Record-keeping requirements for assessment decisions (section 40A)

This factsheet has been prepared to advise units of public administration (UPAs) about:

- the changes to the *Crime and Corruption Act 2001* that are directly relevant to them
- the actions they must take under the new legislation.

Background
The *Crime and Corruption Act 2001* (CC Act) defines:

- what constitutes “corrupt conduct”
- the Crime and Corruption Commission’s (CCC) jurisdiction to oversee the Queensland public sector, and
- how complaints about public sector corruption are to be assessed and actioned.

On 9 November 2018 the *Crime and Corruption and Other Legislation Amendment Act 2018* was passed, bringing in changes to the CC Act. The changes to the Act came out of recommendations from both the CCC and units of public administration (UPAs) to:

- widen the definition of corrupt conduct to capture additional types of behaviour
- extend the CCC’s jurisdiction over conduct that, while not technically within the public sector, can corrupt its functions and damage public confidence in it
- ensure that full records of decisions about allegations of corrupt conduct are kept by UPAs.

Amendments most relevant to UPAs
Two key amendments are relevant to UPAs. These are:

1. changes to section 15, which defines corrupt conduct, and
2. a new section 40A, which includes an additional record-keeping requirement.

This factsheet deals with the introduction of the new section 40A. All references to legislation in this factsheet are to the *Crime and Corruption Act 2001*, unless otherwise specified.
New section 40A

A new section 40A now requires public officials to keep a record of any decision not to refer alleged corrupt conduct to the CCC as required by section 38.

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.

The information recorded should be sufficient for a reasonable person to understand how and why the decision was made.

Details to be recorded

If you are assessing a complaint or allegation that you do not believe needs to be referred to the CCC, the CCC recommends that at the minimum you should:

- Accurately record how you assessed the complaint against the definition of corrupt conduct.
- Specify why in your view the complaint did not meet the definition or threshold for notification to the CCC.
- Record the decision-maker’s name, position and their endorsement of your assessment.
- Identify and record any conflict of interest issues – detail the steps taken to deal with any perceived or actual conflicts.

Timelines for new section 40A

UPAs must comply with the new section 40A in relation to any matter assessed on or after 9 November 2018, regardless of:
- when it was received, or
- when the conduct is alleged to have occurred.