part in the discussion or interview
- they must not advocate for the witness during the interview (this is particularly important in relation to union representatives and lawyers)
- they must not suggest answers or “lead” the person being interviewed
- they must not subsequently talk about the content of the interview (this also applies to the interviewee)
- they must promise to respect the confidentiality of the issues discussed during the interview (if they are unable or unwilling to do so, they should not be allowed to be present during the interview).

A third party may act as a support for one or more interviewees provided that they are not:

- likely to be interviewed themselves in relation to the allegations
- acting in support of the subject officer.

Potential conflicts of interest like this can be avoided by asking the third party at the outset whether they have been asked to assist any other person; for example, a workplace union delegate may have been asked to represent all interviewees. In such cases, establish whether other representatives are available, or see if a paid union official could act as the third party instead. Use your judgment and common sense, and if necessary, negotiate with interviewees and third parties.

## Questioning a person about documents

If you need to show documents or other things to the person during an interview, make sure that you have them ready and available. If there are a lot of documents, you should consider the order in which you will show them to the witness, and have them placed in a file in that order.



You may wish to give the document an identification number such as the person's initials followed by a number — for example, for Mary Smith: MS1, MS2 and so on. The document may then be attached to the interview summary, if relevant.

It will not be sufficient to merely show the person the document in question; you should also describe it in a way that distinguishes it — for example, “a letter dated such and such, from x to y” — for the recording. The person should be required to acknowledge or express ownership of the document —for example, by identifying it as a document that they have previously written, received or seen — and should sign and date any document referred to in the interview.

## **Interruptions**

If, during the interview, the interviewee indicates that they are tired or wish to take a break, then you should call a temporary halt to the interview. On the record of interview, note the time when the interview is halted and resumed and the reason for the break. Generally, it is better not to discuss the subject of the interview with the person during the break. When you resume the interview, ask the person to confirm the fact of the break and what, if anything, you said to them during the break that was relevant to the investigation.

## **The end of the interview**

Give the interviewee the opportunity to provide any further information, including a handwritten or typed statement. For example, if the subject officer has admitted to the conduct that is the subject of complaint, they should be given the opportunity to provide reasons or an explanation.

Tell the interviewee that you may require them to participate in a further interview or provide further information at a later date. You should also invite the witness to get back in touch to tell you anything extra that they think of at a later stage. Give them your contact details for this purpose.

## **Alternatives to face-to-face interviews**

Face-to-face interviews are the preferred method of interviewing as they have a number of advantages that allow you to make a more accurate assessment of a person's credibility. They are more responsive, flexible and spontaneous, and they allow you to observe and respond to both verbal and non-verbal cues. However, if it is not possible or practical to conduct a face-to-face interview, you may need to consider alternatives, including telephone interviews and written statements.

Telephone interviews have the potential for misunderstanding, and you will not be able to see important non-verbal cues. You should only resort to a telephone interview if you need the information urgently and the person is far away. Video conferencing may overcome some of the drawbacks of a telephone interview. You might have your own facilities or be able to hire a facility from a conference centre, depending on available resources and cost.

A telephone interview may also be acceptable if you simply want to clarify some details, or if you need brief or less formal information.

You may be able to record your conversation from a speaker phone. If at all possible, you should electronically forward a copy of the record of the conversation to the person (see “Should I give the interviewee a copy of the recording?” above).

Written requests for information will sometimes be an appropriate method of eliciting information. Because this process gives the respondent time to consider and prepare their response, written requests for information will be suitable where you require detailed or more formal information.

However, you should be aware of the drawbacks of this form of information-gathering. The formality of written requests and responses can be intimidating and time consuming for respondents, and this medium is clearly not appropriate for people who have difficulty in communicating in writing.

Conversely, enquiries by correspondence may offer the skilled respondent the opportunity to carefully craft their words or responses.

Written requests create more delays in the investigation than would result from face-to-face interviewing, and you should also be aware of the risk of loss of confidentiality and of collusion between witnesses in this form of evidence-gathering.

The CCC does not recommend using this procedure in lieu of an interview of the subject officer.

## Interviewing the subject officer

There will be situations where the general rule about interviewing the subject officer last does not apply. For example, it may be appropriate to interview them earlier in the investigation to tie them down to a version of events that your investigation can then prove or disprove (see the first scenario below). In other cases, interviewing the subject officer early may save time and effort by clearing them straightaway (see the second scenario below).

### Scenarios

Scenario	Early interview helpful because...
You have been told that inappropriate emails are being sent from an officer's computer.	It will help you establish a few facts about how she uses her computer. You may want to find out whether she is the only person who had access to the computer and whether it is password protected. You might then want to verify the password and whether or not she has given it to anyone else or written it down where others can see it. By doing this, you have committed the subject officer to a version of the facts. For example, if the subject officer tells you that her computer is password protected and that nobody else knows the password or has seen it, she cannot then at a later date seek to explain away the allegations by saying that the password was on a Post-it note stuck on her computer.
You have received an allegation from the neighbour of an employee that he is stealing photocopier paper and storing the boxes in his garage. Initial enquiries with work colleagues found that the employee was seen walking to his car with photocopier paper boxes and placing them in the boot of his car. However, no-one knew what was actually inside the boxes.	An early interview might give the employee the opportunity to say that the boxes were taken out of the rubbish bin and were full of shredded paper, which he was using to pack fragile ceramic pots he was sending to relatives overseas. You might then go to the man's home with his consent, where his explanation is confirmed, thus saving yourself a full-scale investigation.

When interviewing the person who is the subject of the complaint, you should allow them to respond to all allegations uncovered during the investigation. You may need to paraphrase the allegations to protect the identity of a protected complainant. For example:

*“There is evidence that [...]. Do you wish to comment on that?”*

*or*

*“During the investigation it was discovered that [...]. Do you wish to comment on that?”*

*or*

*“X said that you [...]. Do you wish to comment on that?”*

You may also find that you need to interview the subject officer more than once, for example, if new information comes to light that contradicts earlier statements, or that needs further clarification.

## Evaluating the interview

At the conclusion of each interview you must assess the value of the information provided and how that information affects your investigation. The information may assist you to finalise the investigation at that point or lead you to further avenues of enquiry.

You may need to re-interview the witness or interview other people. You may have been told about documents that you were not aware of. Assess whether these would aid your investigation and, if so, what steps you would need to take to obtain them. Even if you think that the documents would not help you, it would be advisable to look at them to confirm your view.

You should also revisit your investigation plan and assess whether it needs to be changed. If so, make the necessary changes.

Once you have gathered all the evidence you can about a particular case, you will need to assess it and write your investigation report (see chapter 9).

## 9 The final report

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### Analysis of the evidence

After you have compiled all the evidence, you must analyse it to determine whether, in your opinion, it is capable of substantiating the allegations.

