



Crime and Corruption Commission
QUEENSLAND

Corruption audit report

June 2017

Queensland public sector responses to corrupt conduct incidents in recruitment and selection activities

Summary audit report

Acknowledgments

The CCC acknowledges the cooperation and assistance of participating public sector agencies during this audit.

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Summary

During 2016–17, the Crime and Corruption Commission (CCC) conducted an audit examining how allegations of corrupt conduct in recruitment and selection activities were dealt with by a sample of public sector agencies.

The CCC had identified that in the period July to December 2015, complaints falling within the category of “misuse authority” made up almost a fifth (17 per cent) of total complaints made against public sector agencies. Of these, 17 per cent of allegations involved the alleged misuse of authority to benefit others during a recruitment or selection activity.

Failure to conduct recruitment and selection processes appropriately impacts on an agency’s probity, accountability and governance. It may also erode organisational values and ethics principles, making it hard for senior executives to establish the agency’s integrity from “the top”.

The audit also showed that in allegations of corrupt conduct relating to recruitment, nepotism (patronage bestowed on the basis of family or personal relationship and not on merit) was by far the most common (81 per cent), and 67% of allegations were directed at officers who held manager or director positions.

Where misconduct is identified as having occurred as part of a recruitment process, it is important that the agency deals with that conduct appropriately. Failure to do so may result in a perception, by both agency employees and the public, that the misconduct by an officer is acceptable. Failure to take appropriate disciplinary action when dealing with the matter may also result in the behaviour continuing. In circumstances where senior executives have signalled that the consequences are likely to be minor, an officer may consider the benefit of engaging in the conduct outweighs the risks associated with detection.

The CCC audit reviewed how a sample of 12 public sector agencies had handled complaints of corrupt conduct in recruitment and selection activities. This involved, firstly, a review of the systems and processes each agency had established to deal with such complaints. The CCC noted that most agencies had in place processes that are comprehensive and reasonable to guide staff. There was one agency, however, that did not have procedures or a manual, while another agency needed to amend its existing framework to include key investigation components. Overall, the CCC recommended that two agencies of the sample needed to improve or develop a manual for handling complaints of corrupt conduct.

The audit also undertook a detailed review of a sample of 43 complaint files, to assess how agencies dealt with complaints to achieve optimal outcomes and implement prevention responses. Although the CCC was satisfied with how agencies managed the majority of the complaints, there was variation in the quality of processes and outcomes across the agencies. Issues identified included a failure by some to maintain relevant investigation documentation, while the review of other sampled matters suggested that the disciplinary or other outcomes of an investigation might not have been sufficient to promote public confidence in the integrity of the agency. There were opportunities for improvement in the complaint assessment and categorisation areas and also in the way that large agencies oversight complaints that are devolved to a local area within the agency to deal with.

The audit also considered each agency’s existing prevention initiatives, as they related to recruitment and selection processes. The CCC has recommended that agencies improve policies and procedures which direct staff in managing and declaring conflicts of interest associated with recruitment processes. Specifically, it is recommended that a disclosure of a conflict of interest, and how it was managed, should be recorded in the relevant selection report to enable an authorised officer to make a fair and transparent decision.

Overall, although the audit identified a number of areas for improvement to complaints handling, disciplinary outcomes and prevention responses, the audit results were generally sound.

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, by so doing, maintain public confidence in their agency. The CCC also has a lead role in helping agencies to deal effectively and appropriately with corruption by increasing their capacity to do so.

Each financial year the CCC conducts a program of audits to determine how agencies have responded to particular types of complaints and how robust their complaints management frameworks are, including for preventing future cases of corruption.

In 2016–17, the CCC conducted an audit examining how allegations of corrupt conduct in recruitment and selection activities were being dealt with by agencies, including their prevention responses.

Reasons for doing this audit

Departments and statutory bodies appoint persons to positions in order to deliver services to the Queensland community and businesses. It is in the best interests of the community and government that persons appointed to positions within public sector agencies are appointed fairly and by way of a merit-based selection process.

