



Assessing complaints of corrupt conduct: a guide for assessors and decision-makers

This guide, based on the findings of a corruption audit by the Crime and Corruption Commission (CCC), has been developed to help agencies resolve common challenges faced when assessing complaints of corrupt conduct.

It includes the following practical materials:

- “Help guides” on specific problems that the CCC’s audit identified as being challenging for assessors and decision-makers
- Case studies drawn from the audit that illustrate how a complaint is assessed against sections 15 and 38/40 of the *Crime and Corruption Act 2001* (CC Act)
- A sample step-by-step decision tree that agencies can adapt to suit their particular complaint scenarios.

About the audit

In 2020-21, one of the audits conducted by the CCC examined how well various agencies were assessing allegations of corrupt conduct, in particular, whether they were correctly applying:

- the definition of corrupt conduct, and
- the reasonable suspicion test.

The CCC determined to undertake this audit as on 1 March 2019, there were a number of changes to the CC Act, including changes to the definition of corrupt conduct. The requirement that corrupt conduct be “engaged in for the purpose of providing a benefit or causing a detriment” to someone was removed. The definition was also extended to capture particular (criminal or disciplinary) conduct that could impair public confidence in public administration. In addition, agencies were also required to keep a record of any decision not to refer an allegation of corrupt conduct to the CCC.

The importance of assessing complaints correctly

Correctly assessing complaints of suspected corrupt conduct is the first vital step in identifying and preventing public sector corruption.

If complaints are not correctly assessed, the CCC will not be able to monitor either individual complaints or current and emerging trends within agencies. This may not only compromise transparency, but also prevent serious corruption risks being identified.



As an **assessing officer** or **decision-maker**, you are obligated to always consider, assess, and maintain complaint records and decisions consistent with the CC Act, and your agency’s policies and processes. Implementing effective controls and processes to check that the assessment has considered all the elements set out in the definition of corrupt conduct is vital.

You are also obligated to notify the CCC as soon as you have a reasonable suspicion that corrupt conduct may have occurred, in accordance with section 38 of the CC Act. This requirement to notify the CCC is subject to directions issued pursuant to section 40 of the CC Act.

Having clear policies and procedures in place about how complaints of corrupt conduct within an agency will be managed and assessed will ensure matters are dealt with consistently and accurately and will increase confidence in the process.

We encourage you to adapt any of the material provided in this guide to develop or improve on your agency’s current assessment policy framework.

Common challenges in complaint assessment

There are two important steps in assessing corrupt conduct:

- Determining whether the complaint satisfies the definition of corrupt conduct, and if this test is satisfied
- Deciding whether you do or do not hold a reasonable suspicion of corrupt conduct.

In May 2021, the CCC completed its “Assessment of Corrupt Conduct” audit. The audit examined how effectively agencies were assessing complaints about corrupt conduct and subsequently notifying the CCC.

The audit found three areas of the assessment process posed challenges to assessors and decision-makers.

The first two of these challenges related to whether or not a complaint satisfied the definition of corrupt conduct, specifically the requirement set out in section 15(1) (c). They were:

1. determining if the conduct is a **criminal offence**, and
2. determining if the conduct is serious enough to establish **reasonable grounds to terminate someone’s employment**.

The third problem area related to reasonable suspicion:

3. applying the “**reasonable suspicion**” test.