The depth of your analysis — and the content of your final report — will depend on whether you have only been tasked with collecting the evidence, or whether you are expected to make findings and recommendations. If you are conducting the investigation under a statutory power, it is important to determine the extent of your power to draw conclusions, and to be clear about the nature of the conclusions that you are entitled to draw.

Facts not in dispute can be accepted at face value (e.g. at 9 am, it is daylight). Facts in dispute (e.g. whether the subject officer was in the office at the time of the alleged corrupt conduct) should be subject to a constant process of checking, challenging and analysing. Be careful to distinguish between findings of fact and expressions of opinion, based on the evidence. Your findings of fact must be based on the evidence you have collected, and each piece of evidence must be considered in terms of its relevance and reliability. Weigh any evidence that dismisses the charge against any evidence that supports the charge.

If there is more than one allegation, a conclusion should be reached for each allegation.

In some cases, it will ultimately be an issue of one person's word against another's. In deciding which witness is the more credible, you should consider a range of factors, including the demeanour of the witnesses, their possible motives and any inconsistencies. In some circumstances, you might take the past behaviour of a party into account. Evidence of past behaviour is only likely to be relevant if the behaviour is markedly similar, recent or serious. For example, if a person has had allegations of dishonesty proved against them in the past, this may be taken into account in assessing credibility.

Remember, in disciplinary investigations, allegations must be proved on the **balance of probabilities**, but criminal proceedings will require that the allegations are proved **beyond reasonable doubt** (see chapter 7).

### The investigation report

Once you have finished your analysis of the evidence, you must prepare a report, and then complete and file all the paperwork. Your investigation report may well be subject to outside scrutiny by, for example, the CCC or the Queensland Ombudsman, so you need to ensure it is well structured and supports any findings or recommendations you have made.

There is no single correct format for a report. Your agency may have its own templates; otherwise, you can create your own format — you may choose to use your investigation plan as a starting point — as long as it contains all the necessary elements:

- Authorisation
- Scope and purpose
- The complaint
- Précis of allegations
- The evidence
- Conclusions and recommendations
- Attachments.



A good investigation report will use headings to help the reader identify the evidence relating to each issue. The evidence should be appended, tabbed and referenced in the report.

### Investigation report template (see sample report at the end of the chapter)

<b>File no:</b> This should be an internally generated number																							
<b>Investigator and authorisation:</b> Your name and position, and the name and position of the officer who authorised you to conduct the investigation																							
<b>Scope of investigation:</b> Include the scope and purpose approved at the start of the investigation, and note any changes that may have been necessitated as the investigation progressed (these changes would have required further approval).																							
<b>The complaint:</b> Include the following details: <ul style="list-style-type: none"> <li>• how the complaint was received — if in written form, attach this document</li> <li>• the name and occupation/position of the complainant, including any background information that may be relevant to the investigation of this complaint</li> <li>• the name and position of the person about whom the complaint has been made. Provide a summary of the subject officer's employment history with the agency, and any background information that may be relevant to the investigation of this complaint.</li> </ul>																							
<b>Précis of allegations:</b> Set out a brief summary of the nature of the complaint as expressed by the complainant, including the date and place the incident occurred.  Specify and number each allegation distilled from the complaint, having regard to any possible relevant criminal offence or disciplinary breach, or any specific section or clause of any relevant policy, procedure or code of conduct. Use corresponding numbers throughout the succeeding sections. Identify any potential systemic issues.  If other concerns not raised by the complainant have come to light during the investigation, these should be listed under the subheading "Further allegations", and numbered sequentially following on from the original allegations.																							
<b>Summary of the investigation:</b> Interviews conducted: <table border="0"> <tr> <td>• name of interviewee</td> <td>• date of interview</td> </tr> <tr> <td>•</td> <td>•</td> </tr> <tr> <td>•</td> <td>•</td> </tr> </table> People not interviewed: <table border="0"> <tr> <td>• name of person</td> <td>• reason not interviewed</td> </tr> <tr> <td>•</td> <td>•</td> </tr> <tr> <td>•</td> <td>•</td> </tr> </table> Documents examined: <table border="0"> <tr> <td>• title/description of document</td> <td>• if applicable</td> </tr> <tr> <td>•</td> <td>•</td> </tr> <tr> <td>•</td> <td>•</td> </tr> </table> Limitations to investigation: <table border="0"> <tr> <td>•</td> <td></td> </tr> <tr> <td>•</td> <td></td> </tr> </table>		• name of interviewee	• date of interview	•	•	•	•	• name of person	• reason not interviewed	•	•	•	•	• title/description of document	• if applicable	•	•	•	•	•		•	
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**Matters for consideration:**

Relevant criminal offences:

- Outline the legislation allegedly breached (if criminal charges have not already been laid).

Relevant policies and procedures for disciplinary breaches:

- Outline the UPA policies and procedures allegedly breached.

**Discussion of evidence:**

Summarise the evidence obtained:

- the circumstances and particulars of the complaint that the complainant made, with regard to the specific allegations distilled from the complaint
- the salient points of the interview of the subject officer, including the person's responses to each of the allegations
- the versions given by each of the witnesses interviewed, and whether they corroborate or contradict the version of the complainant or the subject officer
- the documentary evidence relied on in the investigation and its effect.

Repeat the process under a new heading for each separate allegation.

**Conclusions and recommendations:**

Set out a clear and positive analysis of the evidence and your opinion as to whether the evidence gathered, if accepted by the decision-maker, substantiates or disproves the allegations, and the reasons for these conclusions. Include relevant policies and procedures.

If there is more than one allegation, you should deal with them separately under headings that correspond with those used in the preceding section, "Discussion of the evidence".

It may be necessary to explain inconsistencies between the versions of witnesses and the reliability of the people interviewed.

If you are required to make recommendations, you should outline possible alternative courses of action to your CEO. Recommendations do not need to be specific about actions to resolve the complaint, and can be made regardless of whether the evidence is capable of substantiating the specific complaint, for example:

- If the evidence is capable of substantiating the specific complaint, your recommendation may state: "My view is that there is evidence which, if accepted by a tribunal of fact, is sufficient to find that the subject failed to comply with the code of conduct and support disciplinary action. I recommend that consideration be given to commencing show cause proceedings".
- If the evidence is insufficient to establish the allegations, or the allegations are not capable of substantiation, your recommendation may state: "I am of the view that there is insufficient evidence to support any criminal or disciplinary action and therefore no further action is warranted".
- If the investigation has identified any systemic issues or management failures that may have contributed to the alleged conduct, you might recommend that action be taken to address these.
- If the investigation has identified systemic issues or deficiencies, you might recommend that action be taken to improve the systems or undertake other corruption prevention actions.