The CCC report *CCC Corruption allegations: data from 1 July 2015–31 December 2015* published in June 2016 analysed data pertaining to complaints of corrupt conduct made to the CCC during that period. It identified that matters falling within the category of "misuse authority" comprised almost one fifth (17 per cent) of total complaints made against public sector agencies. Of these, 17 per cent of allegations involved the alleged misuse of authority to benefit others during a recruitment or selection activity.

Types of corrupt conduct related to recruitment processes

Allegations of corrupt conduct in recruitment and selection activities can involve misusing authority to act, or omit to act, to further one's own interests or to favour a family member, friend, associate or benefactor (favouritism).

Such conduct would involve, at its highest, an offence relating to corruption or abuse of office under Chapter 13 of the *Criminal Code*. When a person interferes with a recruitment process to cause a decision to be made otherwise than in compliance with the merit principle, that person may be guilty of an offence under sections 92/92A of the *Criminal Code*.² Conduct which is not found to be a criminal offence may still amount to dismissible conduct, particularly if it involves a breach of the Code of Conduct.

The two case studies on the next page illustrate the kinds of complaints that are received or made in the context of recruitment and selection activities. Both were investigated by the CCC.

In the first, the CCC investigation found weaknesses in the agency's recruitment and vetting processes that exposed the agency to risk, by facilitating the employment of a person who was not qualified for the proposed role and actively sought to deceive the agency in this respect, and later engaged in fraudulent activities within the agency.

The second case study demonstrates that corrupt conduct can occur at any stage of the recruitment and selection process and be carried out by anyone, including internal staff and applicants. It also shows that agency failure to take recommended preventative action can facilitate corrupt conduct.

1 A public service official is defined in Schedule 2 of the *Crime and Corruption Act 2001*.

2 Section 92 provides that any public servant who does, or directs to be done in abuse of their office, any arbitrary act prejudicial to the rights of another, or intending to dishonestly benefit or gain a benefit, commits an offence.

Case study: Failure to undertake reasonable checks leaves agency vulnerable to possible corrupt conduct

The subject officer was alleged to have fraudulently gained employment with the agency by using fake academic qualifications. In the course of the investigation information was obtained that the officer had previously been involved in similar fraudulent activity in other states.

On his application, he claimed to have completed a number of degrees and training courses. However, the validity of these claims was not checked by the agency before an offer of employment was made. Inquiries conducted after the complaint was received found no record of the subject officer ever being awarded a university qualification. It was suspected that he falsely created the degree certificate to assist him in obtaining employment.

Additionally, the officer's application included two references supposedly from his most recent employment. One of them, said to be from an individual at a particular organisation, was sent from a BigPond account, and was unsigned. No inquiries were undertaken by the employing agency in relation to these references either.

Further, the subject officer did not include a reference from his second most recent place of employment. The investigation established that he had been dismissed from that organisation due to suspicions he was awarding contracts to companies connected to people he had associations with. Again, no inquiries appear to have been made by the agency with that organisation prior to his employment.

At the conclusion of the CCC investigation the officer was charged with one offence of fraud and another of uttering a false statement. The officer has entered a plea of guilty to both charges and is awaiting sentencing.

Case study: Failure to implement recommendations from an investigation exposes agency to further corruption

While investigating allegations of corrupt conduct, involving fraud and/or misappropriation, by a university officer, the CCC identified that the officer had originally been employed by the university without any criminal history check being undertaken. Subsequent inquiries identified that the officer had been a student at that university while incarcerated for fraud offences. It was also established that they had previously been investigated by the university after anonymous allegations were made about their integrity, bankruptcy and criminal history.

A review of the earlier university investigation made it evident that the officer had been asked why they had not advised the university of their earlier offences. The officer argued they did not have to declare a criminal history to the university prior to employment since the university's policy only required the officer to declare a "serious offence". The officer also contended that the university should have been aware of the criminal history because of their student status while incarcerated.

The report prepared after this first investigation by the university recommended that if the university was to continue to employ the officer, the associated risks would need to be managed carefully. It also recommended their Human Resources (HR) Branch introduce a policy for conducting criminal history checks as part of normal recruitment. After considering this second recommendation the HR Branch responded that on human rights grounds, it was "not appropriate for the university to introduce such a practice". It also appears that despite the recommendations, no mechanisms were put in place to manage the risks involved in employing this officer.