Overview of the assessment process

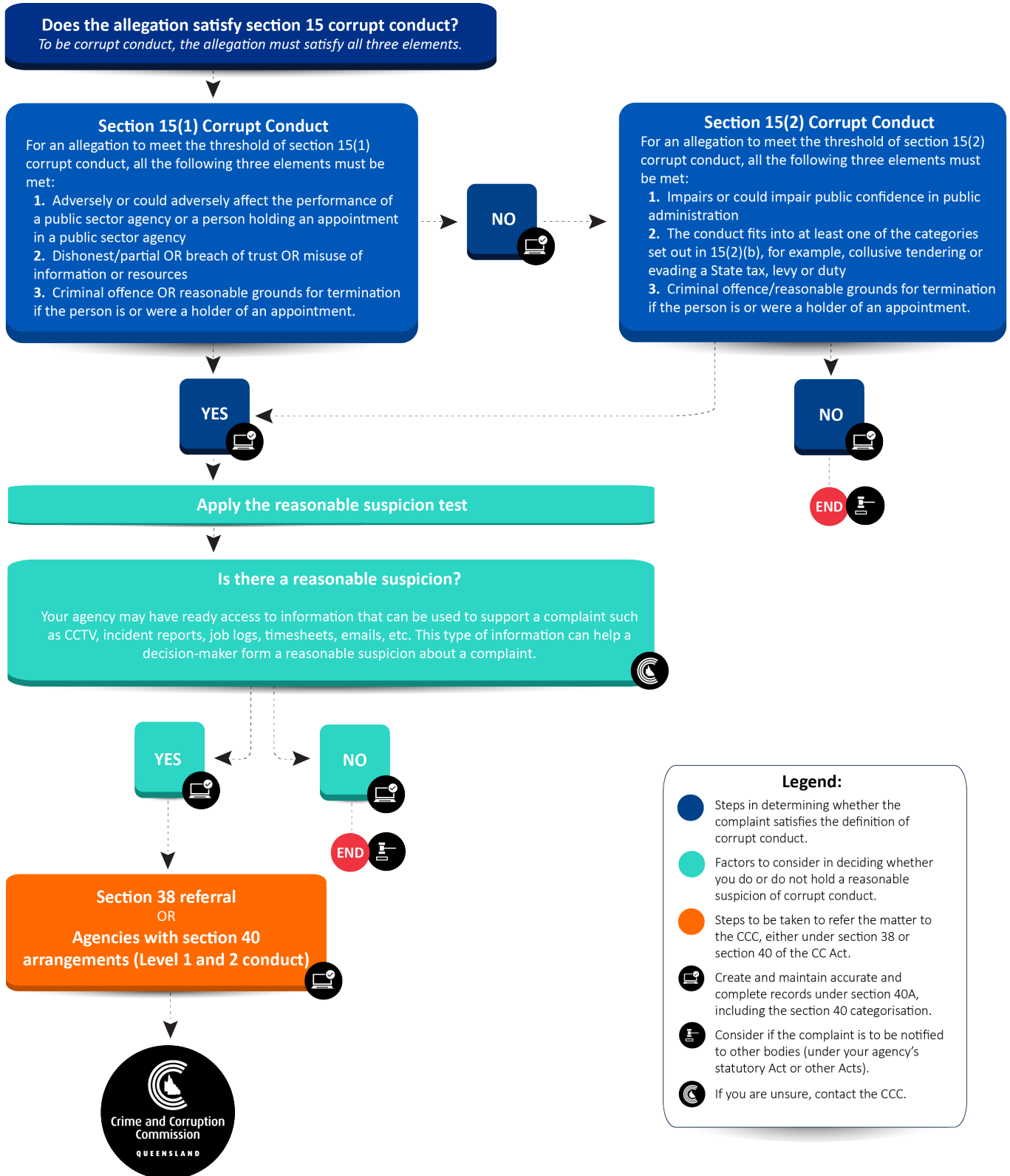
On the following pages, you will find:

- a decision tree showing each of the main stages and key decision points
- a detailed overview of the assessment process
- help guides that will set out the types of questions you should ask yourself in order to answer those questions
- case studies showing how each of the challenges were dealt with and the questions resolved during the assessment process.



Corrupt conduct assessment – using a decision tree (example)

This following example of a decision tree illustrates the key stages and decision points in the assessment process. It also shows how you can use information your agency has (such as CCTV footage) to determine whether or not there is a reasonable suspicion of corrupt conduct.





Help guide – Determining if the conduct is a criminal offence

To determine whether an allegation “would, if proved”, amount to a criminal offence, you need to ascertain whether there is evidence for each element of the relevant offence.

Criminal offences are largely set out in the *Criminal Code Act 1899* (Qld) (Criminal Code), however there are offences in a number of other Acts, including the *Local Government Act 2009*, the *Public Interest Disclosure Act 2010*, the *Drugs Misuse Act 1986*, the *Financial Accountability Act 2009* and the *Public Records Act 2002*.

The CCC does not expect you to be an expert in criminal law, however you should be aware of common offences in the Criminal Code, and offence provisions contained in Acts relevant to the agency in which you work. The following table provides examples of criminal offences, but it is not exhaustive.

Possible criminal offences (Criminal Code)	Conduct
s.89 Public officers interested in contracts s.92 Abuse of office s.92A Misconduct in relation to public office	Misuse of authority Misused authority to act, or omitted to act: <ul style="list-style-type: none"> to favour a family member, friend, associate or benefactor, including a political donor, or to further the elected official’s or appointment holder’s own interests rather than the interests of the state or agency
s.245 Assault s.320 Grievous bodily harm s.323 Wounding	Offences against a person Verbally threatened the complainant by multiple interactions with the complainant (escalating the situation) Note: There are various features of an assault which may make it more serious and allow a more serious offence to be charged, but this should be discussed with police. Serious injuries: (a) the loss of a distinct part or an organ of the body; or (b) serious disfigurement; or (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health. This term is not defined in the Criminal Code, but would include an injury where the “true skin” is cut. That is, it must be more than a superficial scratch or mark on the skin. Wounding is usually charged where a person’s skin is cut or penetrated with some type of object or weapon
s.391 Stealing	Stealing/theft of public property or funds
s.408C Fraud	Concealed a restricted driver’s licence conditions and operated government vehicles in breach of licence conditions Spent a considerable amount of time streaming data for personal reasons instead of completing work duties (see case study 1 below)
s.408E Computer hacking s.85 Disclosure of official secrets	Misused information (unauthorised access and/or inappropriate disclosure of confidential information)
s.488 Forgery and uttering s.430 Fraudulent falsification of records	Falsified information or records



While you may be unable to quantify any pecuniary benefit that the subject officer, or another person, allegedly received, the scope of “fraud” in section 408C of the Criminal Code is broad and applies where a person dishonestly “gains a benefit or advantage, pecuniary or otherwise” or causes a detriment to another.