**Attachments:**

Attachments, including all documents relied on by you and any relevant policies and procedures, should be indexed and numbered in the order they are referred to in the investigation report (e.g. "Attachment 1"), and attached.

If making findings and recommendations was not part of your original scope and purpose, then these should not be included in the final report. You need only present the facts and the evidence that supports those facts.

If the investigation report comments on a manager's responsibilities or systemic issues, these portions of the report can be issued separately and do not have to be provided to the subject officer. Once you have completed your investigation report, you should sign it and mark it "confidential", and deliver it to the officer who authorised you to conduct the investigation.

The final decision-maker will undertake their own analysis, based on your report. They must be able to rely on the facts as detailed in your report, and the evidence collected by you, to arrive at an impartial decision about whether the alleged corrupt conduct has been proven or not. While they may take your recommendations and conclusions into consideration, they will make their decision based on their own assessment.

If the investigation is to be reviewed by the CCC, your CEO should provide a covering letter, including the actions proposed or taken and reasons, and a copy of the full report along with all attachments (either in hard copy or electronic format).

## Closing the investigation

At the end of your investigation you must complete and file all the paperwork.

As you finish your investigation, consider the following points:

- Is the file ready to be sent to storage? Will someone retrieving it in two years' time be able to understand the process and the paperwork?
- Have all the appropriate notifications been made? It is easy to forget to let relevant people know the result of an investigation if they are not the central players. So make a list of all those parties who should be informed and ensure that they are.
- Are there any other actions arising out of the investigation? Is the documentation organised accordingly? Quite often one investigation can trigger another one. So, as the first one ends, it may be necessary for there to be some coordination with the new file.
- Finally, the most searching question: "Is my file good enough for an outside or management review as it stands?" You should not part with your investigation file until you are entirely satisfied that all aspects are fully completed and the file is presentable. As noted in Module 1, even if the CCC does not require any outcome advice in the first instance, your investigation may still become the subject of an audit by the CCC.

You must retain all evidence until the case is fully closed, and any criminal charges or disciplinary action arising from your investigation has been finalised. Retention or disposal is then done in accordance with your UPA's policies in this regard.

At the end of your investigation you must complete and file all the paperwork.

### Checklist for investigations manager

For the assistance of the investigations manager at the conclusion of the investigation:

- Have all relevant witnesses been interviewed?
- Have all interviews been electronically recorded?
- Have all exhibits been obtained, labelled and safely secured?
- Have receipts been issued for property/documents seized?
- Have all exhibits been shown to the relevant witnesses?
- Has the subject officer been interviewed or given the opportunity for an interview?
- If interviewed, has the subject officer been provided with a copy of the interview tape?
- Have all electronically recorded interviews been securely stored?
- Has the subject officer had the opportunity to comment on any adverse findings made against him/her?
- Was the investigation impartial, and would it stand scrutiny from an outside agency?
- Has an investigation report been completed in the required format?
- Has all relevant information been included in the report, including any exculpatory evidence (i.e. evidence of clearing/lifting of blame) or other information favourable to the subject officer?
- Have all interviews been summarised in the report?
- Are copies of all relevant documents (e.g. Authority to Investigate, computer printouts, photographs) attached to the report and listed as attachments?
- Have any systemic or procedural issues been addressed?
- Is the investigation report sufficiently comprehensive to provide the basis for an informed decision by the organisation (e.g. disciplinary proceedings or procedural changes)?
- Are the conclusions justified and supported by the evidence?
- Has a firm recommendation been made as to how the case should be finalised?
- Have steps been taken to mitigate any possible adverse impacts on the workplace?
- Does the case need to be referred to another agency or board (e.g. professional registration board)?



## Sample investigation report

<b>File no:</b> 132/07/123
<b>Investigator and authorisation:</b> Michael Good, Area Manager (Authorised by Director, ESU)
<b>Scope of investigation:</b> An investigation was commenced to establish if Ms Andrews failed to follow the agency's procurement policy in awarding a supply contract to her husband's business.
<b>The complaint:</b> At 10.00 am on 5 January 2014 an anonymous telephone call was received at the Ethical Standards Unit advising that on 20 December 2013 Ms Andrews, the agency's procurement manager, had awarded a three year contract to provide the agency's information technology support services to a business that is owned and operated by her husband. Additional information is that a proper tender process was not undertaken and that there are similar businesses in the marketplace.
<b>Précis of allegations:</b> That on or about 20 December 2013 Ms Andrews had acted corruptly in awarding a supply contract to her husband's business.
<b>Summary of the investigation:</b> Interviews conducted: <ul style="list-style-type: none"><li>• Angela Andrews (subject officer)</li><li>• Bruce Robinson (subject officer's husband)</li><li>• John Raines (IT Manager)</li><li>• 17 January 2014</li><li>• 16 January 2014</li><li>• 9 January 2014</li></ul> Documents examined: <ul style="list-style-type: none"><li>• Supply contract in name of Robinson Tech</li><li>• Previous contract in name of Johnson IT (finished on 31 December 2013)</li><li>• Tender documents</li><li>• Procurement policy and procedure</li><li>• Emails from Angela Andrews to Robinson Tech, Cronin Digital Services and Braden Computing (22 November 2013)</li></ul>
<b>Matters for consideration:</b> <b>Relevant criminal offences</b> <ul style="list-style-type: none"><li>• Section 89 of the Criminal Code (Public officers interested in contracts)</li><li>• Section 92A of the Criminal Code (Misconduct in relation to public office)</li></ul> <b>Relevant policies and procedures for disciplinary breach</b> <ul style="list-style-type: none"><li>• <i>Procurement policy and procedure</i></li><li>• <i>Code of conduct</i></li></ul>
<b>Discussion of evidence:</b> <ul style="list-style-type: none"><li>• The department's IT servicing contract with Johnson IT expired on 31 December 2013.</li><li>• A new limited tender (open only to selected suppliers) was called on 22 November 2013, closing at 5 pm on 13 December 2013.</li><li>• The tender was managed by Ms Angela Andrews, Procurement Manager.</li><li>• Robinson Tech lodged its bid at 4.50 pm on 13 December 2013. No bids were received from Cronin Digital Services or Braden Computing.</li></ul>

- As Robinson Tech was the only tenderer, it was awarded the contract, worth \$525 000, on 20 December 2013.
- An anonymous complaint was received by telephone, alleging that Ms Andrews had acted corruptly in awarding the contract to a company run by her husband, Bruce Robinson.
- Investigation showed that the email addresses used for Cronin Digital Services and Braden Computing were found to be false, and no companies could be located under those names through either an internet search, or a business name search with the Office of Fair Trading.
- In interview, John Raines agreed that a new contract for IT services was required, but that he had taken no part in the procurement process other than to provide the specifications for the tender.
- In interview, Mr Robinson stated that he had responded to the invitation to offer from the agency, and was unaware of any other companies invited to tender.
- In interview, Ms Andrews originally stated that she had conducted a limited tender in accordance with the agency's policies, inviting three suppliers to tender. When asked about the false email addresses for Cronin Digital Services and Braden Computing, she was unable to provide an explanation, or to provide any valid contact details for these companies.
- The agency's procurement procedures clearly show that an open tender process is required for all procurement over \$500 000.
- The agency's *Code of conduct* provides that employees should not let personal and financial interests influence the performance of their duties.