The CCC went on to investigate the later allegations that, subsequent to this university investigation, the officer had engaged in fraud against the university.

An increase in the number of allegations of corrupt conduct relating to recruitment may be driven by a rise in actual corrupt conduct. Alternatively, increased complaints may result from greater competition for limited opportunities, leading to the perception that an outcome was the result of corrupt conduct and thereby generating complaints.

Regardless of the basis of the allegations, agencies should identify and assess recruitment risk factors, and implement measures to prevent corrupt conduct in recruitment and selection activities.

Public sector recruitment and selection system

The CCC promotes a three-step process for implementing mechanisms that will assist an agency in preventing and reducing wrongdoing.³ (Note that the following is not exhaustive and should be considered as a summary guide only.)

The three steps consist of:

1. Policy framework
2. People
3. Process.

1 Policy framework

An agency should maintain strong, effective and efficient policies, procedures and guidelines which are clearly based on and linked to relevant legislation, official guidelines, and examples of best practice advice (refer below). A policy must also assign responsibilities for completing key components of an agency's recruitment and selection activities, and assign particular roles to those who are authorised and responsible for carrying out identified activities with particular outputs.

Relevant legislative requirements

A range of legislative requirements mandate the merit principle in recruitment and selection activities to ensure fair and transparent processes. These include the *Public Service Act 2008* (PSA), the *Public Sector Ethics Act 1994* (PSEA) and relevant *Directives*.

Directive No. 15/13 Recruitment and Selection

The Recruitment and Selection Directive (No. 15/13)⁴ specifies the requirements applying to the recruitment and selection of public service employees and applies to public service employees as defined in section 9 of the PSA.

This directive specifies the minimum requirements for vacancy advertisement and exemptions from advertising, merit assessment and decisions and pre-employment checking. There are also other requirements specified in this directive.

This directive does not apply to the recruitment of chief executive officers.

Directive No. 07/11 Employment Screening

This directive⁵ assists agency chief executives to:

- conduct employment screening for persons engaged, or proposed to be engaged, to perform relevant duties or prescribed duties in the Queensland public service
- implement a risk management strategy for agencies performing child-related duties.

This directive has an inter-relationship with the Recruitment and Selection Directive. It applies to public service employees, contractors, students, and volunteers engaged in agencies. It does not apply to statutory bodies.

3 The CCC uses the term "wrongdoing" because it covers both corrupt conduct under the *Crime and Corruption Act 2001* (CC Act), misconduct under the *Public Service Act 2008* (PSA), offences under the Criminal Code, breaches of Public Service Commission (PSC) Directives and the Code of Conduct, and breaches of agency policy and procedures, including low-level breaches which would not amount to either corrupt conduct or misconduct.

4 Directive No. 15/13 provides as its legislative basis sections 8, 9, 25–30, 53, 98, 99, 110, 119–222 of the PSA.

5 Directive No. 07/11 provides as its legislative basis section 53; chapters 5, part 6; chapter 9, part 5 of the PSA.

Directives No. 03/10 and 01/15 Declaration of Interests

Two separate directives relate to declaration of interests:

- No. 03/10 – provides for matters which must be disclosed by *public service employees* when directed by their chief executive, how those matters must be disclosed, and the purpose of the disclosure. It also specifies requirements for the storage of, and access to, declarations.
- No. 01/15 – provides for matters which must be disclosed by *chief executives* of agencies including public service offices⁶ and how those matters must be disclosed. It also specifies requirements for the storage of, and access to, declarations.

Ethical principles and values

The ethics principles and values set out in the PSEA underpin the culture and foundation that applies to all levels of Queensland public sector officers when making decisions. An ethical decision-making tree or process to guide public sector officers is usually found in the Code of Conduct for the Queensland Public Service (or equivalent public sector entity Code of Conduct).

