




Please quote: TF/15/12786

5 AUG 2015

Public Service Commission

Mr Peter Russo MP  
Acting Chair of Parliamentary Crime and Corruption Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr  Russo

### **Review of the Crime and Corruption Commission**

Thank you for your letter dated 11 June 2015 extending the invitation to provide a submission to the Parliamentary Crime and Corruption Commission regarding the review of the Crime and Corruption Commission (CCC).

The Public Service Commission (PSC) is established under the *Public Service Act 2008* (PS Act) and its functions include enhancing human resource management and capability, promoting ethical culture and decision making and enhancing leadership and management capabilities in relation to disciplinary matters. The PSC has a strong interest in the outcome of this review as the PSC has increasingly worked alongside the CCC since amendments to the *Crime and Corruption Act 2001* (CC Act) in July 2014.

At that time the amendments to the CC Act included replacing the term 'official misconduct' with 'corrupt conduct'. This change was aimed at raising the threshold for conduct matters that were within the CCC's jurisdiction and allow the CCC to refocus on investigating more serious corrupt conduct and crime. These changes were also designed to place greater responsibility on relevant Queensland Government public sector agencies to manage complaints about low level corruption and minor misconduct (conduct and work performance) matters promptly.

In July 2014, amendments to the PS Act also commenced with the overarching objective of building managerial and human resource practitioner capability and assisting agencies to achieve timely and proportionate responses to conduct and work performance matters. The amendments also provide the authority for the PSC to collect data from agencies on conduct and work performance matters being handled by agencies and to conduct or commission a review of an agency's management of a matter with a view to improving an agency's practices or promoting the optimal resolution of a matter.

To assist public sector agencies to manage conduct and work performance matters, the PSC established the Conduct and Performance Excellence (CaPE) service on 1 July 2014. Public sector agencies are able to contact CaPE for specialist advice and assistance in managing

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matters. CaPE has also developed a case categorisation model where 'misconduct' is grouped into three categories - category 1 being least serious to category 3 being most serious, along with descriptors, examples and benchmarks specifying the expected timeframes for steps in the process. The case categorisation model and benchmarks are designed to improve consistency, resolve matters more quickly and proportionately to the issue and enable public resources to be used more efficiently. A copy of the case categorisation model and benchmarks are attached for your information.

CaPE regularly meets with the CCC to discuss the implementation of the new arrangements and ensure that matters are being dealt with in the appropriate jurisdiction. Discussions are also continuing with the CCC regarding the development of an information exchange agreement as detailed in the PS Act (section 88K). The agreement, when established will assist agencies to facilitate the resolution of conduct and work performance matters which may also involve allegations of corrupt conduct.

As mentioned, since the establishment of CaPE, public sector agencies have been required to collect details about conduct and work performance matters, employee suspensions and discipline cases. This data has been collected by CaPE on a quarterly basis for the past 12 months and includes the number of matters, the case category, investigation costs, the duration of the matter, suspension costs and outcomes. CaPE analyses the data trends and provides quarterly reports to agencies in order to drive change and promote a positive performance culture across the public sector. CaPE has also identified a minor change to data collection to allow better matching of paid suspension data to CCC matters. This change has been discussed with the CCC.

A priority for CaPE is to work with public sector agencies to seek the resolution of matters which involve the suspension of an employee. Although CaPE has only been operating for just over 12 months, the data indicates a reduction in the number of long term suspension matters exceeding 12 months. The data also indicates an improvement in the number and percentage of conduct and work performance matters that have been managed within the timeliness benchmarks.

I see great mutual and system benefit should the CCC and PSC adopt similar benchmarks in monitoring complaints. Adopting a consistent set of benchmarks between the PSC and CCC would demonstrate the PSC and CCC's shared commitment to improving the quality and timeliness of the complaints management system within the Queensland Government public sector as well as smoother operation and more informed understanding, regardless of whether it is dealt with by the CCC or the relevant Queensland Government public sector agency.

Should the PCCC require further information or have any queries, please contact Katie Holm, Assistant Deputy Commissioner, Workforce Policy and Legal, PSC via [katie.holm@psc.qld.gov.au](mailto:katie.holm@psc.qld.gov.au) or telephone (07) 3003 2702.

Yours sincerely

  
Robert Setter  
**Commission Chief Executive (Acting)**

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## CaPE Case Categorisation

### Conduct and performance excellence

The PSC's Conduct and Performance Excellence (CaPE) service promotes and supports excellence in the management of conduct and performance in the Queensland public sector by:

- providing, on request, specialist advice and support to agencies, on the management of conduct and performance;
- setting, and strategically monitoring, benchmarks (timeliness) and standards (quality) for agencies' handling of these matters; and
- reviewing individual cases as required, with the aim of building agencies' capability.