#### **Conclusions and recommendations:**

##### **Conclusions**

- Ms Andrews ran a limited tender process in direct breach of the agency's *Procurement policy and procedure*, which requires an open tender for all procurement over \$500 000.
- Only three companies were invited to offer for the contract by Ms Andrews.
- One of those companies was Robinson Tech, owned by Ms Andrews' husband, Bruce Robinson.
- Ms Andrews' interest in this company was not divulged at the time of the tender.
- The other two companies listed as being invited to offer could not be located, and the email addresses used in the tender process turned out to be false.
- My conclusion is that there is sufficient evidence to find that Ms Andrews:
  - breached section 89 of the Criminal Code (Public officers interested in contracts) by not divulging her interest in Robinson Tech
  - breached section 92A of the Criminal Code (Misconduct in relation to public office) by subverting the procurement process for the benefit of her husband's company
  - failed to comply with the *Procurement policy and procedure*
  - failed to comply with the conflict of interest provisions of the *Code of conduct*.

##### **Recommendation**

- I recommend that consideration be given to referring the criminal matters involving Ms Andrews and Mr Robinson to the QPS, and commencing show cause proceedings against Ms Andrews for the breach of agency policies and procedures.

##### **Attachments:**

1. Record of original anonymous telephone call
2. Records of interview with John Raines, Bruce Robinson and Angela Andrews
3. Copy of tender documents
4. Copy of Procurement policy and procedure
5. Copy of Code of conduct
6. Copy of emails from Angela Andrews to Robinson Tech, Cronin Digital Services and Braden Computing dated 22 November 2013
7. Copy of contract awarded to Robinson Tech

## 10 Retrieving an investigation when things go wrong

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### Putting an investigation at risk

To avoid putting your investigation at risk, you should:

- ensure due process (e.g. as outlined in these guidelines) is followed — document any action or inaction that is contrary to best practice
- document all your investigative actions, as well as reasons for deviating from your investigation plan
- follow all relevant disciplinary procedures, particularly if they are contained in an Act or Regulation — take care not to omit any steps
- be careful about adopting the findings of another investigator — any disciplinary outcome should be based on your independent investigation
- ensure that the outcome of your investigation is firmly supported by the evidence — don't make any recommendation that can't or won't be defended
- check that your evidence is complete, with all available witnesses interviewed and all documentary evidence gathered.

Nevertheless, even with the best-laid plans for an investigation, from time to time things may go wrong. However, the situation is usually retrievable if swift and appropriate action is taken to remedy the problem.

### Act immediately

You need to be aware of what might go wrong in an investigation so that you can be prepared to take action if it shows signs of faltering.

- Acknowledge the problem as soon as it is discovered, and consider who else should be notified. Depending on the nature of the investigation and of the problem, this may involve notifying the person who authorised the investigation, or notifying the CCC. Usually anyone who has been unfairly prejudiced as a consequence of the problem should also be notified, but this does not apply if notification would have the effect of exacerbating the problem or compromising the investigation.
- Act to fix the specific problem immediately. Unfortunately, this will not always be possible, and in some cases you will be unable to recover the investigation.
- Fix the general problem by examining your investigation procedures. If the problem is procedural, you should act to rectify the problem across the board.

### Actual or perceived conflict of interest

A conflict of interest may be discovered or alleged when the investigation is already under way (see “Conflicts of interest” in chapter 5). You may become aware of facts or circumstances indicating a conflict of interest which were not apparent at the outset, or an allegation of a conflict of interest might be levelled by someone else after your investigation has started. Retrieving an investigation in these circumstances can be complex.

Under no circumstances should you make a judgment about the existence of an actual or perceived conflict of interest.

Responsibility for determining whether a conflict of interest exists will usually lie with the person who authorised the investigation. As soon as a conflict becomes apparent or is alleged, the person who appointed you and, where practical and appropriate, the complainant and the subject officer should be told about it and their views ascertained. The potential conflict of interest should only be withheld from the subject officer in exceptional circumstances (e.g. if advice would compromise any future investigation, or the current investigation if it is retrievable).

The preferred course of action is for you to be removed from the investigation and a new investigator appointed. In practice, however, this might not be feasible, due to the passage of time, available resources, or the state of the investigation (e.g. witnesses or other evidence may no longer be available).

It may be necessary to bring in a third party to oversee or cross-check the investigation; and, if it is impossible to re-interview a witness, this third party may review the electronically recorded interviews. Some aspects of the investigation may be able to be separated and treated differently —the factual material already obtained might be used, but other aspects of the investigation (such as interviewing witnesses) might need to be done again from scratch. A probity auditor might need to be appointed to vet the investigation report, or advice could be sought from an appropriate source such as Crown Law.

In determining whether an investigation tainted by conflict of interest can be salvaged, consider:

- the nature of the conflict
- the remoteness of the actual or perceived conflict
- the seriousness of the allegations being investigated (the more serious the allegations under investigation, the more important it is that there is no actual or perceived conflict of interest).

If you continue with the investigation, or if material collected or produced by you is to be relied on by a different investigator, the consent of all relevant parties should be obtained if possible, otherwise the credibility of the concluding report will be diminished. All decisions and actions must be documented.

## Excessive delay

Claims of excessive delay in completing an investigation may come from either the subject officer or the complainant.

### Steps to be taken

The usual procedure for reactivating an investigation that has been excessively delayed is to:

- advise the person who authorised the investigation and your supervisor
- explain the reason for the delay
- review the investigation plan to see if it can be streamlined
- develop a timetable and meet those time commitments
- document the reasons for the delay and how the problem has been approached
- finish the investigation.

The seriousness of the allegations being investigated must be taken into account whenever consideration is being given to discontinuing an investigation. The more serious the allegations, the more disinclined you should be to drop it.



## Role of your supervisor

However the delay has been identified, your supervisor may need to act to rectify the problem and reactivate the investigation by:

- advising the person who authorised the investigation
- advising all other parties concerned
- closely monitoring and supervising the completion of the investigation
- investigating the reason for the delay
- determining, in consultation with the person who authorised the investigation, whether it would be fair to proceed with the investigation or whether, in the interests of natural justice, it should be dropped
- if the investigation is to proceed, considering whether a new investigator should be appointed or the case reallocated
- determining whether any urgent action needs to be taken and prioritising it
- setting a timetable for completion
- reviewing the investigation plan to see if it can be streamlined in any way.

