



Crime and Corruption Commission

QUEENSLAND

How to classify matters of corrupt conduct pursuant to section 40 directions

A five-step guide for public officials and delegated decision makers

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Crime and Corruption Commission

GPO Box 3123, Brisbane QLD 4001
Level 2, North Tower Green Square
515 St Pauls Terrace
Fortitude Valley QLD 4006

Phone: 07 3360 6060
(toll-free outside Brisbane: 1800 061 611)
Fax: 07 3360 6333
Email: mailbox@ccc.qld.gov.au

Note: This publication is accessible through the CCC website: www.ccc.qld.gov.au.



This document is relevant to agencies which have section 40 directions. It does not replace the section 40 directions.

Introduction

Suspected corruption can come to the attention of public sector agencies from various sources. Public officials¹ are obliged to notify the CCC as soon as they have a reasonable suspicion that corrupt conduct may have occurred. This requirement to notify the CCC is subject to directions issued pursuant to section 40 of the *Crime and Corruption Act 2001 (CC Act)*.

This document is a practical guide to assist public officials and delegated decision makers in public sector agencies with agreed section 40 directions to effectively assess, classify and notify the CCC of corrupt conduct matters. It provides the necessary key steps, recordkeeping obligations and supporting resources. Case studies have been included to highlight potential assessment errors to be avoided.

This document is a prevention initiative that arose from a recent CCC audit of section 40 non-reportable matters (January 2020). This audit examined matters that agencies had assessed as Level 3 and accordingly were not notified to the CCC (see Table 1). The audit found that some agencies overlooked certain aspects of an allegation when assessing it against the section 40 directions. This resulted in the classification of the allegation as Level 3 when in fact the allegation was a Level 1 or 2 matter. The consequence of this was that the CCC was not notified of some more serious instances of corrupt conduct.

What are section 40 directions?

Section 40 directions modify the mandatory notification arrangements for all public officials in section 38 (and also, for the Commissioner of Police, under section 37 of the CC Act). Section 40 directions assist the CCC to focus on the most serious allegations of corruption and dedicate its resources appropriately. These directions allow agencies to deal with certain categories of allegations immediately and notify the CCC of these matters in bulk at specified intervals, rather than reporting them individually.

Public officials and delegated decision makers can use the following five steps to assist in determining when allegations of corrupt conduct are to be reported to the CCC.

- **Step 1–3** relate to determining if an allegation is within the CCC’s jurisdiction.
- **Step 4** assists public officials and delegated decision makers determine the seriousness of the allegation.
- **Step 5** provides guidance on when an allegation is required to be reported to the CCC once its level of seriousness has been determined.

Table 1: Three levels of notifying obligations for corruption exist in the section 40 directions.

Level 1 – immediate reporting	Level 2 – monthly reporting	Level 3 – non-reportable ²
<i>The most serious type of corruption</i>	<i>Serious corruption</i>	<i>Less serious</i>
Immediately notify the CCC of certain conduct types in Level 1 prior to dealing with the complaint.	Notify the CCC of certain conduct types in Level 2 via a schedule at the conclusion of each calendar month. Agencies may deal with the matter immediately.	Notification to the CCC is not required. Agencies may deal with the matter immediately.

¹ A public official is defined in Schedule 2 of the CC Act.

² The Queensland Police Service (QPS) does not have a Level 3 and all police misconduct and corrupt conduct matters must be referred to the CCC as either a Level 1 or 2 matter.

The five-step process

1 Assess the complaint against the definition of corrupt conduct (Type A)

“Type A” corrupt conduct involves conduct that affects, or could affect, how officers from a public sector agency perform their functions or exercise their powers.

Assess the conduct (complaint) against the definition of Type A corrupt conduct. Conduct must satisfy all three elements described under section 15(1) of the CC Act:

1. Effect of the conduct
2. Result of the conduct
3. Seriousness of the conduct.

Next steps:

- a. If the conduct satisfies all three elements above, the matter is Type A corrupt conduct; go to **Step 3**.
- b. Otherwise, if any one of the three elements is not met, continue onto **Step 2**.

Resources

- CCC’s *Corruption in focus* guide (January 2020; see chapter 1. Examples of Type A corrupt conduct are contained in the guide).

Recordkeeping

- See your agency’s section 40 direction issued by the CCC for what records about the complaint need to be captured and assessed.

2 Assess the complaint against the definition of corrupt conduct (Type B)

“Type B” corrupt conduct involves conduct that impairs, or could impair, public confidence in public administration.

Assess the conduct (complaint) against the definition of Type B corrupt conduct. Conduct must satisfy all three elements described under section 15(2) of the CC Act:

1. Effect of the conduct
2. Type of conduct
3. Seriousness of the conduct.

Next steps:

- a. If the conduct satisfies all three elements above, the matter is Type B corrupt conduct; go to **Step 3**.
- b. If any one of the three elements is not met, the complaint is considered to be out of the CCC’s jurisdiction. (**Note:** The matter could fall under other jurisdictions.)