Case study 1 – Failing to perform work duties

Allegation

An officer failed to complete and maintain timely observation checks and records of young people in their care on three night-shifts. A review of the officer’s internet usage identified the quantity of internet data used was high, associated with accessing Netflix (13.8 GB of data over five days).¹ The officer spent a considerable amount of time streaming data for personal reasons instead of completing their work duties (noting 1 GB equates approximately one hour of streaming Netflix). The officer was being paid for work not performed.

Elements that make it corrupt conduct

- Element 1 – Adversely affects the performance of the agency through misuse of resources.
- Element 2 – Is dishonest.
- Element 3 – Is a criminal offence (i.e. fraud in section 408C of the Criminal Code).

The officer’s conduct is “dishonest” and satisfies the definition of “fraud” in section 408C of the Criminal Code because the officer was dishonestly claiming employee entitlements, such as salary/wages, for work not performed. The CCC’s view is that the scope of fraud in section 408C is broad and applies where a person dishonestly “gains a benefit or advantage, pecuniary or otherwise”.

1 Netflix is a streaming service that offers a wide variety of TV shows, movies, and other documentaries through internet-connected devices. Watching TV shows or movies on Netflix uses about 1 GB of data per hour for each stream of standard definition video, and up to 3 GB per hour for each stream of HD video. (Source: Netflix Help Center)





Help guide – Determining if the conduct is reasonable grounds for dismissal (termination of employment)

To determine whether an allegation would, if proved, amount to a disciplinary breach providing reasonable grounds for dismissal, you need to apply an objective test.

Dismissal must be an objectively reasonable consequence of the conduct, even though it may not be the inevitable consequence. For example, excessive or improper use of internet and email facilities owned and provided by the agency may result in disciplinary action – for example, termination of employment.

The following case study provides an example of how to distinguish between conduct which would warrant dismissal and conduct which would not warrant dismissal.

Case study 2 – When conduct is/is not reasonable grounds for dismissal

Allegation

An officer working in a detention centre fails to conduct welfare checks/observations on a prisoner, as required by their agency's policy.

When would the conduct provide reasonable grounds for dismissal?

An officer working in a youth detention centre fails to conduct welfare checks/suicide risk observations on a young person assessed as a suicide risk over an extended period of time.

When would the conduct not be dismissible?

An officer in an adult prison fails to conduct welfare checks/observations over a short period of time of a prisoner, where no particular risk factors had been identified.

Factors to consider

The checks would need to be done under the relevant policy regardless of the vulnerability of the prisoner or the identified risk. Both scenarios are likely to involve a breach of policy, but not every policy breach will amount to corrupt conduct.

In the context of this example, some factors which will make the conduct more serious and therefore more likely to be dismissible include:

- vulnerability of detainee – e.g. age, mental health, physical health
- risk factors – e.g. identified risk of suicide or self-harm
- length of time when checks were not conducted – the longer the period where no checks were conducted, the more likely it is to be dismissible.

You must also consider “grounds for disciplinary action” as stated in section 187 of the *Public Service Act 2008*, as, even if conduct is not corrupt conduct, it may still be conduct that warrants disciplinary action.

For agencies 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.





Help guide – Determining a “reasonable suspicion”

For a suspicion to be “reasonable”, there needs to be more than a mere idle wondering or speculation that the subject officer committed the conduct (*George v Rockett* (1990) 170 CLR 104).²

1. The reasonable person test / Would a reasonable person suspect corrupt conduct?

When assessing a complaint, you only need to decide if there is sufficient evidence for a reasonable person to suspect corrupt conduct.

The “reasonable suspicion” test is satisfied if there is a clear allegation of corrupt conduct and that allegation satisfies the elements of section 15 of the CC Act, as well as the existence of sufficient information that would warrant an assessment.

You must not consider whether the allegation is capable of being proved.

2. Looking at CCTV/BWC footage

It is appropriate to view closed-circuit television (CCTV) and body worn camera (BWC) footage to help in deciding whether a complaint needs to be notified to the CCC.