## Information leaks

Despite your best efforts to keep an investigation confidential, word can still leak out about it. In this case, you should:

- report the leak to the person who authorised the investigation
- ascertain the source of the leak, if possible
- take steps to ensure that witnesses are not harassed
- where appropriate, meet with relevant parties and decide ground rules
- determine the effect that the loss of secrecy has had, or will have, on the investigation
- in the areas where the investigation has been compromised, undertake a risk assessment, including an examination of the prospects of successful completion
- if the investigation is to continue, adjust or redesign the investigation plan.

## Failure of procedural fairness

At relevant stages of the investigation, there may have been a failure to adhere to the principles of procedural fairness (see chapter 5). This can sometimes be remedied by going back and affording the procedural fairness that has been denied.

Then, if possible, somebody else should reconsider all relevant facts of the case and any submissions made by those affected, to avoid any perception of prejudice.

In practice it will not always be possible to remedy a denial of procedural fairness. It may then be advisable not to act on any recommendations contained in a report, but instead to hand all relevant information to a new investigator who provides procedural fairness, makes a new finding and produces a fresh report (which may in practice be based largely on the original report).

## Loss of documents

A situation may arise where a document is lost (e.g. a document or record obtained from a witness, a document not electronically saved, or a receipt). You should:

- attempt to find it
- record the loss on the file
- check whether any copies are available (copies should be made of all documents integral to your investigation)
- try to present the evidence in some other way.

In the case of a lost receipt or similarly unreproducible document, investigators should draw up a statement indicating that they have seen it, that it was previously in their possession, and what it said, including corroboration from any other witnesses.

## Loss of a highly confidential document

If a highly confidential document is inadvertently lost rather than merely misplaced, there may be potential for it to fall into the hands of third parties. If so, in addition to the steps above for the loss of a document, you should also:

- identify who might be prejudiced, embarrassed or adversely affected by the loss, and alert them that it has been lost
- undertake a risk assessment of the likely consequences of the loss, and take appropriate remedial action
- demonstrate that there was no impropriety in its disappearance
- look at any systems failure that may have contributed to the loss, and implement necessary changes.

## Failure to identify unrelated criminal matters

An investigation may uncover evidence of criminal conduct unrelated to the allegations being investigated. For example, an analysis of an employee's work computer during an investigation into possible invoice fraud may indicate that the employee has downloaded child pornography.

If evidence of unrelated criminal conduct is found, the most appropriate response is to stop the investigation immediately and advise the person who appointed you. The new information should be referred to the CCC or the QPS by you, the person who appointed you, or your UPA's CCC liaison officer.

The main thing is to avoid any action that could prejudice the investigation of the unrelated criminal conduct. Once the allegations of unrelated criminal conduct have been appropriately referred and the necessary evidence secured, your original investigation can proceed.

## Investigation becoming too complex or losing focus

If you feel out of your depth due to the complexity of an investigation, you should:

- acknowledge the fact
- revisit your investigation plan
- seek advice or additional resources from the person who authorised the investigation.

## Investigation going off track or losing focus

You may not be aware that your investigation has gone off track until it is raised with someone senior to you by a party affected by the investigation, or even when you report to management.

This situation calls for a strong supervisory role by your CEO. It may be possible for the investigation to be brought back on track by the two of you getting together and talking through the issues. You could revisit the investigation plan, identify where, why and how the investigation has lost track, and formulate the future direction of the investigation.

If the investigation is beyond your competence or capability, it will be necessary to replace you. If the course that you have taken has irreparably compromised the investigation, it may be necessary to abandon it entirely.

# 11 Reducing the incidence of corruption in the public sector

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## Prevention opportunities

Regardless of the final outcome, complaints and investigations can highlight particular gaps in your current internal controls or practices which expose your UPA to an identifiable risk of fraud or corruption. Although they may focus on a specific officer, work unit, process or operation, they can also provide you with an opportunity to look at your UPA as a whole, and to consider if the conduct investigated in one context might also be at risk of happening elsewhere.

Minimising opportunities for corruption and implementing effective control measures are central to good governance, minimise the costs to your UPA from corrupt conduct, and contribute to the integrity of the public sector.

The CCC has legislative obligations to:

- analyse the results of its investigations into corrupt conduct, and the information it gathers
- assess the appropriateness of systems adopted by UPAs for dealing with complaints about corruption
- provide advice and make recommendations to UPAs about the way they deal with complaints about corruption.

However, responsibility for shaping suitable prevention strategies rests principally with you. You are best placed to identify deficiencies in your systems and operations, and this knowledge can be used to particularise risks, identify possible controls and develop appropriate remedies.

Prevention initiatives are not optional. Effective risk management and internal controls are required by the Financial and Performance Management Standard 2009 and the *Financial Accountability Act 2009*. Prevention is also a key part of upholding the ethics values set down in the *Public Sector Ethics Act 1994*.

In addition to having prevention strategies in place, firm action will also be required whenever any previously unidentified risks or inadequacies in existing controls are discovered (e.g. through the investigation of a complaint).

To achieve the required change in focus from investigation to prevention, it is helpful to have staff who are skilled in risk analysis and organisational analysis.

## “Prevention perspective”

An agency that has a “prevention perspective” is comfortable with the view that prevention of corrupt conduct is a primary management responsibility, not just something a manager thinks about when there’s time.

To achieve this, you need an active and permanent strategic risk assessment process that accurately identifies problem areas and trends, and that devises, communicates and implements suitable countermeasures.

Your complaints management system and your code of conduct require staff at all levels to be alert for, and to report, any wrongdoing which may occur, and you should support your managers and staff by developing prevention strategies that are tailored to your UPA’s functions, risks and capabilities.



Clearly identifying which of your assets (e.g. tangible and intangible, including information, licences and approvals) will have a value to those who are not authorised to access them is a good place to start. Identification of these “attractive” items is the first step in developing strategies to safeguard them and identifying potential threats to their security.

An investigation will often highlight issues beyond its direct consequences. For example, a specific investigation into a theft might provide reason to freshly examine the adequacy of fraud prevention controls, staff recruitment and selection practices, the use of credit cards, or the impact of external influences on an official function.

## Developing a prevention response as a result of an investigation

Investigators can play a pivotal role in the prevention response to identified risks and vulnerabilities. During the course of an investigation, investigators will develop an appreciation of how events occurred and any procedural or systemic weaknesses that may have been exploited. Investigators should be instructed to be aware of prevention possibilities when collecting evidence, and to record general or specific issues that may merit a prevention response as they come across them.