Resources

- CCC’s *Corruption in focus* guide (January 2020; see chapter 1. Examples of Type B corrupt conduct are contained in the guide).
- *Changes to the Crime and Corruption Act - Factsheet 1*.
- *Corruption in the Queensland public sector – it’s not just about public servants*.

Recordkeeping

- See your agency’s section 40 direction issued by the CCC for what records about the complaint need to be captured and assessed.

3 Form a conclusion about “reasonable suspicion” of corrupt conduct

Having regard to all the initial information available to you, decide whether you do or do not hold a reasonable suspicion of corrupt conduct.

For a suspicion to be “reasonable”, there needs to be more than bare or idle speculation.³ In essence, there must be sufficient evidence for a reasonable person to suspect corrupt conduct.

You must objectively base your assessment on 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.

Next steps:

- a. If you decide that you hold a reasonable suspicion of corrupt conduct, your next step is to determine the seriousness of the allegations; go to Step 4.
- b. Otherwise, you do not hold a reasonable suspicion of corrupt conduct.

Resources

- CCC’s *Corruption in focus* guide (January 2020; see chapter 2).
- CCC’s audit – *Assessing complaints of corruption: the effectiveness of the Queensland Police Service’s policies and practices* (December 2018. There are examples of the application of a reasonable suspicion test in this report.)

Recordkeeping

Keep records of:

- The public official or delegated decision maker’s name, position and endorsement of the assessment including:
 - » The evidence relied on in reaching the conclusion (e.g. complaint, internal records and CCTV footage)
 - » The reasons for your conclusion (why the complaint did or did not meet the definition or threshold of a reasonable suspicion of corrupt conduct)
- Any conflict of interest issues. Detail the steps taken to deal with any perceived or actual conflicts.

³ *George v Rockett* (1990) 170 CLR 104

4

Determine what level the conduct is under the section 40 direction

Refer to your agency's section 40 direction.

Public officials or delegated decision makers should start at Level 1. Only if the conduct is not a Level 1 matter, consider if the conduct is Level 2. If it is not Level 1 or 2, then it would be caught by Level 3.

In assessing if a matter is Level 1, decision makers should identify all potential criminal offences, the value of property/fraud (if relevant) and the conduct types from the complaint.

You should then check if any of the identified offences, value or types match any of those conduct types set out under Level 1 of your agency's section 40 direction.

Next steps:

Having determined what level the alleged conduct is, go to **Step 5** to ascertain when you must report the allegation to the CCC.

Resources

- Your agency's section 40 direction.

Recordkeeping

Keep records of:

- The level for the complaint
- The reasons for your categorisation
- The public official or decision maker's name, position and endorsement of your assessment and categorisation of the complaint.

Note: If you are unsure as to whether a complaint of corrupt conduct involves Level 1, 2 or 3, contact the CCC for advice.



Level 1 Assessment

Look carefully at each type of conduct that is listed in Level 1 to see if the matter fits. The CCC's audit noted that a number of agencies overlooked cases in which:

- The complaint raised suspicions of serious systemic concerns, and involved an allegation of professional misconduct. See case study 1.
- The conduct of an employee of an agency resulted in a child or vulnerable person being placed at imminent risk of abuse or neglect. See case study 2.
- The conduct was an offence relating to property and public monies in Part 6 of the Criminal Code and maladministration where the volume exceeded \$20,000. See case study 3.



Case study 1 - Serious systemic concerns

Allegations

- A clinical nurse maintained inappropriate contact with a patient outside of work on 11 occasions.
- A registered nurse had multiple allegations of fraud on 11 occasions (e.g. stole prescriptions without authority, fraudulently inserted details on prescriptions including the name and signatures of five issuing doctors, and presented stolen and forged prescriptions to various chemists to obtain Schedule 8 controlled drugs⁴).
- An allied health officer had multiple allegations of inappropriate behaviour against persons under their care (e.g. touching inappropriately, failing to manage a conflict of interest relating to a previous working relationship, inappropriate language and improperly disclosing confidential information).

Reason for allegations classified as Level 1

The above allegations “raise suspicion of serious systemic concerns, and involve allegations of ‘professional misconduct’ e.g. wilful behaviour that undermines the trust placed in the person by virtue of their position”. Stealing and fraud are criminal offences.

Case study 2 - Child or vulnerable person

Allegations

- A registered nurse pushed a towel into a patient’s mouth to keep him quiet. The patient was calling out in pain prior to the towel being pushed into his mouth.
- A security officer employed by the agency was observed inappropriately grasping a patient by one of his legs and pulling the patient across the floor into the patient’s room.
- A carer inappropriately used physical force on a child in care.

Reason for allegations classified as Level 1

The conduct of the subject officers resulted, in each case, in “a child or vulnerable person being placed at imminent risk of abuse or neglect (e.g. prisoner, detainee, health patient)”. The CCC has an interest in allegations that concern mistreatment of a child or person in the officer’s charge or care.

Case study 3 - Financial value

Allegation

- A senior officer authorised bathroom upgrade works of more than \$130,000 without obtaining three written quotes. The officer also exceeded his financial delegation, which was limited to \$10,000.