All of the above legislative requirements are among the many contributors to the development of an agency's policy framework. While not all agencies (specifically, universities and statutory bodies) are subject to the directives, there are universal expectations that employees act fairly and transparently.

2 People

The second step involves "People" – an agency must have "zero tolerance" for wrongdoing. To give effect to its position of zero tolerance for wrongdoing, and to meet its legislative obligations (that is, ethics principles and the "merit" principle), an agency must proactively establish a culture and workplace environment that will not tolerate corrupt conduct or dishonest behaviour.

Maintain a good ethical climate

All employees are to be provided with effective training and awareness in key areas of an agency's integrity framework during induction and at regular intervals thereafter. This training reflects the ethical principles and values set out in the PSEA and reflected in the Code of Conduct.

Train staff in recruitment and selection activities

When staff are required to participate in particular activities such as recruitment and selection, an agency must ensure they do not commence these until they have received training specific for that purpose and have demonstrated that they understand the training material, their obligations and the role they are to play in those activities.

In summary, all managers must lead by example, and mentor and monitor their staff to ensure the various requirements that will contribute to sound decisions within recruitment and selection activities are routinely followed.

3 Process

Once the policy framework and the integrity and training measures of staff have been addressed, the next logical step involves designing and implementing internal controls in recruitment and selection processes. It is vital that they:

- reflect an agency's organisational structure including oversight functions and accountabilities
- are a product of a robust risk assessment and response process
- are subject to regular testing and monitoring activities
- are understood by those participating in identified activities.

⁶ A public service office is defined under Chapter 1, Part 2, Division 3 of the PSA.

Overall, these three main steps comprise a set of standards, processes and structures that provide the basis for carrying out control activities across the agency. This sets the tone for the agency, influencing the control consciousness of its staff.

Audit focus

The objectives of the audit were to:

- Assess an agency’s systems (that is, policies, procedures and processes) for dealing with complaints involving allegations of corrupt conduct in recruitment and selection activities.
- Assess how effectively an agency has dealt with related corrupt conduct complaints, including whether the outcomes were appropriate and in proportion to the seriousness of the allegations.
- Evaluate the agency’s responses to reduce or prevent future cases of corrupt conduct in recruitment and selection activities.

Scope of the audit

This audit focused on the way in which the sample of public sector agencies dealt with complaints involving allegations of corrupt conduct in recruitment and selection activities during the period July 2014 to June 2016. It was conducted in four stages.

Selection of agencies

The first stage involved selecting which of the agencies in the three sectors (namely Departments, Queensland Health and Statutory Bodies) would be included in the audit. We identified a sample of 12 agencies by examining factors including:

- information held by the CCC concerning complaints of recruitment and selection activities to the CCC during the relevant period
- selecting a representative sample of agencies with high numbers of allegations of suspected corrupt conduct relating to recruitment and selection from across the three sectors.

The participating agencies across three sectors are shown in the table below.

Sectors and participating agencies		
Departments	Queensland Health	Statutory Bodies
<ul style="list-style-type: none"> • Education and Training • Housing and Public Works • Justice and Attorney-General • Transport and Main Roads 	<ul style="list-style-type: none"> • Department of Health • Darling Downs Health Service • Gold Coast Health Service • Metro North Health Service • Metro South Health Service 	<ul style="list-style-type: none"> • TAFE Queensland • University of Queensland • University of Southern Queensland

Reviewing agency systems for policy and people initiatives

The second stage involved reviewing policies, procedures and guidelines for recruitment and selection activities, to ensure they are reasonable and linked to relevant legislation and official guidelines. We also reviewed what communications occurred within the agency to maintain a good ethical climate.

The following was obtained in the course of this audit.

- Human Resource policies, procedures and guidelines
- Code of Conduct
- The agency’s clearly articulated statement of values and behaviours

- Latest communication to staff which reinforced the agency’s statement of values and behaviours
- Whether there had been an audit on recruitment and selection by an Internal Auditor or an independent auditor in the last two years
- Any other prevention strategy documents in the area of recruitment and selection

We reviewed these to help us in determining what procedural or control measures could be recommended as a result of an agency’s investigation into complaints.