The following is a list of questions that could prove helpful in developing prevention-related material:

- What are the issues of concern (apart from the criminal/disciplinary breach)?
- What are the current system risks that potentially expose the unit/operation to corruption?
- What internal controls are missing or inadequate?
- Have previous internal control weaknesses been identified and why was the remedial action ineffective?
- What were the accountability systems and where did they fail?
- If the systems and processes are adequate but were simply not followed, at what point was the supervision breakdown that permitted this?
- Is this a localised problem, or possibly more widespread?
- Were the employees in this work area provided with adequate training in the processes and the ethics expectations of the organisation?
- Is there consistency in the way policies and rules (including the code of conduct) are enforced, both within the work unit and agency-wide? Are staff clear about what is acceptable conduct and what is not?
- Are there any major underlying factors, such as a culture of tolerance or non-reporting of minor corruption, which may be contributing to the system breakdown?
- Even if there is no evidence to prove that corrupt conduct occurred in this instance, are there indications of shortcomings in policies, procedures, supervision or workplace culture which might expose the agency to the possibility of corrupt conduct in the future?

Relevant concerns should be included in the investigation report (see chapter 9).

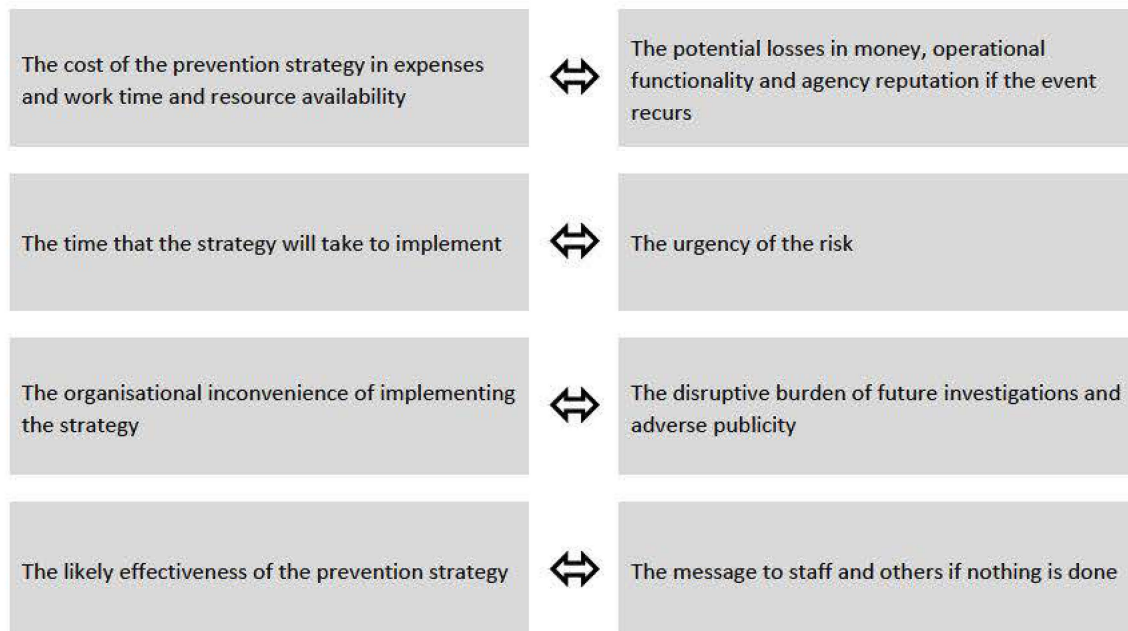
Acting on prevention-related material gathered by investigators requires careful management. There will need to be processes to allow identified concerns to be referred to managers with appropriate expertise for attention, but only at an appropriate time and in a manner that does not compromise any ongoing investigation. It may or may not be desirable to identify the concerns as related to an investigation.

## Balancing prevention costs against corruption risks

Before determining the extent of an appropriate prevention response, you will need to conduct a thorough risk assessment to establish the magnitude of the issues uncovered and your UPA’s capacity to provide or acquire the necessary expertise to deal with them.

The extent of the prevention response should be commensurate with the risk. A major prevention exercise does not need to be instituted when the risk is low and the consequences are minor or immaterial. Nor should there be merely a cursory examination of prevention options when an organisation identifies major risks that could have significant consequences.

It will be necessary to balance:



By evaluating these issues, your UPA can develop the most appropriate response.

Possible prevention strategies include, but are not limited to:

- a major risk-based system review
- revision/updating of a specific procedure or policy
- additional checks, supervision, reporting or audits
- education/training/guidance of staff in following particular procedures
- education/training/guidance of supervisors in the proper performance of their duties
- education of senior management in the necessity of leading by example and of actively opposing corruption and selfish work practices
- individual mentoring and guidance to selected staff and supervisors
- awareness raising for some or all staff in their ethical obligations and your UPA's expectations of them
- a program to initiate culture change in our UPA or a specific unit (where corruption is widespread, habitual or tolerated)
- public affirmation by the organisation of its commitment to resisting corruption.

It is often valuable to identify best practice solutions and strategies implemented by other bodies confronted with similar risks.

It is helpful, too, if implementation processes can include milestones and mechanisms to monitor progress and measure the impact of change.

## Sources of information about corruption prevention

There are many sources of information and training materials on fraud prevention, corruption prevention and ethical conduct.

Agencies with particular expertise in the area under review might include:

- Queensland Ombudsman
- Public Service Commission
- Queensland Information Commissioner
- Queensland Audit Office.

You could also try:

- other agencies with similar functions or structures to yours, both in Queensland and elsewhere
- industry associations
- training and consulting companies
- various corruption prevention sites on the internet
- internal audit and risk management units
- professional groups (e.g. fraud examiners, internal auditors or accountants, who may be able to provide relevant material or advice).

## Glossary

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### **Benefit**

Includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

### **CC Act**

*Crime and Corruption Act 2001*

### **CEO**

See public official

### **Complaint**

See chapter 1 for a full discussion of what constitutes corrupt conduct.

### **Conduct**

Includes—

- neglect failure and inaction
- conspiracy to engage in conduct
- attempt to engage in conduct.

### **Corruption**

Corrupt conduct or police misconduct.

### **Detriment**

To a person, includes detriment caused to a person's property.

### **Discloser**

A person who makes a public interest disclosure in accordance with Chapter 2 of the *Public Interest Disclosure Act 2010*.

### **Holding an appointment in a unit of public administration**

A person holds an appointment in a unit of public administration if the person holds any office, place or position in the unit, whether the appointment is by way of election or selection.

### **Information**

A communication received by the CCC concerning suspected corruption that is not a complaint, notification or matter

OR

information from other sources (see examples below).



Examples of information may include, but are not limited to:

- information given to the commission through a commission activity, including, for example—  
evidence given by a witness at a commission hearing  
information obtained through telephone interception or a covert operation  
evidence gathered through a corruption investigation
- an intelligence report from a law enforcement agency
- a media report
- indirect sources of information about suspected corruption.