The Crime and Corruption Commission (CCC) has the function (the corruption function) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way. In performing its corruption function, the CCC must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.

Where there is uncertainty, the CCC and the CaPE service will work together with agencies to ensure matters are categorised appropriately as either corrupt conduct or as a personal conduct/work performance matter.

### Categorising matters

To assist agencies in the timely, proportionate and relevant management of unsatisfactory employee conduct or work performance (or allegations of same), the Public Service Commission (PSC) has developed a case categorisation framework.

The framework groups matters into three (3) categories, from least to most serious, providing descriptors and examples of each, as well as benchmarking timeframes for finalisation. When applying the framework **it is important that decision makers consider the particular context of the matter** they are dealing with to determine the appropriate categorisation, including whether the behaviour is repeated. For example, interpersonal conflict could fall into category one, two or three, depending on the circumstances. Decision makers should consider the seriousness, the impact and the possible (and likely) outcomes if the concerns are substantiated when determining the applicable category. **The CaPE service can be contacted for assistance in determining the appropriate categorisation ph: (07) 3003 2777 or email: cape@psc.qld.gov.au**

Category Criteria	
<b>Category one</b>	Category one matters involve: <ul style="list-style-type: none"> <li>• inappropriate interpersonal conduct with colleagues, clients or other stakeholders</li> <li>• inappropriate behaviour relating to minor management matters</li> <li>• performance requiring improvement.</li> </ul>
<b>Category two</b>	Category two matters involve: <ul style="list-style-type: none"> <li>• conduct that would otherwise fall within category one, but warrants treatment as category two due to its ongoing or repeated nature</li> <li>• minor misconduct: conduct / behaviour that is inconsistent with conduct standards expected of a public sector employee (such as the Code of Conduct), but that is not wilful or malicious</li> </ul>

	<ul style="list-style-type: none"> <li>careless / negligent performance of duties (rather than unsatisfactory performance due to lack of skill).</li> </ul>
<b>Category three</b>	<p>Category three matters involve:</p> <ul style="list-style-type: none"> <li>serious misconduct: conduct / behaviour that is inconsistent with conduct or professional standards / practices expected of a public sector employee (such as the Code of Conduct), and that is wilful, reckless or malicious</li> <li>conduct that, if proven, will warrant the commencement of a discipline process,</li> <li>conduct that, if proven, reasonably raises the possibility of termination of employment</li> <li>conduct that is a breach of criminal law</li> <li>serious neglect of performance of duties</li> </ul>

Examples and considerations for each category is set out below.

## Category one

### Category criteria

Category one matters involve:

- inappropriate interpersonal conduct with colleagues, clients or other stakeholders
- inappropriate behaviour relating to minor management matters
- performance requiring improvement.

### Examples:

- Failure to behave in a professional and appropriate manner, including but not limited to rudeness, derisive attitude or behaviour, unreasonableness, lack of respect (lower level: does not include behaviour that is abusive, discriminatory or harassing – see category two and three).
- Failure to perform to a standard required, or the performance of duties without proper diligence, care and attention.
- Inappropriate use of email / internet (low level: does not involve serious matters such as the distribution of pornography - see category three).
- Failure to accurately record attendance or leave.
- Failure to provide appropriate or correct information or advice.
- Failure to comply with a practice or procedure that resulted in a customer service issue of a minor nature (does not involve risks to the safety or well-being of clients – see category three).
- Failure to provide a service in an adequate, professional or appropriate manner.

### Further considerations:

It is imperative that category one behaviour be addressed in a timely manner, and a record made of any action taken and the reasons for it.

It is expected that minor management matters or matters involving personality clashes be addressed by using the performance management system or a dispute resolution processes (such as mediation or counselling). It is **not** considered appropriate to undertake extensive investigation of matters involving personality clashes.

Minor types of management or conduct matters, if unaddressed, may be repeated and/or escalate to more serious issues.

Should matters within this category **continue or be repeated**, consideration should be given to categorising the further / continuing matters as **category two matters**.

## Category two

### Category criteria

Category two matters involve:

- conduct that would otherwise fall within category one, but warrants treatment as category two due to its ongoing or repeated nature
- minor misconduct: conduct / behaviour that is inconsistent with conduct standards expected of a public sector employee (such as the Code of Conduct), but that is not wilful or malicious
- careless / negligent performance of duties (rather than unsatisfactory performance due to lack of skill).