Reviewing agency systems for complaints handling

The third stage involved reviewing the systems in place to deal with complaints of corrupt conduct in each of the 12 agencies. We did this by reviewing the agency’s procedures or manual for dealing with corrupt conduct matters to ensure it achieved its stated outcomes including reducing the incidence of corruption. The CCC’s *Corruption in focus* guide was used in this.⁷

Reviewing how agency systems were applied in practice

This final stage was a detailed review of a sample of 43 complaint files (from 63 files in total) to assess how well each complaint had been dealt with by the respective agency, with the objectives of: a) maintaining public confidence in the agency; and b) enhancing a deterrent effect organisationally.

We considered matters which fell into the following three categories:

- Matters referred to the CCC, assessed as corrupt conduct and determined appropriate to return to the agency to deal with on a “no further advice” basis — that is, the agency was not required to update the CCC on how the matter was dealt with or any associated outcomes.
- Less serious matters — 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.
- Not corrupt conduct — complaints assessed by the agency as not raising a reasonable suspicion⁸ of corrupt conduct, under section 38 of the CC Act. This type of complaint is not reported to the CCC.

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.

Exclusions

This audit did not include:

- the efficiency and effectiveness of the agency’s recruitment and selection processes
- complaints relating to secondary employment outside of the public sector
- the risks, controls or any activities relating to inappropriate access or unauthorised disclosure of confidential information, as these were audited by the CCC in 2015.⁹

7 The CCC’s *Corruption in focus: a guide to dealing with corrupt conduct in the Queensland public sector* is used extensively by public sector agencies.

8 For a suspicion to be “reasonable”, there must be some evidence sufficient for a reasonable person to suspect corrupt conduct (section 38 of the CC Act).

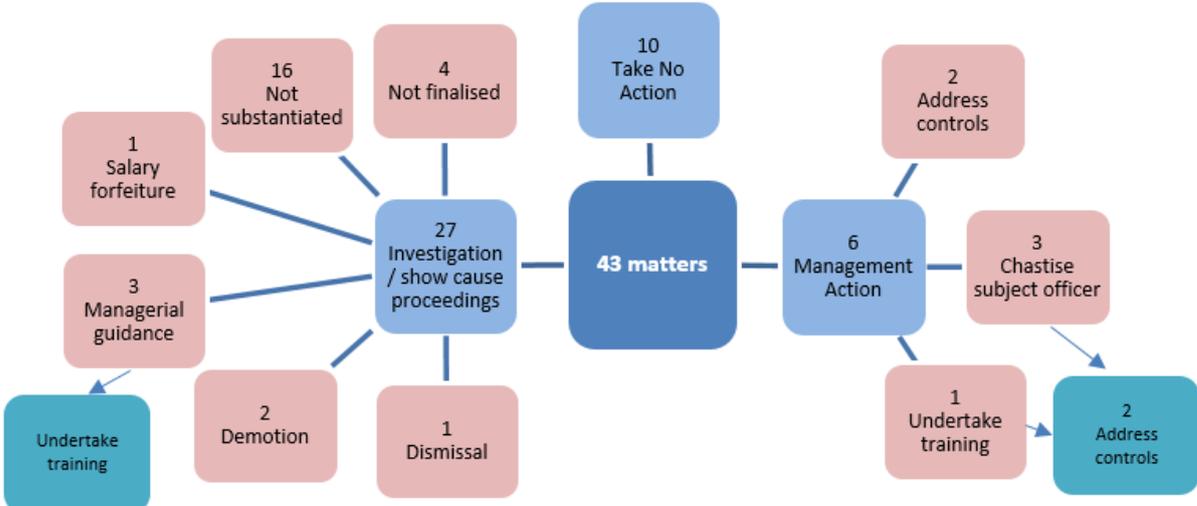
9 The CCC has published two corporate documents on its website related to confidential information, <<http://www.ccc.qld.gov.au/corruption-prevention/confidential-information>>.

Statistical results from this audit

This audit examined a total of 43 complaint files across 12 agencies that involve allegations of corrupt conduct in recruitment and selection activities.