## **HR Act**

*Human Rights Act 2019*

### **Human rights – section 7 HR Act**

The rights stated in part 2, divisions 2 and 3

### **Human rights complaint – section 63 HR Act**

A complaint about an alleged contravention of section 58(1) by a public entity in relation to an act or decision of the public entity

## **Knowingly**

There is evidence to show that the person was aware of facts that were reasonably apparent, and where it was not apparent, it could be necessary to assess on the known objective facts whether the conduct had been engaged in recklessly.

## **LG Act**

*Local Government Act 2009*

## **Matter**

An adverse finding made by an official body such as Parliament, a court or a tribunal that a person has, or may have, engaged in corruption.

## **Notification**

A communication given to the CCC about suspected corruption by, or on behalf of, a public official in accordance with sections 37, 38, 40 48A of the CC Act.

## **Police misconduct**

Means conduct, other than corrupt conduct, of a police officer that—

- is disgraceful, improper or unbecoming a police officer
- shows unfitness to be or continue as a police officer  
or
- does not meet the standard of conduct the community reasonably expects of a police officer.

## **Public official**

Means—

- the ombudsman

- the chief executive officer of a UPA, including the commissioner of police or
- a person who constitutes a corporate entity that is a UPA.

### **Reasonable suspicion**

See chapter 2 for a discussion of what constitutes a reasonable suspicion.

### **Recklessly**

Where there was an awareness by the person engaging in the conduct that there was a real and apparent risk of the breach of the trust placed in the person holding the appointment and that the person nevertheless without justification went through with the conduct.

It would be without justification for a person to ignore a risk that was real and apparent as opposed to one that was fanciful and speculative or without substance.

### **Unit of public administration (UPA)**

- (1) Each of the following is a unit of public administration—
  - (a) the Legislative Assembly, and the parliamentary service;
  - (b) the Executive Council;
  - (c) a department;
  - (d) the police service;
  - (da) a local government;
  - (e) a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act;
  - (f) a noncorporate entity, established or maintained under an Act, that—
    - (i) is funded to any extent with State moneys; or
    - (ii) is financially assisted by the State;
  - (g) a State court, of whatever jurisdiction, and its registry and other administrative offices;
  - (h) another entity prescribed under a regulation.
- (2) However, none of the following is a unit of public administration—
  - (a) the commission;
  - (b) the parliamentary commissioner;
  - (c) the entity consisting of—
    - (i) the parliamentary commissioner; and
    - (ii) officers and employees of the parliamentary service assigned to the parliamentary commissioner; and
    - (iii) persons engaged to provide the parliamentary commissioner with services, information or advice;
  - (d) an entity declared by an Act not to be a unit of public administration.

### **Would, if proved**

See chapter 1 for a discussion of how “would, if proved” affects the threshold applicable to corrupt conduct.

## Relevant legislation — *Crime and Corruption Act 2001*

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### **Section 4 (Act's purposes)**

The main purposes of the *Crime and Corruption Act 2001* (CC Act) are:

- (a) to combat and reduce the incidence of major crime; and
- (b) to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.

### **Section 15(1) (Meaning of “Type A” corrupt conduct)**

Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—

- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
  - (i) a unit of public administration (UPA); or
  - (ii) a person holding an appointment in a UPA; and
- (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—
  - (i) is not honest or is not impartial; or
  - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
  - (iii) 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; and
- (c) would, if proved, be—
  - (i) a criminal offence; or
  - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

### **Section 15(2) (Meaning of “Type B” corrupt conduct)**

Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—

- (a) impairs, or could impair, public confidence in public administration; and
- (b) involves, or could involve, any of the following—
  - (i) collusive tendering
  - (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described):
    - (A) protecting health or safety of persons
    - (B) protecting the environment
    - (C) protecting or managing the use of the State's natural, cultural, mining or energy resources
  - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets
  - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue
  - (v) fraudulently obtaining or retaining an appointment; and
- (c) would, if proved, be—
  - (i) a criminal offence; or

- (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

### **Section 33 (Commission's corruption functions)**

- (1) The commission has the following functions for corruption (the corruption functions)—
  - (a) to raise standards of integrity and conduct in UPAs
  - (b) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.
- (2) The commission's corruption functions also include—
  - (a) investigating and otherwise dealing with—
    - (i) conduct liable to allow, encourage or cause corrupt conduct; and
    - (ii) conduct connected with corrupt conduct
  - (b) investigating whether corrupt conduct, conduct liable to allow, encourage or cause corrupt conduct, or conduct connected with corrupt conduct may have happened, may be happening or may happen.

### **Section 34 (Principles for performing corruption function)**

It is the Parliament's intention that the commission apply the following principles when performing its corruption functions—

- (a) Cooperation
  - to the greatest extent practicable, the commission and UPAs should work cooperatively to prevent corruption
  - the commission and UPAs should work cooperatively to deal with corruption
- (b) Capacity building
  - the commission has a lead role in building the capacity of UPAs to prevent and deal with cases of corruption effectively and appropriately
- (c) Devolution
  - subject to the cooperation and public interest principles and the capacity of the UPA, action to prevent and deal with corruption in a UPA should generally happen within the UPA
- (d) Public interest
  - the commission has an overriding responsibility to promote public confidence—
    - in the integrity of UPAs and
    - if corruption does happen within a UPA, in the way it is dealt with
  - the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to...—
    - the capacity of, and the resources available to, a UPA to effectively deal with the corruption
    - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a UPA
    - any likely increase in public confidence in having the corruption dealt with by the commission directly.

### **Section 35 (How commission performs its corruption functions)**

- (1) Without limiting how the commission may perform its corruption functions, it performs its corruption functions by doing 1 or more of the following—



- (a) expeditiously assessing complaints about, or information or matters involving, corruption made or notified to it
  - (b) referring complaints about corruption within a UPA to a relevant public official to be dealt with by the public official
  - (c) performing its monitoring role for police misconduct as provided for under section 47(1)
  - (d) performing its monitoring role for corrupt conduct as provided for under section 48(1)
  - (e) dealing with complaints about corrupt conduct, by itself or in cooperation with a UPA
  - (f) investigating and otherwise dealing with, on its own initiative —
    - (i) the incidence, or particular cases, of corruption throughout the State; or
    - (ii) the matters mentioned in section 33(2) [the third and fourth corruption functions in section 33]
  - (g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a UPA, if the commission considers that action to be appropriate having regard to the principles set out in section 34
  - (h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for —
    - (i) the prosecution of persons for offences; or
    - (ii) disciplinary proceedings against persons
  - (i) assessing the appropriateness of systems and procedures adopted by a UPA for dealing with complaints about corruption
  - (j) providing advice and recommendations to a UPA about dealing with complaints about corruption in an appropriate way.
- (2) In performing its corruption functions in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.
- (3) In performing its corruption function under section 33(1)(b) [to ensure a complaint is dealt with in an appropriate way], the commission must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a UPA.

