



Managing corruption risks associated with secondary employment

Summary audit report

October 2018



Acknowledgments

The Crime and Corruption Commission would like to acknowledge the cooperation and assistance of participating departments and statutory bodies during this audit.

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Summary

In the 2016–17 financial year, the Crime and Corruption Commission (CCC) completed an audit examining how allegations involving conflicts of interest by council employees were dealt with by councils and the robustness of councils' systems of internal controls. That audit identified further work needed by 10 of the 13 councils to design and implement a conflicts of interest framework.

The CCC continued working in the conflicts of interest space during 2017–18, recognising that allegations of corrupt conduct in this space continue to be a significant issue in the Queensland public sector.

In this audit we examined how effectively 11 departments and statutory bodies managed corruption risks associated with secondary employment.

We concluded that some agencies' secondary employment processes could be enhanced to improve practices. Five agencies did not have in place a strategy directed towards identifying areas of their operations, or positions within the agency, that by their nature were of commercial value making them more susceptible to corruption risks associated with secondary employment.

We also found some agencies needed to implement clear and effective governance arrangements for managing secondary employment risks. The audit also identified that some agencies were not utilising advanced detection mechanisms to identify potential undeclared secondary employment on the part of their staff. We identified that three of the agencies had more than 30 per cent of employees included as samples in this test who potentially owned an external business or were acting as a company officeholder.

The CCC was of the view that one agency had not appropriately investigated an allegation involving an officer conducting a private business, and as a result the officer's conduct had not been adequately addressed.

A different agency had very limited case management material about how they dealt with a complaint about an employee's secondary employment. For example, the CCC could not identify any clear information or evidence related to inquiries undertaken by the agency in relation to the allegations, nor any relevant disciplinary and further prevention outcomes.

The CCC's audit of 33 complaint files identified that, in determining how to deal with allegations of potential conflicts of interest arising out of an employee's secondary employment, most agencies did seek to undertake some form of inquiry with respect to the allegations and the conflicted processes. There was evidence, however, that some agencies failed to consider other relevant factors, such as the officer's complaint history and if the officer had ever attended ethics training whilst at the agency.

Five agencies did not prepare an investigation plan to detail the what, why, how and when of their investigation. This has resulted in these five agencies not conducting a risk assessment of policies, procedures and processes to identify control weaknesses.

There were also seven instances where complainants were not provided with outcome advice pursuant to section 44(5) of the *Crime and Corruption Act 2001*.

The CCC made further recommendations for some agencies to strengthen their prevention measures where the recommended actions in response to a particular matter did not address the control deficiencies.

Overall, audit results were generally sound, although there were a number of identified areas for improvement to secondary employment systems, disciplinary outcomes and prevention responses.

Introduction

The *Crime and Corruption Act 2001* (CC Act) recognises the responsibility of an agency's public official¹ to set and maintain proper standards of conduct for their staff and, in so doing, maintain public confidence in their agency. The CCC has a lead role in helping agencies to deal effectively and appropriately with corruption.

Each financial year the CCC conducts a program of audits to examine how agencies have responded to particular types of complaints and how robust their complaints management and corruption prevention frameworks are. The CCC also undertakes audits aimed at controlling the risks of corruption.

In 2017–18, the CCC conducted an audit examining how effectively departments and statutory bodies manage corruption risks associated with secondary employment.

What is secondary employment?

Secondary employment is additional paid or unpaid employment (either on a full-time, part-time or casual basis) performed by an employee, including during absences on approved leave, in:

- the Queensland public sector or other government jurisdictions
- the private sector, whether for a private company or business, or in the course of ownership, or directorship of a company, trading trust or partnership
- working as an independent contractor
- self-employment.

It is acknowledged that employees may wish to undertake outside work for a variety of reasons, including augmenting their income, working while travelling overseas, or to enhance their personal or professional development.²

Reasons for doing this audit

In 2017, the CCC completed an audit examining how councils dealt with complaints alleging conflicts of interest on the part of council employees. In this audit we continue working in the conflicts of interest space, recognising that complaints in this area continue to be a significant issue in the Queensland public sector. It is recognised there is a risk that employees with secondary employment may engage in corrupt conduct if conflicts of interest are not appropriately managed.

While employees are not prohibited from engaging in secondary employment, the requirement to work impartially and in the public interest outweighs all other considerations. The *Public Sector Ethics Act 1994* establishes that the primary obligation of an employee is to always act in the public interest. Agencies should put in place mechanisms to manage the risks from, and effects of, any other commitments. Obtaining the approval of a delegated officer before undertaking such employment, or immediately upon commencing duty at an agency, is one way of commencing the risk mitigation process.

Improperly engaging in, or breaching, approved conditions in relation to secondary employment could constitute corrupt conduct under the CC Act.

For these reasons each agency should conduct a detailed risk assessment to identify their areas of vulnerability relating to secondary employment, maintain a good ethical culture, and implement policy, procedures and internal controls to manage these risks. The success of internal controls is demonstrated by their ability to prevent, detect and deter corrupt behaviour.

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

² Volunteering work is generally not regarded as secondary employment. However, conflict of interest issues may still arise and must be addressed where they do arise.

Audit focus

The objectives of the audit were to, as related to secondary employment:

- assess whether agencies adequately identified, analysed and evaluated the corruption risks
- evaluate the adequacy of agencies’ control frameworks for mitigating corruption risks
- evaluate the effectiveness of agencies’ risk management strategies in controlling corruption risks
- assess how each agency appropriately dealt with allegations of corrupt conduct.

Scope of the audit

This audit involved a total of 11 departments and statutory bodies across the following two main scope areas, during the period July 2016 to December 2017, namely by:

- reviewing agency systems for managing secondary employment risks
- reviewing how agency matters were dealt with.

Reviewing agency systems for managing secondary employment risks

We selected a sample of five agencies by examining factors including:

- the types of industry
- officers’ working hours arrangements
- the expertise of certain positions making them potentially of commercial value.