The figure below shows how agencies have dealt with these matters, and the resulting outcomes. In summary, of the 43 matters:

- 27 were investigated, with a range of outcomes
- in 6, some form of management action was taken
- in 10, no action was taken.

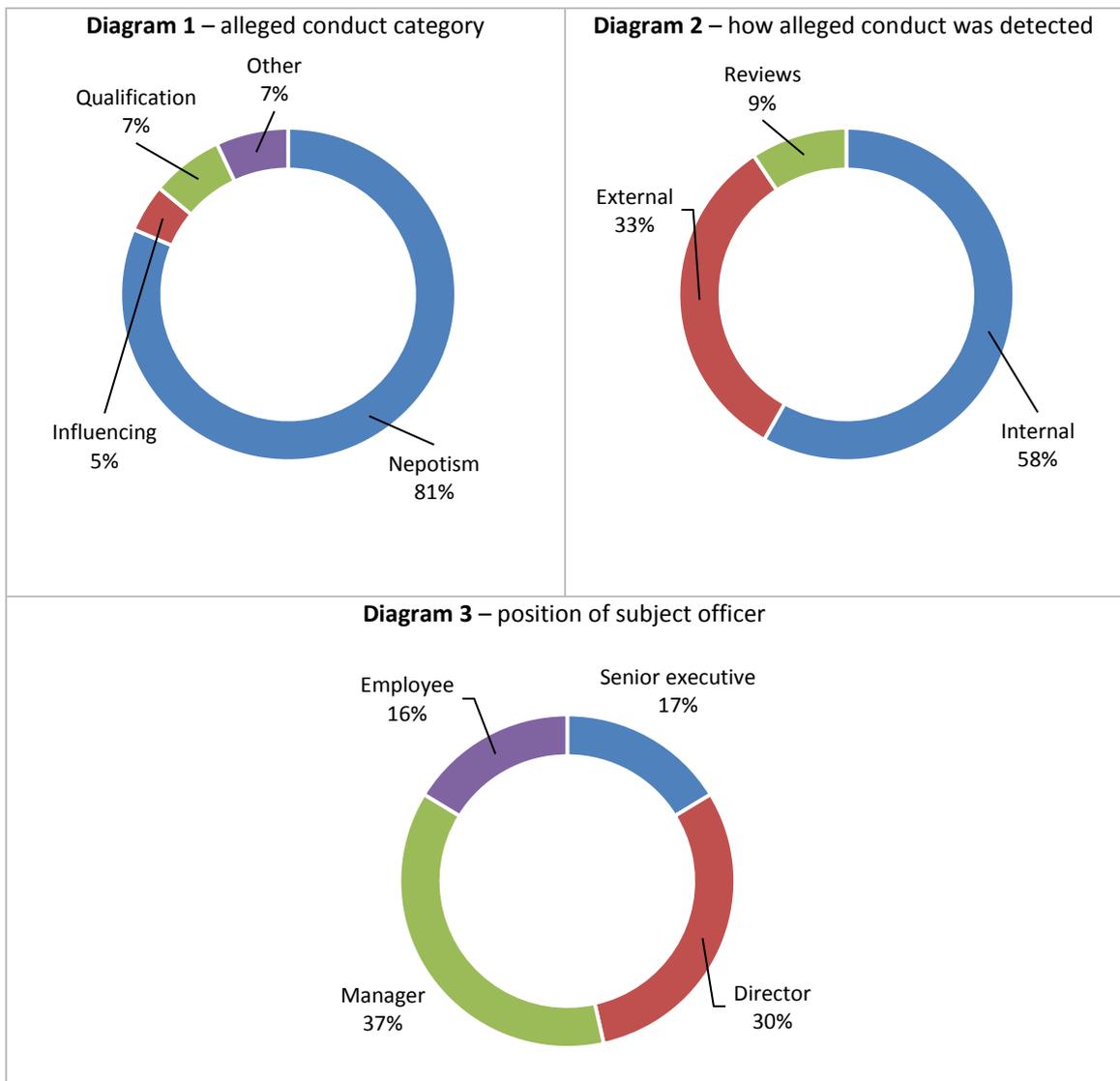


Source: Crime and Corruption Commission 2017

The following diagrams graphically indicate the types of alleged conduct (diagram 1), how the alleged conduct was detected (diagram 2), and the level of the subject officers (diagram 3).

