

2 Obligations of public officials

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 corrupt conduct, you must apply all of the four elements discussed in chapter 1, as shown in the example below (see more scenarios at the end of this chapter). If the conduct does not meet all four, it is not corrupt conduct.

Conduct	Elements that make it 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"> 1. Adversely affects the performance of the department through breach of privacy obligations. 2. Involves a misuse of information. 3. Is engaged in for the benefit of the officer’s friend. 4. Is a criminal offence (i.e. abuse of public office).

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*.

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 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, and is engaged in for the purpose of gaining a benefit.

Conduct	Corrupt conduct because ...	Not serious because ...
A finance officer pilfers \$200 from the petty cash tin.	<ol style="list-style-type: none"> 1. Adversely affects the performance of the department through misuse of resources. 2. Is dishonest and a breach of trust. 3. Is engaged in for the officer's benefit. 4. Is a criminal offence (i.e. theft). 	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 the Queensland Police Service under the requirements of section 21 of the Financial and Performance Management Standard 2009.

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
- 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 (s. 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, 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
- Chairman.

How notification should be made

The CCC has an online form for public officials available at 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
- 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>, and you must consult with the Chairman 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).

Scenarios

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

Conduct	Elements that make it 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"> 1. Adversely affects the performance of the university through the appointment of an unqualified person. 2. Lacks impartiality. 3. Is engaged in for the benefit of the officer and the officer's spouse. 4. Is reasonable grounds for dismissal.
A liquor licensee offers monetary inducements to an investigator for advance information about investigations and search warrants.	<ol style="list-style-type: none"> 1. Adversely affects the execution of the department's powers under the relevant legislation. 2. Is dishonest and involves a misuse of information. 3. Is engaged in for the benefit of the investigator and the licensee. 4. Is a criminal offence (e.g. bribery).
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"> 1. Adversely affects the execution of the officer's powers under the relevant legislation. 2. Involves a breach of trust placed in the officer by virtue of his position. 3. Is inaction causing a detriment to the assaulted prisoner. 4. Is a criminal offence (e.g. party to assault/negligence causing harm).