The participating agencies across two sectors are shown in the table below:

Sectors and participating agencies	
Departments	Statutory Bodies
<ul style="list-style-type: none"> • Department of Environment and Science³ • Department of Natural Resources, Mines and Energy • Queensland Fire and Emergency Services 	<ul style="list-style-type: none"> • Central Queensland Hospital and Health Service • TAFE Queensland

We developed a questionnaire for agencies to complete, focusing on governance, risk management and internal controls. We obtained relevant documents from agencies and examined them against the following scope activities, asking if the agency had:

- A detailed corruption risk assessment to identify, analyse, evaluate and treat corruption risks arising from the potential threat from employees having secondary employment.
- Adequate policies and procedures that outline the obligations of employees to comply with the Code of Conduct and contribute to the achievement of managing secondary employment in a transparent and accountable manner.
- Sound induction and training programs that cover the ethics principles and values, the risks of secondary employment, and the processes to manage the risks.
- Senior executives to convey to employees the importance of managing integrity and ethics.
- Senior executives who complete a declaration of interests annually, or following a significant change in their interests which requires their information to be updated.
- Managers who regularly remind employees of their statutory obligations in relation to disclosing secondary employment and complying with mandatory policies.
- Internal controls that are operating effectively in three main mechanisms: identify, manage and monitor.

³ Limited to the Queensland Parks and Wildlife Service, being the Unit from the former Department of National Parks, Sport and Racing which has been transferred to the Department of Environment and Science.

The CCC obtained a listing of ‘active’ employees from the respective agencies’ payroll systems. We analysed the data to identify employees that might potentially be involved in businesses based on their role, area of expertise and commercial value (e.g. targeted employees). Samples of these employees were selected and checked against business data from the Australian Securities and Investments Commission (ASIC) database.

Reviewing how agency matters were dealt with

We identified a sample of nine agencies by examining information held by the CCC concerning allegations of corrupt conduct relating to secondary employment made or notified to the CCC during the relevant period.

The participating agencies across two sectors are shown in the table below:

Sectors and participating agencies	
Departments	Statutory Bodies
<ul style="list-style-type: none"> • Department of Aboriginal and Torres Strait Islander Partnerships • Department of Education • Department of Housing and Public Works • Department of Natural Resources, Mines and Energy • Department of Transport and Main Roads • Office of the Industrial Relations⁴ 	<ul style="list-style-type: none"> • Central Queensland Hospital and Health Service • Queensland Rail • TAFE Queensland

A total of 33 complaint files were reviewed to assess how well each complaint was dealt with by the respective agency. We considered if the outcomes from the agencies’ dealing with the individual matters would:

- maintain public confidence in the agency
- produce a deterrent effect organisationally
- identify prevention opportunities arising from an agency’s investigation.

The audit also examined factors that might have given rise to incidents of corrupt conduct as well as systemic issues related to dealing with complaints of this nature and reducing corruption risks.

Findings from the audit

The CCC has communicated the findings of its audit to participating agencies, but for the purposes of this summary the CCC does not identify which agencies were involved in each finding. The intent of this audit summary is to help all agencies in the Queensland public sector improve their outcomes.

In the majority of agencies, there were some elements of a system and process in place to manage the risks of secondary employment. Agencies also had in place conflict of interest and secondary employment policies and procedures.

The CCC was satisfied that the majority of complaints audited were appropriately dealt with. We also did not identify conflicts of interest on the part of the case officers who dealt with the individual complaints.

Areas for improvement

The audit identified eight areas for improvement within two main parts:

- Agency systems for managing secondary employment risks
- Dealing with actual complaints and preventing future incidents.

⁴ The Office of Industrial Relations which, as a result of Machinery of Government changes on 12 December 2017, now sits within the Department of Education.

1. Agency systems for managing secondary employment risks

This section relates to the specific five agencies included in this part of the scope of this audit – refer to ‘Reviewing agency systems for managing secondary employment risks’ on page 6. We focused on their corruption risk assessments, controls framework and risk management strategies for managing secondary employment risks.

Area for improvement 1 – Corruption risk assessments

The audit found that none of the five agencies were effectively conducting detailed corruption risk assessments that included the comprehensive identification of corruption risks associated with secondary employment in significant business areas and processes. This extended to the identification and evaluation of corruption risks associated with significant employment positions which are, by their nature, more vulnerable to corrupt conduct in terms of secondary employment. As a result, these agencies were unknowingly exposing themselves to fraud and corruption.

Two of the agencies did not undertake corruption risk assessments to identify vulnerabilities associated with secondary employment. They considered corruption risks only as they occurred (for example, on a case by case basis when a person declared, or the agency identified, an involvement in secondary employment) rather than being undertaken proactively. It is important that each agency adopts a systematic and comprehensive approach so that all potential risks are identified, regardless of their source or controllability.

Two of the five agencies were working towards implementing the required governance and processes for undertaking corruption risk assessments. Once these were implemented, the agencies intended to conduct regular and detailed corruption risk assessments to identify current and emerging risks.

One of the five agencies had good procedures for fraud and corruption risk assessment, and fraud prevention initiatives, however the agency only conducted regular corruption risk assessments of high risk functions rather than through detailed identification and analysis of corruption risks across all business units and processes.

Corruption risk assessments are key to a successful prevention system and are an important management tool for preventing and detecting fraudulent and corrupt activities.

The CCC has published two prevention reports which may provide further assistance to agencies in this area, as follows:

- *Effectiveness of Queensland Public Sector Corruption Risk Assessments* (September 2017)
- *Fraud and Corruption Control: Best Practice Guide* (March 2018).

Recommendation

Agencies to conduct a detailed fraud and corruption risk assessment to identify their areas of vulnerability in business areas, service delivery areas and positions vulnerable to secondary employment risks, using a comprehensive risk management system (to be undertaken at least every two years).

See an example below which is a useful prompt to ensure significant corruption risks are considered across the business operations.

Note: In responding to this audit, four of the five agencies acknowledged they needed to identify areas of vulnerability relating to secondary employment, and put in place policies and processes to ensure there were adequate prevention measures and internal controls to prevent, detect and deter corrupt behaviours.

The other agency has not responded to this audit. The CCC intends to monitor this agency to ensure that management actions have been effectively implemented.

Example – Identifying corruption risks associated with secondary employment

The first step in the corruption risk assessment process is to *establish the context* of an agency's risk exposure. The Fraud Control Officer (or a Risk Officer) ran six 'risk storm' workshops across a wide cross section of agency employees. At each of the workshops, the Fraud Control Officer said to the participants:

"The maintenance of high standards of integrity, conduct and fiduciary responsibility is one of the important tasks in this agency. We must remember that the Queensland community has high expectations in relation to all of us, as public service officers, to perform our duties in a fair and unbiased way, and that the decisions we make are not affected by our own self-interest, or the likelihood of personal gain or loss".