You can look at the independent footage to assist with your assessment of the complaint. At this point, be careful you do not consider whether the complaint is capable of being substantiated as this is a different test. However, viewing the footage may show:

- the allegation **did not** occur (in which case there is no reasonable suspicion)
 - CCTV/BWC footage shows no conduct consistent with the complaint occurred. For example, the complainant alleges the subject officer physically assaulted them by pushing them to the ground and kicked them multiple times but there is nothing in the footage to suggest the event happened. You must still create records pursuant to section 40A of the CC Act.
- the allegation **did** occur, and the available evidence is consistent with the complaint (in which case there is reasonable suspicion)
 - you are not to determine at the assessment stage whether the conduct is capable of being proved on the balance of probabilities. The matter is to be referred to the CCC under sections 38/40 of the CC Act.

Case study 3 – Excessive use of force

Allegation

The complainant alleges that an officer used excessive force by kicking him in the head, which resulted in an injury to his right cheek.

What would be appropriate assessment inquiries to undertake?

CCTV/BWC footage; occurrence reports; incident reports; and written complaint.

What information would enliven a reasonable suspicion?

- The complainant alleged he was kicked in the head. The CCTV and BWC footage showed an altercation between the complainant and subject officer but were inconclusive about whether the officer actually kicked the complainant or whether any contact may have been accidental as a result of the complainant being taken to the ground.

² See chapter 2 of the *Corruption in focus guide* for a discussion of what constitutes a reasonable suspicion.



- Whether or not the use of force to restrain the complainant during the incident was reasonable is not clear from the footage.

To properly consider this issue, further investigation would be necessary, such as taking a formal statement from the complainant and interviewing other witnesses including the subject officer.

- You must not undertake these additional investigative steps as part of the initial assessment.
- You must not form an opinion at the assessment stage that the complainant would not be able to be proven to the required standard, even if, for example, the footage does not rule out that staff may have accidentally made contact with the complainant's head during the restraint. It is sufficient that there are reasonable grounds to suspect that the complaint occurred as described.
- Although a subsequent investigation may conclude that without independent evidence (such as BWC or CCTV) showing that there was contact with the complainant's head and indicating that contact was not accidental, this "possible defence" is not enough to rule out a reasonable suspicion. This may be the conclusion the agency reaches after considering all the evidence as part of dealing with the complaint, however it is not appropriate to rely on this possibility when forming a reasonable suspicion at the assessment stage.
- The CCC takes the view that unless the footage clearly showed that there was no physical altercation with the complainant, the video footage is not inconsistent with the complainant's allegation and is therefore sufficient to raise a reasonable suspicion of corrupt conduct and should be reported.

3. Looking at other internal records

It is appropriate to look at internal records (e.g. timesheets, rosters, photographic evidence, incidents reports, occurrence reports, health assessments, audit reports, etc.) to consider the veracity of the complaint. However, enquiries should only be made where there is no risk of alerting the subject officer of the complaint. It is not appropriate to gather information which has the potential to alert the subject officer to the complaint (i.e. contacting witnesses and other subject officers).

Case study 4 – Fraud

Allegation

A finance officer notices a discrepancy in the payment of expenses to a staff member ("Ms Boggs"). The staff member received "out of pocket" expenses of \$5000 and it appears that she was not eligible. The expenses were processed by a different finance officer (whose last name is also "Boggs") and may be related to Ms Boggs.

Appropriate assessment inquiries to undertake

Financial records (i.e. purchase orders, expenditure vouchers, EFTs); audit logs; timesheets. These inquiries established that:

- \$5000 for expenses was paid to Ms Boggs
- the expense payment authority was not signed by Ms Boggs' supervisor as required by the policy
- the audit logs confirm that the finance officer (Boggs) processed the expenses
- the original expenses claim in the system was for \$50 – two days later it was changed to \$5000.

Information that establishes a reasonable suspicion

- There is a discrepancy of \$5000.
- The payment of expenses was not properly authorised.
- The records may have been altered.
- The processing officer was on duty and processed the transactions (i.e. audit logs and timesheets).



You may be considering whether to look at the payroll records to determine if Ms Boggs and the processing officer are related. There is no need to - this information is irrelevant, because fraud can be committed by anyone whether they are related or not.

Further information and resources

You should read this guide in conjunction with other CCC publications:

- [Corruption in focus](#) is the CCC's primary guide to dealing with corrupt conduct, written specifically for the Queensland public sector.
- [Assessing allegations of corrupt conduct: A guide to recordkeeping under section 40A](#) was developed by the CCC to assist agencies with their recordkeeping practices.
- A suggested template for a [Corrupt Conduct Assessment form](#), developed by the CCC that integrates sections 15, 38, 40 and 40A of the CC Act.
- Agencies with section 40 agreements should also refer to [How to classify matters of corrupt conduct pursuant to section 40 directions: A five-step guide for public officials and delegated decision-makers](#).