In summary:

- Nepotism was by far the most common form of corrupt conduct alleged (81%), followed by false qualifications (7%) and improper influence (5%) (Diagram 1).
- Over half of the conduct (58%) was detected through internal mechanisms, 33 per cent by external members and 9 per cent by reviews of selection documentation (Diagram 2).
- In relation to the relative positions of officers alleged to have committed corrupt conduct, managers were the most common (37%), followed by directors (30%), senior executives (17%) and employees (16%) (Diagram 3).



Source: Crime and Corruption Commission 2017

Findings from the audit

Designing and implementing an effective corrupt conduct complaints management system can be challenging, and applying its provisions effectively and appropriately for every individual complaint can also be demanding. However, both design and operating effectiveness are crucial to reducing risk in the way a complaint is dealt with, supporting sound decision-making capabilities, and achieving optimal outcomes.

1 Agency systems for dealing with complaints

Our review of the complaints handling procedures and/or manuals of agencies relevant to corrupt conduct indicates that most agencies have processes that are thorough and sufficient to guide staff in effectively and appropriately responding to corrupt conduct incidents relating to recruitment and selection. The audit did, however, note improvement opportunities for two agencies.

In one example, the agency's procedures could not be described as sufficiently thorough to ensure that complaints handling processes were followed effectively and appropriately. Updating its procedures as recommended below by the CCC will increase consistency and decrease risk in handling complaints involving allegations of corrupt conduct.

In another example, the agency did not have a detailed manual or work instructions, though it is acknowledged that the agency follows the CCC's *Corruption in focus* guide. This needs to be developed or formally included as a policy direction in a complaints management policy. For the reasons explained above, we consider it is essential that processes (key controls) are described in a manual.

Area for improvement 1 – Develop or improve manual for dealing with corrupt conduct complaints

Improve their procedures or develop a manual setting out the key processes to be undertaken by responsible officers when dealing with complaints involving corrupt conduct. This will assist in ensuring complaints are dealt with effectively and appropriate outcomes are achieved.

Note. In responding to the audit, the agencies acknowledged the need to improve or formally include their processes and practices in their policy or procedure.

2 Dealing with actual complaints

The majority of the matters considered by this audit have been dealt with appropriately. There were some matters, however, that could have been managed more effectively, and where a disciplinary outcome may have been more appropriate for maintaining public confidence in affected agencies.

Maintain full records of investigation in central file

In considering one complaint file, the audit could not locate two letters relating to the show cause proceedings¹⁰ even though a completed checklist recorded that all correspondence had been added to the file. There was also a handwritten note on a subject officer's response but no indication of who made the note or any action taken as a result of the note. While we do not consider this affected the appropriateness of the outcome as determined by the decision-maker, it does impact adversely on the integrity of the central file.

Area for improvement 2 – Ensure all disciplinary correspondence is contained in the file

Remind staff to ensure that all correspondence or other documentation is added to file, and that notes or comments appropriately identify the respective writers.

Note. The CCC has consulted with the agency, who advised the material was kept on the agency's other file but was not provided to the CCC. The agency has since implemented processes to ensure all necessary material is provided to the CCC for the purpose of audits. The agency has also communicated to its divisions about the closure requirements for CCC matters.

Another matter involved several allegations, one of which was within the ambit of this audit, namely that the officer had engaged in nepotism by employing staff with whom they had a personal relationship.

The investigation was undertaken by an external investigator who was assisted by the agency's HR area who apparently undertook inquiries about the recruitment processes and provided relevant information to the investigator. The external investigator's report provides:

[The agency's HR officer] advised that it appears there were recruitment processes behind the appointments. I understand that, although there may not have been complete compliance with policy, there is nothing to suggest that the appointees were not qualified for their roles. At worst, there may be a failure to properly document the selection processes and a failure to declare a relationship with the appointees. In my view, this does not warrant an external investigation. Rather, this is a matter that could be handled internally by the agency.