In the second step of the corruption risk assessment process, *identify the risks*, the participants were asked to identify what were the main risk themes in their work practices and policies that would prevent them from achieving high standards of integrity. The aim was to identify a comprehensive list of sources of risk (e.g. risk themes). 'Secondary employment' was raised as one of the sources of risk.

The participants were then asked for each of the risk themes, what were the main categories of conduct that could arise. In relation to secondary employment, 'conflicts of interest' and 'misuse of information' were the two broad conduct categories raised by the participants.

Participants then worked through each type of conduct to identify the corruption threats.

At the end, the Fraud Control Officer produced an output as per below.

Note: Other proactive advanced analytics/researches, intelligence sources, senior executive meetings, and business areas and business processes vulnerabilities, were also used to identify the risks.

Level 1 – Risk theme – Secondary employment

Level 2 – Conduct category – Conflicts of interest

Level 3 – Potential corruption threats related to conduct

Risk A – misuse of an agency's name for commercial gain

Risk B – bias in awarding contracts or tenders

Risk C – directing subordinates to perform tasks for the employee's own secondary employment

Level 1 – Risk theme – Secondary employment

Level 2 – Conduct category – Misuse of information

Level 3 – Potential corruption threats related to conduct

Risk A – misuse of intellectual property

Risk B – misuse of privileged access to information for procurement competitive purposes

Note: The above is not exhaustive and should be considered only as a partial example.

An agency must conduct regular detailed corruption risk assessments (i.e. at least every two years) to identify current and emerging risks to make informed and intelligent decisions on anti-corruption programs.

Area for improvement 2 – Accountability (roles and responsibilities)

While each of the five agencies had in place a policy and process for managing declared secondary employment, the audit identified that two of the agencies did not have in place clear delegation arrangements to ensure officers managed risk effectively.

These agencies had not documented the responsibilities of the Senior Executive Group in overseeing the ongoing management of conflicts of interest (including secondary employment), internal controls effectiveness, current and emerging risks, and the mitigation strategies. The responsibilities of the Chief Human Resources Officer, the Chief Operating Officer, and all the managers in the lifecycle of the risk had also not been documented.

The agencies should have clearly differentiated the responsibilities of the central Human Resources unit and the regional Human Resources units, ensuring central Human Resources were responsible for the overarching governance and leadership in managing the risk.

These failures represent a deficiency in the agencies' risk management processes concerning secondary employment.

Recommendation

Agencies are to clearly define and assign responsibilities for all key governance roles (which should start at the top of the organisation and flow downwards to employees and volunteers) in relevant policies and procedures associated with secondary employment.

Note: One of the two agencies advised the CCC that the recommendation may not translate to practical implementation, given governance structures and resources within the agency. The agency, however, planned to address the issues in ways that are proportionate to the risk.

The other agency planned to review their policy and procedures to ensure the responsibilities of all key governance and management roles are documented.

Area for improvement 3 – Governance (centralised register, obligations and monitoring)

The audit identified that four of the five agencies did not have in place a coordinated approach for registering, managing or monitoring employees' secondary employment. Each region or division was working autonomously to manage and monitor employees' secondary employment. As a result the agencies could not demonstrate a consolidated position in terms of how declared secondary employment was being managed and monitored throughout the agency as a whole.

For example, one agency maintained a central register of senior executive officers' personal interests including secondary employment, however, each region or division was also responsible for maintaining their conflicts of interest and secondary employment register on behalf of their staff.

In other agencies there was no regular standard reminder sent to staff about their obligations to declare secondary employment or comply with the management strategy. As a result these agencies may have been vulnerable to undeclared conflicts of interest and secondary employment.

The agencies also did not have in place guidelines or requirements establishing how frequently a declared secondary employment arrangement should be reviewed. Reviews are important to ensure adjustments can be made to the management strategy, if required, before problems can arise.

The gaps identified in agencies' secondary employment frameworks identified above may result in an immature process which fails to identify, manage and monitor secondary employment related risks effectively.

Recommendations

- a) Develop a centralised secondary employment register that consolidates information from all individual regions. The register should detail how secondary employment is being managed by agencies and the processes being implemented to monitor those arrangements.
- b) Nominate a responsible officer to review and manage the centralised register.
- c) Release the centralised register to the respective managers on a quarterly basis to provide feedback on the currency of the employees' secondary employment (including any conflicts of interest) related to their business areas, and any updates on how the secondary employment is being managed and monitored.
- d) Send quarterly communications and reminders to employees regarding their obligations to declare and register their secondary employment. The reminders should be sent via the Senior Executive Group to demonstrate the agency's stance from the top down on the management of conflicting interests and its importance.
- e) Table quarterly reports at the Senior Executive Group meeting to highlight the types of secondary employment conflicts that have been declared by employees, and provide information on secondary employment that has been detected without self-declarations. The report should also identify action plans to remedy the issues identified.

Note: In responding to this audit, the three agencies noted they will further improve accountability through better oversight of secondary employment declarations across their organisation, including regular reporting of secondary employment to senior executive group meetings.

The other agency has not responded to this audit. The CCC intends to monitor to ensure management actions have been effectively implemented.

Area for improvement 4 – Detection control mechanisms

None of the five agencies audited had undertaken proactive advanced analysis techniques, or used other intelligence tools, to identify potential undeclared secondary employment on the part of their staff. The agencies had also not utilised their internal audit area to conduct an audit of their secondary employment processes and controls.

As part of our audit, we also conducted data analytics tests. While based on small employee samples within the broader agencies, we identified that three of the five agencies had more than 30 per cent of employees selected as samples in this test, who potentially owned an external business. Refer to the table below.

Agency	Number of current employees <i>[at date of data extracted by the agency]</i>	Sample size	Results <i>[potential employees with a business]</i>	As a percentage of total samples
Agency 1	4247	50	10	20%
Agency 2	1147	50	3	6%
Agency 3	2551	50	16	32%
Agency 4	5365	65	20	31%
Agency 5	6072	75	28	40%

In conducting the data analytics we were limited to searches based on names only, and a positive name identification will not necessarily translate as being the same person identified and employed in the agency. We have, however, provided the information to the relevant agencies so that they might undertake their own due diligence.