### Examples:

- Failure to behave in an appropriate and professional manner and of a more serious nature than category one (e.g. yelling at a client, colleague or stakeholder). Repeated behaviours of this sort may be regarded as harassment and fall within category three.
- Inappropriate disclosure of official or confidential information.
- Failure to adequately supervise an employee within line of responsibility.
- Inappropriate behaviour at an agency sponsored function or event.
- Theft of agency goods or property. **The categorisation of theft, including whether it amounts to corrupt conduct, may be affected by the value of the theft and the context in which it occurred, including the person's role** (see also category three).
- Failure to comply with a practice or procedure that resulted in a customer service issue of a significant nature (does not involve risks to the safety or well-being of clients – see category three).

### Further considerations:

Matters within category two should generally be dealt with through training and development or remedial action in the workplace, however this does not preclude an agency from implementing a discipline process where considered appropriate. However, theft may represent a significant breach of trust and warrant termination of employment or demotion.

Minor misconduct does not include matters of underperformance or singular instances of interpersonal conflict. In the first instance, such matters should be dealt with through timely and appropriate managerial mechanisms; continuation or repetition may warrant such matters being addressed using other mechanisms.

A complaint that is initially assessed as a category two matter may be elevated to category three on the recommendation of the manager / decision maker.

## Category three

A category three matter is a serious breach of conduct expectations, however the behaviour does not meet the **definition of corrupt conduct** in the *Crime and Corruption Act 2001*. Whether the alleged behaviour relates to the particular role a person holds *and* what benefit they derived or detriment they caused, will be relevant to determining whether a behaviour falls within category three or the definition of corrupt conduct. The CaPE service is available to discuss such matters with agency representatives.

### Category criteria

Category three matters involve:

- serious misconduct: conduct / behaviour that is inconsistent with conduct or professional standards / practices expected of a public sector employee (such as the Code of Conduct), and that is wilful, reckless or malicious
- conduct that, if proven, will warrant the commencement of a discipline process
- conduct that, if proven, reasonably raises the possibility of termination of employment
- conduct that is a breach of criminal law
- serious neglect of performance of duties

### Examples:

- Failure to disclose a personal conflict that could be seen as influencing the performance of duties, but that does not meet the definition of corruption.
- Using social media to make comments that reflect adversely on the reputation of the public service.
- Use of computer system to access or distribute pornography
- Sexual harassment
- Discrimination
- Harassment (i.e. conduct that is offensive and unwelcome, of a repeated nature and warrants formal intervention)
- Charged in relation to an alleged criminal offence
- Behaviour that is threatening or abusive or otherwise inappropriate (and repeated)
- Attending work under the influence of drugs or alcohol
- Theft of agency goods or property. **The categorisation of theft, including whether it amounts to corrupt conduct, may be affected by the value of the theft and the context in which it occurred, including the person's role.**
- Failure to comply with a practice or procedure that resulted in a customer service issue that risked the wellbeing or safety of a client.

### Further considerations:

Serious misconduct can occur in an official capacity or otherwise and could reasonably raise a question of employment suitability.

Criminal proceedings may result from an employee's behaviour in the workplace as well as from private actions.

## Benchmarks

Category	Max. evaluation period	Maximum investigation period	Adjudication (decision making)	Maximum total time from notification	Percentage target
Category 1 (informally managed)	N/A	7 days (conciliation/management action)	N/A	7 days	N/A
Category 1 (formally managed)	7 days	14 days (conciliation/management enquiries)	7 days	28 days	75% of matters completed within the benchmark
Category 2	14 days  7 day initial assessment period + 7 day full evaluation period	30 days (management enquiries/internal investigation)	7 days	51 days	75% of matters completed within the benchmark
Category 3 (a) (outside criminal law)	28 days  7 day initial assessment period + 21 day full evaluation period	90 days (management or other internal / external investigation)	21 days	139 days  Matters over 150 days trigger CaPE contact  Matters over 200 days trigger review by CaPE	75% of matters completed within the benchmark
Category 3 (b) (breach of criminal law)	28 days  7 day initial assessment period + 21 day full evaluation period	90 days (management or other internal / external investigation)	21 days	Pending Police/Court timeframes  To be considered at 200, 290 and 350 days	

Note: All timeframes specified are maximum acceptable benchmarks however all cases should be managed in a timely manner.

\*days are calendar days.