Reason for allegation classified as a Level 1

The subject officer may have fraudulently approved works to benefit themselves or others (e.g. misuse of authority⁵), aggravated by the failure to follow an appropriate procurement process. Under the section 40 directions, “an offence relating to property and public monies in Part 6, Criminal Code and maladministration where the value exceeds \$20,000” is a Level 1 matter.

4 Drugs of dependence are prescription medicines that have a recognised therapeutic need but also a higher potential for misuse, abuse and dependence. Queensland regulation – the Health (Drugs and Poisons) Regulation 1996 – requires certain persons to obtain an approval or licence to perform certain regulated activities with Schedule 8 medicines (drugs of dependence) in Queensland.

5 A misuse of authority allegation can involve misusing authority to act, or omit to act, in order to further one’s own interests or to favour a family member, friend, associate or benefactor (favouritism).

Level 2 Assessment

Look carefully at each type of conduct that is listed in Level 2 to see if the matter fits. The CCC's audit noted that a number of agencies overlooked cases in which:

- The complaint raised suspicions of repeated behaviour of a similar nature that had been occurring for a significant period of time. See case study 4.
- The conduct was an offence relating to fraud or misappropriation over \$5,000. See case study 5.



Case study 4 - Repeated behaviour of a similar nature

Allegations

- An employee fraudulently claimed five days of unworked time. Another employee claimed eight days of unworked time. Both employees worked in the same work unit.
- An employee fraudulently claimed 27 hours and 30 minutes of unworked time over multiple pay periods.

Reason for allegations classified as Level 2

The conduct by the subject officers is considered to be “repeated behaviour of a similar nature that has been occurring for a significant period of time”. The first allegation above also shows “potential systemic concerns” within the work unit or across the agency. These conduct types are important to the CCC because they provide intelligence about possible patterns of behaviour or systemic issues.

Case study 5 - Financial value

Allegation

- An operational coordinator split purchase orders to keep the amounts below certain procurement thresholds, so that they could be approved by his subordinate rather than his supervisor. The coordinator's subordinate had a lower financial delegation limit. The coordinator processed four transactions under \$5,000, ultimately totalling \$19,000.

Reason for allegation classified as a Level 2

The conduct by the subject officer raises a suspicion of fraudulent activities – “fraud or misappropriation over \$5,000”. Purchases are not to be split into a series of orders for the same goods and services in order to avoid delegation thresholds. This requirement applies to “whole-of-life” considerations involving all elements of the planned acquisition.

Level 3 Assessment

The remainder of allegations which are not assessed as either Level 1 or Level 2 matters are categorised as Level 3.

5 Notify the CCC of the matter

You should notify the CCC as soon as you have a reasonable suspicion that corrupt conduct may have occurred. Your notifying obligations are set out in your agency's section 40 direction.

- a. Level 1:** You must immediately notify the CCC prior to dealing with the complaint. However you may take any action reasonably necessary to preserve evidence. Provide as much detail as you have to help the CCC assess the complaint. You should not delay reporting the suspected corrupt conduct while you conduct further enquiries to get this information.
- b. Level 2 (s. 40):** You must notify the CCC via a section 40 schedule at the conclusion of each calendar month. Provide as much detail as you have to help the CCC assess the complaint. You may commence dealing with the allegations.
- c. Level 3 (s. 40):** You do not need to notify the CCC of the complaint. You may deal with the allegations. Your agency's section 40 direction, policies and guidelines will stipulate what records you must capture to facilitate CCC audits.

Note: If you are unsure of your obligations to notify the CCC, contact the CCC for advice.

Resources

- CCC's *Corruption in focus guide* (January 2020; see chapter 2).
- Your agency's section 40 direction.
- Your agency's policies and guidelines relating to complaints management.

Recordkeeping

- Overall, capture and keep accurate records of complaint management activities and decisions about complaints.

Remember

It is important you understand what needs to be notified and what does not before you take any action to deal with a complaint of corrupt conduct. 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 your agency, and yourself, from the accusation of covering up suspected corrupt conduct.

References

- *Corruption in Focus: A guide to dealing with corrupt conduct in the Queensland public sector*
www.ccc.qld.gov.au/publications/corruption-focus
- *Changes to the Crime and Corruption Act - Factsheet 1.*
www.ccc.qld.gov.au/publications/changes-crime-and-corruption-act-2001-definition-corrupt-conduct-section-15
- *Prevention in focus: Corruption in the Queensland public sectors - it's not just about public servants*
www.ccc.qld.gov.au/publications/prevention-focus-case-studies



Crime and Corruption Commission

QUEENSLAND

Contact details

- ✉ Crime and Corruption Commission
GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square
515 St Pauls Terrace,
Fortitude Valley QLD 4006
- ☎ 07 3360 6060 or
Toll-free 1800 061 611
(in Queensland outside Brisbane)
- 📠 07 3360 6333

More information

- 🌐 www.ccc.qld.gov.au
- @ mailbox@ccc.qld.gov.au
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