The CCC was concerned that some agencies were not utilising advanced analytics to manage the corruption risks associated with secondary employment. Instead, the agencies had left the responsibility for declaring secondary employment with individual staff members. By relying on the honesty of their staff, rather than pursuing proactive initiatives, these agencies may leave themselves exposed to fraud and corruption.

There is considerable evidence of a strong link between the incidence of corruption and poor internal control systems.

Recommendations

- a) Agencies to adopt the CCC's advanced analytics work, in particular:
 - Obtain from the payroll system the employee's date of birth (DOB) and check against the listing provided by the CCC for identity confirmation.
 - If the employee is likely to be the same person, check if the employee has declared the relevant secondary employment (e.g. register and form), and if:
 - A declaration exists, review the approved management strategies to determine your next approach
 - No declaration exists, obtain an extract from ASIC for further review to undertake appropriate actions regarding the employee.
- b) Agencies to implement a program for assessing compliance with controls by:
 - Periodically assessing controls to confirm that they continue to operate effectively, and are appropriately designed to mitigate the risk. This can be done by:

- conducting surveys with employees across the agency to gauge the effectiveness of the agency's secondary employment processes and identify areas which require attention and improvement
- testing the controls to assess their implementation and effectiveness.

Note: The five agencies mentioned above have noted the CCC's advanced analytical work performed. Three of these agencies have already commenced actions to confirm if the officers identified have appropriately declared all secondary employment.

The other agency has not advised if they will follow up on the CCC's work, and the fifth agency has not responded to the CCC's audit. The CCC will continue to monitor these two agencies to ensure that management actions have been effectively implemented.

Some agencies, including those not included in the scope of this audit, planned to investigate available options to conduct proactive advanced analytical techniques or use other intelligence tools to identify potential undeclared secondary employment on the part of their staff that, best matches their governance structures and resources.

2. Dealing with actual complaints and preventing future incidents

This section relates to the nine of the 11 agencies and the issues identified by our review of the 33 complaint files subject to audit.

Statistical results from this audit

The figure below shows how agencies dealt with the 33 complaints. In summary:

- Agencies took no action in relation to two complaints that were assessed as lacking in substance or credibility, or where dealing with the complaint would be an unjustifiable use of resources.
- 27 complaints were investigated, with a range of outcomes (further shaded boxes in diagram below).
- 4 complaints were either still in-progress or identified by us upon closer examination as not being associated with secondary employment.

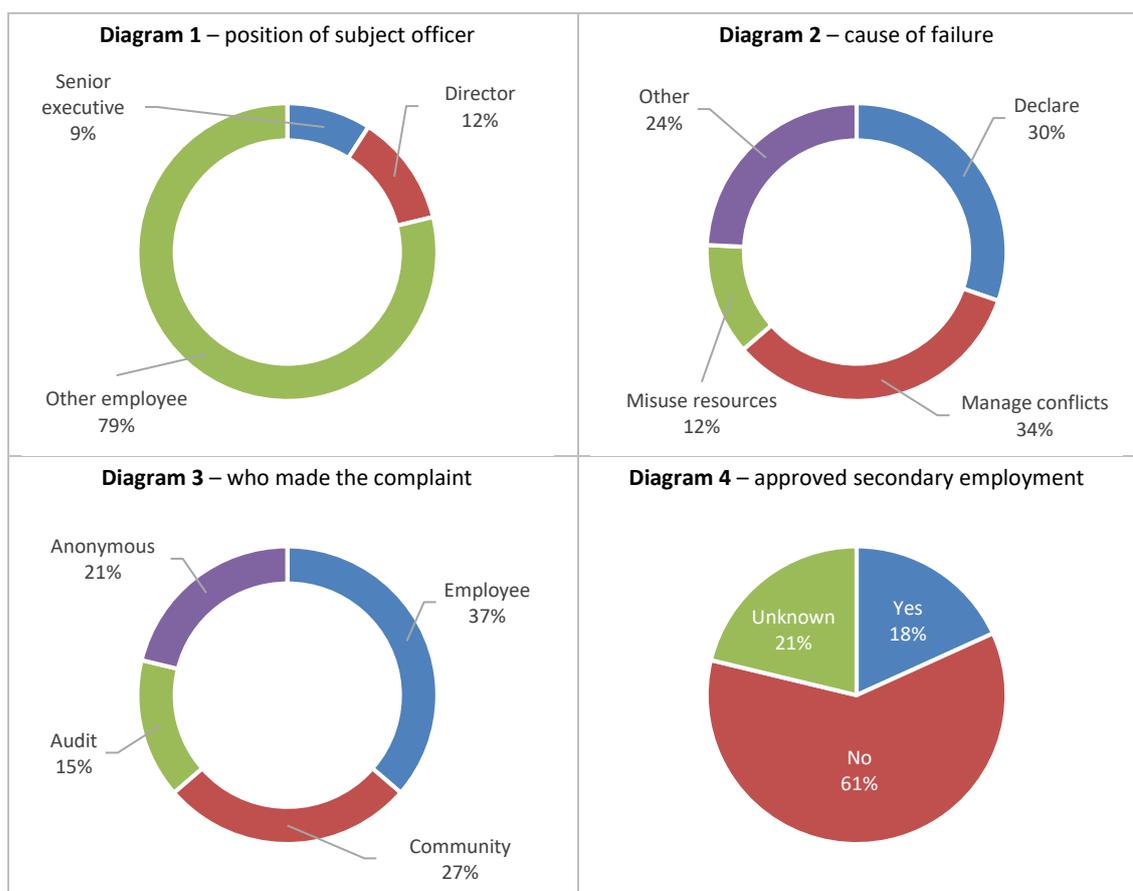


Source: Crime and Corruption Commission 2018

The diagrams shown below graphically indicate the position or level of the subject officers (Diagram 1), how the subject officers failed to comply with the policies (Diagram 2), how the complaints were reported to the agencies (i.e. who) (Diagram 3), and whether the subject officers had in place approved secondary employment conditions prior to the allegations arising (Diagram 4).