#### **Section 38 (Duty to notify commission of corrupt conduct)**

- (1) This section applies if a public official reasonably suspects that a complaint, or information or matter, involves, or may involve, corrupt conduct.
- (2) The public official must notify the commission of the complaint, subject to section 40.

#### **Section 40 (Commission may issue directions about notifications)**

- (1) The commission may issue directions about the following —
  - (a) the kinds of complaints a public official must notify, or need not notify, the commission of under section 37 or 38
  - (b) how and when a public official must notify the commission of complaints under section 37 or 38.
- (2) Before issuing a direction, the commission must consult with, and consider the views of —
  - (a) the relevant public official; and
  - (b) if the direction relates to the chief executive officer of a department or a public service office within the meaning of the *Public Service Act 2008*—the public service commission.
- ...
- (4) A public official must comply with a direction given under subsection (1).

**Section 40A (Record of alleged corrupt conduct not notified)**

- (1) This section applies if a public official decides that a complaint, or information or matter, about alleged corrupt conduct is not required to be notified to the commission under section 38.
- (2) The public official must make a record of the decision.
- (3) The record must include—
  - (a) the details of the complaint or information or matter; and
  - (b) the evidence on which the public official relied in making the decision; and
  - (c) any other reasons for the decision.
- (4) The commission may ask a public official to give the commission access to a record made under this section in a stated way and by a stated time.
- (5) A public official must comply with a request made of the official under subsection (4).

**Section 43 (Responsibility of public officials, other than the commissioner of police)**

A public official, other than the commissioner of police, has a responsibility to deal with a complaint about, or information or matter involving, corrupt conduct that is referred to it by the commission.

**Section 44 (Dealing with complaints—public officials other than the commissioner of police)**

- (1) This section does not apply to the police service.
- (2) A public official must deal with a complaint about, or information or matter involving, corrupt conduct in the way the public official considers most appropriate, subject to the commission's monitoring role.
- (3) If the public official is satisfied that—
  - (a) a complaint—
    - (i) is frivolous or vexatious; or
    - (ii) lacks substance or credibility; or
  - (b) dealing with the complaint would be an unjustifiable use of resourcesthe public official may take no action or discontinue action taken to deal with the complaint.
- (4) A public official may, in an appropriate case, ask the commission to deal with a complaint in cooperation with the public official.
- (5) If a person makes a complaint that is dealt with by the public official, the public official must give the person a response stating—
  - (a) if no action is taken on the complaint by the public official or action taken to deal with the complaint is discontinued by the public official— the reason for not taking action or discontinuing the action; or
  - (b) if action is taken on the complaint by the public official—
    - (i) the action taken; and
    - (ii) the reason the public official considers the action to be appropriate in the circumstances; and
    - (iii) any results of the action that are known at the time of the response.
- (6) However, the public official is not required to give a response to the person—
  - (a) if the person has not given his or her name and address or does not require a response; or
  - (b) if the response would disclose information the disclosure of which would be contrary to the public interest.

### **Section 45(1) (Responsibility of commission)**

The commission has primary responsibility for dealing with complaints about, or information or matter involving, corrupt conduct.

### **Section 46 (dealing with complaints—commission)**

- (1) The commission deals with a complaint about, or information or matter involving, corruption by—
    - (a) expeditiously assessing each complaint about corruption made or notified to it, or otherwise coming to its attention; and
    - (b) taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.
  - (2) The commission may take the following action—
    - (a) deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with
    - (b) refer a complaint about corrupt conduct to a relevant public official to be dealt with by the public official or in cooperation with the commission, subject to the commission’s monitoring role
    - (c) ...refer a complaint about corrupt conduct of a person holding an appointment in a UPA that may involve criminal activity to the commissioner of police to be dealt with

...

  - (f) if a public official asks the commission to deal with a complaint or to deal with a complaint in cooperation with the public official—
    - (i) deal with the complaint; or
    - (ii) deal with the complaint in cooperation with the public official; or
    - (iii) advise the public official that the commission considers that it is appropriate that the public official continue to deal with the complaint, subject to the commission’s monitoring role
  - (g) if the commission is satisfied that—
    - (i) the complaint—
      - (A) is frivolous or vexatious; or
      - (B) lacks substance or credibility; or
      - (C) is not made in good faith; or
      - (D) is made primarily for a mischievous purpose; or
      - (E) is made recklessly or maliciously; or
    - (ii) dealing with the complaint—
      - (A) would not be in the public interest; or
      - (B) would be an unjustifiable use of resources; or
    - (iii) the subject matter of the complaint—
      - (A) is not within the commission’s functions; or
      - (B) has been dealt with by another entity

take no action or discontinue action.
  - (3) For taking action, or action taken, under subsection (2) for a complaint, the commission may require a public official to provide stated information about the complaint in the way and at the times the commission directs.
  - (4) A public official must comply with a requirement made under subsection (3).
- ...

- (7) Nothing in this part limits the commission from providing information about the conduct of a person to a public official for use in the proper performance of the public official's functions.

**Section 48 (Commission's monitoring role for corrupt conduct)**

- (1) The commission may, having regard to the principles stated in section 34—
- (a) issue advisory guidelines for the conduct of investigations by public officials into corrupt conduct; or
  - (b) review or audit the way a public official has dealt with official misconduct, in relation to either a particular complaint or a class of complaint; or
  - (c) require a public official—
    - (i) to report to the commission about an investigation into corrupt conduct in the way and at the times the commission directs; or
    - (ii) to undertake the further investigation into corrupt conduct that the commission directs; or
  - (d) assume responsibility for and complete an investigation by a public official into corrupt conduct.
- (2) The public official must—
- (a) give the commission reasonable help to undertake a review or audit or to assume responsibility for an investigation
  - (b) comply with a requirement made under subsection (1)(c).
- (3) If the commission assumes responsibility for an investigation, the public official must stop his or her investigation or any other action that may impede the investigation if directed to do so by the commission.

**Section 48A (Policy about how complaints involving public official are to be dealt with)**

- (1) A public official must, in consultation with the chairperson, prepare a policy about how the UPA for which the official is responsible will deal with a complaint that involves or may involve corruption of the public official.
- (2) The policy may nominate a person other than the public official to notify the commission of the complaint under section 37 or 38, and to deal with the complaint under subdivision 1 or 2, on behalf of the public official.
- (3) If the policy includes a nomination mentioned in subsection (2), this Act applies as if a reference about notifying or dealing with the complaint to the public official were a reference to the nominated person.



## Crime and Corruption Commission

QUEENSLAND

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### More information

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