In summary:

- Allegations of corrupt conduct associated with secondary employment were most commonly made against other employees (79%), followed by directors or managers (12%) and senior executives (9%) (Diagram 1).
- Complaints most commonly related to a failure to avoid a conflict (34%), followed by a failure to declare secondary employment (30%) and the misuse of resources (12%). The remaining complaints (24%) arose from a variety of different circumstances particular to the individual matters (Diagram 2).
- Most complaints of this nature were made by other employees (37%), followed by complaints lodged by members of the public (27%) and issues identified through routine audits (15%) (Diagram 3).
- In 61% of complaints, the subject officers did not have in place approved conditions for their secondary employment prior to the allegations being made. In 18% of matters prior approval had been obtained, and in the remaining matters the relevant information was unknown (Diagram 4).



Source: Crime and Corruption Commission 2018

Area for improvement 5 – Allegations not dealt with appropriately

One agency, in dealing with a complaint raising issues of secondary employment, focused on workplace conflict and in doing so failed to address the key issue, namely that the subject officer was conducting another business.

The following case study has been described in detail to show investigators and decision-makers where mistakes were made and how better outcomes might have been achieved.

Case study – Allegations about an officer’s secondary employment were not dealt with appropriately

An anonymous complainant alleged that a manager favoured his wife (who also worked in the same work area) by allowing her to work from home and conduct a private business. It was alleged that the wife had engaged in timesheet fraud by conducting her personal business during work hours.

The agency did not formally investigate the allegations. This appears to be because, three days after receiving the anonymous complaint, an officer was sent to the workplace to initiate inquiries. After speaking with staff the officer received numerous complaints from various staff members which were mostly related to the management style of the manager, and the impact this management style had on staff members at that office.

As a result of the information received by an agency's officer, a preliminary review of the work area was commenced to gather information to identify and verify the specific complaints that had been raised by these staff members.

Staff members were interviewed to obtain their version of events. All staff members interviewed provided similar accounts of what they had observed, either first or second hand, regarding issues with the management and communication style of the manager towards them personally or other staff members. These staff interviews did not result in the officer obtaining further information about the original allegations about secondary employment, timesheet fraud and misuse of resources.

At the conclusion of the preliminary review, a decision-maker adopted a range of recommendations that focused on the workplace issues identified in the staff interviews as impacting upon the health and well-being of staff members in the work area.

In effect the investigation into the later allegations about management and communication caused the original investigation to fall from focus and they were finalised on the basis of insufficient evidence and the agency took no further action against the subject officers. There was no evidence the agency undertook any other inquiries, beyond the staff interviews, to determine if the staff member (i.e. the Manager's wife) was engaged in secondary employment. The corruption risk could still be present.

The CCC was concerned that the agency relied on indirect evidence (i.e. staff interviews) to determine if an officer was engaging in secondary employment. We believed the agency should have conducted additional inquiries to identify any secondary employment. In Australia, business names and companies are required to be registered. To identify if a person has their own business, a logical avenue of inquiry would be to conduct searches through ASIC Connect⁵ to locate and validate any connection between a private business and the subject officer, particularly in circumstances, as was the case here, where the complaint included the name of the business.

During our review of this complaint we conducted a series of very basic business name, business officeholder names and google searches. We were able to locate the identified business and the subject officer. This was sufficient evidence to warrant further inquiries by the agency to establish whether the subject officer had declared her secondary business interests. It also suggested a full examination of the other allegations about timesheet fraud and misuse of resources should have been fully investigated by the agency.

The CCC was of the view that the agency had not appropriately investigated this matter, and as a result a subject officer's conduct had not been adequately addressed. The agency has been requested to investigate the allegations concerning secondary employment, timesheet fraud and misuse of resources, and provide an outcome report to the CCC.

Recommendations

- a) The agency in question to further investigate this matter, particularly the allegations involving secondary business interests, timesheet fraud and misuse of resources.
- b) At the conclusion of the investigation, the agency to provide a copy of the report and final disciplinary outcomes to the CCC. This will form part of the audit's follow up process.
- c) The agency to be reminded of the importance of gathering and examining appropriate evidence concerning the allegations, so matters can be dealt with appropriately to promote public confidence in the administration of the agency.

⁵ ASIC Connect is an online tool, administered by the ASIC, that enables an individual to conduct a search on organisations and business names. It also provides a search on business officeholders. Some examples of information the ASIC provides for free include: organisation name, officeholder name, unique identification number (i.e. ABN), registration date and locality of registered office. This tool is available on the ASIC's website at <https://asicconnect.asic.gov.au>

Note: In responding to this audit, the agency intended to further investigate the allegations and take appropriate actions against the relevant subject officers, including providing the CCC with an outcome report.

The CCC intends to review the outcomes made by the agency's decision-maker, as a result of the re-investigation, and whether outcomes were appropriate to promote public confidence in the integrity of the agency.

Area for improvement 6 – Maintain full case management records

The CCC noted one agency failed to keep sufficient and accurate records about how a particular complaint was dealt with. The matter concerned a senior officer who had been identified as engaging in a role external to the agency, and was a non-reportable matter⁶ to the CCC, as detailed in the case study below.

Case study – Insufficient information about how allegations were dealt with

The agency appointed a consultant to conduct an integrity review of their third-party providers and to ensure there were no potential financial or other irregularities involving agency staff and/or its third-party providers. As a result of the integrity review, a senior officer was identified as engaging in a role external to the agency, in circumstances where she may:

- have a potential conflict of interest between her public duties and her position as President of an incorporated body, which she was required to declare and/or appropriately manage
- be in breach of Section 89 – Public Officers Interested in Contracts – of the *Criminal Code*⁷, as an employee of the agency, considering her position as President of an incorporated body.

When the Ethical Standards Unit (in a different agency under the Memorandum of Understanding) was notified of this matter, they asked the agency to undertake preliminary inquiries to allow them to conduct a further assessment of the allegations to enliven the notification obligation to the CCC.

The preliminary inquiries found that the subject officer completed a conflict of interest declaration, however, there was no evidence of it being approved by the manager and delegate, or of any agreement being put into place regarding how the conflict was to be managed going forward.

In reviewing the available material, the CCC could not identify any clear information or evidence about matters including:

- What risk mitigation strategies, if any, were put in place for the subject officer to manage a conflict of interest.
- The inquiries undertaken by the agency in relation to the allegations.
- Whether the subject officer was provided with a show cause notice, and if so whether they had responded to it.
- Any relevant outcome as a result of the agency dealing with the matter.
- Whether a risk assessment of the relevant policies, procedures and prevention measures had been undertaken to identify if they remained effective.

In the absence of explanatory material, the CCC was unable to determine if the allegations were dealt with appropriately and to provide the agency with suggested prevention measures to address any issues.

Recommendations

- a) Implement a system to adequately capture, manage, respond to and report on complaints at all stages of the complaint handling process.
- b) Maintain full records of inquiries conducted and evidence gathered, including a decision-maker's outcome.

⁶ Complaints of corrupt conduct that under section 40 of the CC Act may be dealt with by the agency without having to report them to the CCC.

⁷ Section 89 of the *Criminal Code* means that employees are not permitted to work for any organisation that is engaged in business with their own agency.

- c) Consider and implement a prevention response as a result of an investigation.
- d) Consider and implement a deterrent response concerning the actions of the subject officer.
- e) Provide an outcome report to the CCC in relation to this matter.

Note: In responding to this audit, the agency planned to implement the recommendations.

Area for improvement 7 – Strengthen inquiries, investigation and outcome advice capabilities

The audit identified some agencies, in dealing with complaints, failed to consider relevant factors including:

- the subject officer's complaint history
- whether the subject officer had undertaken any ethics training.

The CCC considered that the failure to consider these factors excludes critical information relevant to complaint assessment, investigation and outcomes. It demonstrates an inclination to treat complaints in isolation, ignoring possible patterns in an individual's behaviour, and missing opportunities for performance improvement or disciplinary action.

We also identified a small number of matters where two agencies failed to prepare an investigation plan to detail the what, why, when and how of their investigation. While this failure did not affect the appropriateness of the outcomes in these instances, it did result in agencies not conducting a risk assessment of policies, procedures and processes at the end of the investigation to ensure current internal controls continued to be adequate to prevent future incidents.

The CCC also identified seven instances where complainants were not provided with outcome advice. Section 44(5) of the CC Act obliges agencies to provide complainants with a response to their complaint.

Overall, the CCC has a responsibility to help agencies improve the skills of their staff to deal with instances of corrupt conduct.

Recommendations

- a) Agencies to review and document every subject officer's:
 - relevant complaint history
 - history of relevant Code of Conduct and/or fraud and corruption prevention training.
- b) Remind staff involved in dealing with complaints that complainants should be afforded the opportunity to receive an outcome advice pursuant to the CC Act. The complainants noted in the findings above are to be provided with outcome advice.
- c) Prepare an investigation plan to detail the investigation (Scaling guide: adequate to the risk, complexity, nature and timing of the investigation).

Note: Agencies have acknowledged the recommendations relating to complaint and management practices.

Area for improvement 8 – Further prevention measures

The audit identified opportunities for some agencies to further strengthen their prevention strategies, in circumstances where the recommended actions did not address the control deficiencies.

Prevention initiatives are not optional. Effective risk management and internal controls are central to good governance, allowing an agency to minimise the costs of corrupt conduct and contribute to the integrity of the public sector.

Some of the opportunities we have recommended agencies should consider implementing include:

- avoiding engagement of businesses where there is an existing employee working for the business in secondary employment. Where this is not practicable the agency should implement close scrutiny of invoices and monitoring of staff who are associated with the external business that is providing private work for the agency
- better clarification around what a conflict of interest is e.g. it is about relationships and business interests
- organisational awareness about the desirability of documenting action including recording any declaration of secondary employment and the associated approval in writing e.g. processes are thorough and transparent
- taking ownership of the risk. When someone in the agency becomes aware of an officer's potential secondary employment they should proactively raise the issue rather than leaving it up to the individual employee to declare their secondary employment. Refer case study below.

Case study – A supervisor did not take ownership of the risk and ensure the direction was complied with

A senior officer was promoting the activities of the subject officer's secondary employment business. The business offers coaching, training and workshops to support start-ups, enterprise and government services.

The business is also an organiser of a specific group in an online social networking service, where members can find and join groups with a common interest. That specific group hosted a series of events where a 'game' was played (a gamification based approach to teaching lean business principles).

The senior officer encouraged the subject officer's business to promote the game to senior staff within the agency.

The senior officer was not initially conscious of the relationship between the meetup group and the services being provided by the subject officer's secondary employment business to that meetup group, and when he became aware that there was a relationship, did not understand the nature of the relationship.

When the senior officer was put on notice of the potential for a conflict of interest, no one at the agency took ownership of the associated risk. The series of emails which the senior officer received, either directly or forwarded from a number of witnesses, should have raised questions as to the relationship. No action appears to have been taken to require the subject officer to declare and report the conflict of interest. That is, the agency appears to have relied on the subject officer to declare the conflict themselves rather than the agency proactively taking ownership and requesting this to occur.

The senior officer was reminded of his obligations to comply with the agency's conflicts of interest policy, and the subject officer resigned from the agency prior to the decision-maker considering disciplinary proceedings.

Recommendations

- a) Consider and implement the prevention measures as communicated to relevant agencies.
- b) In each instance where corrupt conduct is detected, the relevant owner of the control should reassess the adequacy of the internal control environment (particularly those controls directly impacting on the corrupt incident and potentially allowing it to occur) and consider whether improvements are required. Where improvements are identified as required, these should be implemented as soon as practicable.

The results of the risk and control assessment of the incident should be communicated to the case officer and the CCC Liaison Officer for subsequent reporting to the Fraud/Risk Manager as part of the agency's corruption risk assessment processes.

Note: Agencies related to this issue have acknowledged the specific recommendations to the relevant matters audited by the CCC, to further strengthen prevention measures.

Conclusion

The CCC's audit identified a number of areas for improvement to managing corruption risks associated with secondary employment, the appropriateness of outcomes, and internal controls in the secondary employment system.

Following the completion of our audit the relevant agencies have had an opportunity to comment on the findings. Their views have been considered in reaching our final report and this report represented the overall responses from the agencies involved. The agencies have already taken, or planned to take, all the relevant steps to address the issues and recommendations made within this report.

The CCC made numerous follow-ups and has not received assurance to implement relevant recommendations from one statutory body, which was disappointing. It demonstrates a lack of commitment from a senior executive that could potentially diminish the ethical climate of the agency by opening up an opportunity for staff to engage in corrupt conduct. The statutory body has a shared obligation, along with the CCC, to prevent corrupt conduct in the public sector.

The community has a right to expect that senior executives and employees will perform their duties in a fair and unbiased way, and that the decisions they make are not affected by self-interest, private affiliations, or the likelihood of personal gain or loss. It is critical that employees and agencies protect the public interest by ensuring that secondary employment is identified and managed effectively.

Summary guide – Strategies to manage corruption risks

Key facts

Risk factors

Corruption and other risks associated with secondary employment, include:

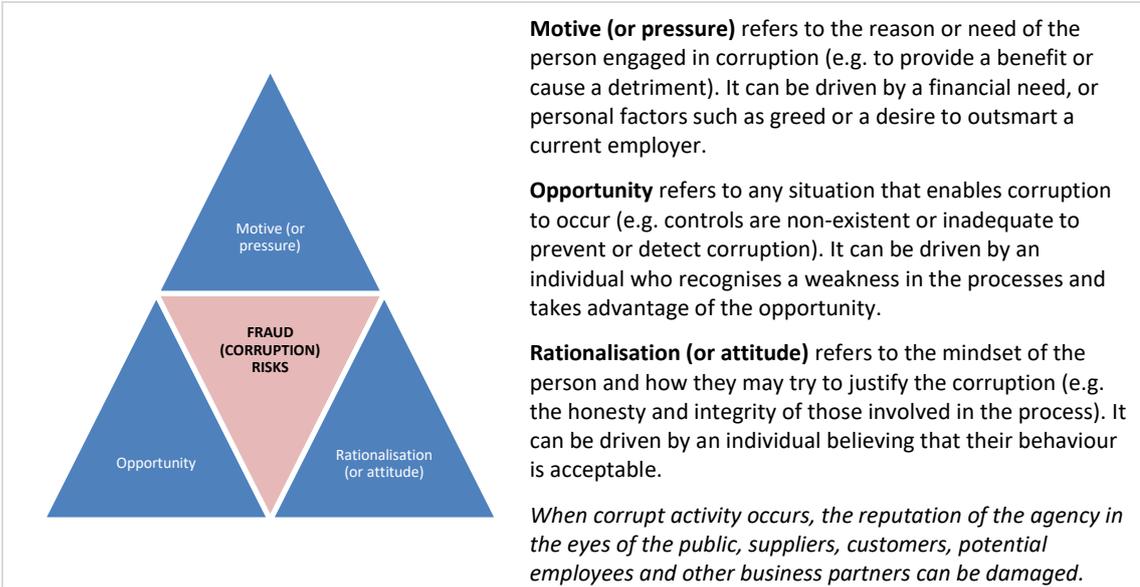
- actual and perceived conflicts of interest
- misuse of information or resources gained through employment with the agency in their outside work, or use of an agency’s computing and office equipment to undertake duties connected with their secondary employment
- absenteeism due to clashing commitments (e.g. taking ‘leave with pay’ or ‘leave without pay’ to pursue opportunities elsewhere)
- diminished work performance as a result of fatigue, distraction or time pressures
- increased workload on co-workers who are required to ‘cover’ the reduced performance of the employee.

The risks to the agency are greatest when the other employer:

- has, or is likely to have, contractual dealings with the agency
- is in, or may come into, commercial competition with the agency
- has a regulatory relationship with the agency.

The Fraud Triangle

Research suggests corrupt activity is usually motivated by one or more of the following three factors:



Source: adapted from *The Fraud Triangle* ⁸

An ‘Opportunity’ for corruption is an element that every agency should be seeking to reduce. Inadequate governance and policy frameworks, significant weaknesses in identifying and managing corruption risks, and a failure to implement strong internal controls all form to create an environment that is vulnerable to employee corruption. Undeclared secondary employment (including undeclared conflicts of interest associated with secondary employment) and a lack of supervision are expected to be the most common internal control breakdowns that contribute to corruption incidents.

8 Donald R. Cressey, *Other People’s Money*, “The Fraud Triangle”, Montclair: Patterson Smith (p. 30), 1973.

Guiding legislation

The *Public Sector Ethics Act 1994* is the main piece of legislation governing and guiding the obligations of all employees in performing their public duties. Employees must always act in the public interest.

The *Public Service Act 2008*⁹ and an agency's Code of Conduct require employees to declare any interests, including a conflict of interest, so that it can be transparently managed in the public interest.¹⁰ The requirement to work impartially and in the public interest outweighs all other considerations.

Strategies to manage risks

The following is not exhaustive and should be considered as a guide only. It has been adapted from the CCC's corruption prevention advisory, *Conflicting commitments*, and the CCC's corruption audit report, *Managing and responding to conflicts of interest involving council employees*.¹¹

It is important to strike a balance between the need to maintain public confidence in the integrity of the agency whilst also catering for individual needs such as part-time working arrangements. To achieve this it is recommended that agencies put in place mechanisms to manage the risks from, and effects of, any other commitments.

Policy

Policy and procedure

To assist employees in understanding their obligations it is recommended that each agency have a readily available policy and procedure that provides clear guidance to managers and staff about secondary employment. The policy and procedure should cater for the following key areas of accountability.

Obligations for the agency

The policy and procedure should:

- Require that written declarations of, and applications for, secondary employment, including reasons for approval or rejection, are retained with staff records for future reference and audit purposes
- Be reinforced through mechanisms such as induction training, ethics awareness sessions, and periodic reminders to ensure that all employees know and understand their obligations under the policy
- Empower the agency to take disciplinary action against employees who fail to declare, or do not cooperate in managing, secondary employment
- Provide for periodic reviews of the policy to ensure it is current
- Cater for internal promotional opportunities or transfers, and require a new risk assessment to be carried out under the proposed new working arrangements, and an updated management plan if required
- Identify a suitable manager or delegate to make decisions about the management of secondary employment risks
- Require regular training for managers and supervisors about:
 - the workings of the policy
 - the application and approval process
 - the need to ensure that the public authority is not disadvantaged as a result of approving secondary employment
 - the need to discuss with the employee, and ensure they understand, the importance of abiding by the requirement to always act and resolve any conflict of interest in the public interest.

Agency

⁹ *Public Service Act 2008*, sections 185 and 186.

¹⁰ Not all agencies are subject to all of the provisions of the *Public Service Act 2008*. Under the Public Service Regulation 2008, a number of the provisions of the *Public Service Act 2008* are applied to certain agencies, and may include a range of employment obligations for employees.

¹¹ CCC's corruption audit reports and prevention advisories are available on the CCC's website at <http://www.ccc.qld.gov.au/>

Performance obligations for managers

Managers must:

- Understand and be able to explain the key issues, and provide clear guidance to an employee about the basis on which decisions about secondary employment are to be made
- Be able to:
 - identify and assess all potential risks (including risks not identified by the employee)
 - review and decide on the practicality of the mitigating steps the employee proposes to implement to manage the risk
 - discuss and seek agreement on a plan to manage the identified risks
 - implement a review process to ensure the mitigating steps are effective and also to identify emerging risks not previously identified
- Remind the employee about their obligations to comply with mandatory policies such as conflict of interest, misuse of official resources, timekeeping and the Code of Conduct
- Ensure the employee understands that compliance with legislation and policies relating to secondary employment is required even when an employee is on leave (paid or unpaid) from the agency
- Conduct periodic ad-hoc reviews of the employee's work to ensure the secondary employment is not affecting the employee's performance.

Manager

Employees' obligations

The policy and procedure should inform the employee about their obligations to:

- Notify the agency about their proposed other employment and how to access pro-forma templates for the application process
- Disclose specific information including the duties undertaken, name and location of the other employer, hours worked and any current links the other employer has with their or other government organisations
- Self-identify any potential conflicts of interest, possible risk factors and document how they will manage those risks
- Comply with the management plan or other contractual conditions including ongoing oversight of the approval (particularly for high risk matters) to ensure that the secondary employment does not have a negative impact on either the performance of the employee's duties or on the reputation of the agency or the public sector generally
- Not commence secondary employment until the approval is provided
- Promptly notify the agency of any change of circumstances that may need to be managed or which indicate that conditions associated with the approval may need to be reconsidered
- Submit to an annual review of the approval and to understand that any approval can be revoked
- Ensure that any other employment and functions relating to it must not be carried out during work time or using agency resources.

Staff

Risk & Controls

Risk and controls assessments

Effective risk management and internal controls are required by the *Financial Accountability Act 2009* and the *Financial and Performance Management Standard 2009*. Prevention is also important to upholding the ethics principles and values set out in the *Public Sector Ethics Act 1994*.

An agency should include the identification and management of secondary employment as a risk to be assessed in their corruption risk management processes. Corruption risk assessment is a vital step in producing an effective anti-corruption treatment program that specifically addresses an agency's risks.

Risk

The CCC has published an audit into the *Effectiveness of Queensland Public Sector Corruption Risk Assessments* (September 2017). This report will provide further assistance to agencies in this area.

Agencies should ensure that the risks of secondary employment, particularly those government positions assessed as having a higher susceptibility to the risks of corruption, are subject to a rigorous system of internal controls. Such controls should cover the prevention, deterrence and detection of issues associated with secondary employment. Examples of risk management strategies have been provided under the Scope section of this report in page 6.



Internal controls should be periodically evaluated for effectiveness by management and internal audit.



Application process

Every agency should have a mechanism that allows employees to apply for approval to engage in secondary employment. Within this process the employee makes a declaration about potential or actual conflicts of interest.



Implementing an application form to record the secondary employment provides a number of benefits (that is, obtaining the right information, consistency, accuracy and record keeping).



Management process

Once the employee has made an application, the employee's manager and/or the delegate should consider whether there are any unacceptable risks arising from the proposed secondary employment. The employee and decision-maker together are to develop and document a plan to manage the risks with an approval for secondary employment to be accompanied by conditions which are recorded in an agreed management plan.



The decision-maker should try to ensure that the employee is not unfairly disadvantaged, however, the primary consideration must be to ensure that work is done and any conflicts of interest are resolved in the public interest.



If the risks cannot be mitigated to the agency's satisfaction, the employee should be advised that the agency does not support the employee engaging in the other employment. While the agency cannot refuse to allow the employee to accept other employment, if they do so despite the agency identifying unacceptable risks, their employment with the agency may be terminated on the basis of a breach of the Code of Conduct.

Special care is to be taken with current employees who have existing secondary employment and apply to work in your agency. In these circumstances, the job application and interview process should disclose whether the potential employee wishes to take up the government role and also maintain their secondary employment. When this occurs, the declaration, application and risk management plan must be carried out to the agency's satisfaction before the potential employee is offered employment with the agency. If the potential applicant is unable to commit to the requirements of this process or the management plan, then the offer of employment should not be made.

Similarly, if a promotion or internal transfer opportunity arises for an existing employee who is already subject to a management plan, that plan should be revisited with the 'recipient manager' under the proposed new working arrangements and be adjusted if required, and agreed to, before the promotion or transfer can be approved.

Where risks are identified but manageable, and the agency decides to support the other employment, agencies are to implement a management plan which provides safeguards for the agency in relation to the perceived or potential conflict of interest arising from this approval, and to implement an ongoing review process to ensure that the controls are effective.



The agreed management plan should be signed by the decision-maker, manager and employee. It also assists the supervisor/manager to monitor the employee's compliance with the agreed management plan.



The approved secondary employment should be recorded in a central register and governed by the central Human Resources Group. That central register is then used for reporting to the Senior Executive Group. The register can also be used to perform an agency-wide risk assessment for mitigating risks associated with secondary employment (including conflicts of interest).



Monitoring process

Managers (as representatives of the agency and the public interest) are entitled and obligated to:



- Monitor the employee to ensure they continue to perform their job efficiently, effectively and safely
- Continue to ensure no actual conflict of interest arises from secondary employment
- Have an ongoing role in evaluating whether the other employment may compromise, or has compromised, the reputation of the agency or other government agencies.

If the manager considers that the employee does not appear to have responded to the obligation of working in the primacy of the public interest, and there are continuing unresolved conflicts of interest, then, as part of the management plan, the manager is obligated to discuss these concerns with the employee. This includes discussing whether the employee will cease involvement in the other employment, whether they could be transferred to another position within the agency, or, if neither of these are viable options, the employee should consider resigning from their government position.



Ultimately, if the employee is unable to resolve these conflicts in favour of the public interest, and to the managers' satisfaction, and does not resign, then the manager is obligated to progress disciplinary action against the employee on the basis of failing to adhere to the management plan and breaching the Code of Conduct, which may result in the employee being dismissed.



In conclusion, design and implement appropriate policies, procedures and processes to manage secondary employment risks in a transparent, accountable manner.



Crime and Corruption Commission

QUEENSLAND

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