10 "Show cause" — that is, ask the person to show any reason why they should not be disciplined.

Subsequent to this, the decision-maker determined no further action was required but reminded the subject officer of their obligations under the Code of Conduct.

The CCC identified a number of issues in the way the matter was dealt with including:

- The material provided to the CCC to audit was incomplete and did not include documents such as the material provided to the external investigator by the HR officer.
- The investigator's findings "there may have been a failure" does not answer the fundamental questions — was the conflict declared, documented and managed?
- The findings also raise another question — if the allegations were not substantiated, why was it necessary to remind the employee of their obligations under the Code of Conduct?

Area for improvement 3 – Maintain full case management of a matter

- a. Implement a system to adequately capture, manage, respond to and report complaints at all stages of the complaint-handling process. This includes developing Terms of Reference or an Investigation Plan.
- b. Maintain full records of inquiries conducted and evidence gathered, including documenting telephone conversations.
- c. Consider the risks and benefits when determining if it is necessary to inform a subject officer about allegations, for example, procedural fairness.
- d. Consider prevention responses in relation to the lack of documentation in selection processes.

Note – the agency acknowledges further improvements could be made.

Ensure that disciplinary outcomes are appropriate to the seriousness of the allegation

It is important that the outcome actions of a complaint process are appropriate to the seriousness of the allegation, in order to maintain:

- public confidence in the agency
- the morale of officers
- the reputation of the agency
- proper standards of conduct for agency officers.

Disciplinary action is not just about punishment but recognises that detecting and taking action in relation to serious misconduct presents a learning opportunity for both the agency and the officer concerned. It may also act as a deterrent to others and prevent future re-occurrences.

The CCC audit identified two examples where our reviews suggested the outcomes of the process may not have met community expectations. These cases have been described in detail to show public officers where mistakes were made and how better outcomes might have been achieved.

Case study 1. Review by the CCC

This matter concerned an anonymous complaint alleging nepotism and conflicts of interest by several subject officers at senior director and higher position levels. The CCC reviewed this matter to assess whether the allegations were effectively investigated and if the outcomes were appropriate.

Allegations

The allegations concerned a recruitment to fill an AO8 vacancy within the relevant agency. It was alleged that the successful applicant had a family connection to an executive director in the agency, who was also the delegate who approved their appointment to the position. In doing so it was alleged that the executive director did not disclose their relationship with the successful applicant. It was further alleged that two senior directors with the agency, who were respectively the panel chair and a panel member for the position filled, had colluded with the executive director to ensure the successful applicant was recommended for the position.

Agency's investigative decisions

An agency investigator concluded that the allegation against the executive director, that he had failed to declare a conflict of interest in appointing a person with whom he had a personal association, was able to be substantiated. He similarly found that the allegation against one of the senior directors (panel member), of failing to appropriately deal with a conflict of interest, could also be substantiated. It was recommended that the allegation against the panel chair could not be substantiated.

The Department commenced show cause proceedings against the senior director, panel member, who in responding stated:

- He had not read the recruitment and selection policy.
- He relied upon others to mentor him in relation to the correct procedures around recruitment.
- He admitted that the panel chair knew about the family connection between the candidate and the delegate.
- He assumed that the chair would take the appropriate action required to manage the selection process.
- His "connection" with the young relative of the delegate, was known to the panel chair, which he considered exonerated him from any wrongdoing or any requirement to make a formal declaration.
- He was not aware of any training regarding conflict of interest in recruitment processes.

The decision-maker then determined *not* to make a finding of misconduct against the officer based on his advice that he was not aware of his obligations, as he had not been trained in relation to conflicts of interest and recruitment.

The decision-maker required that the subject officer complete training in relation to recruitment processes and undertake the updated Conflicts of Interest, Fraud and Ethics Mandatory Training, when it became available.

CCC concerns

The CCC is of the view that in this matter consideration of disciplinary action would have been appropriate to promote public confidence in the integrity of the agency. In reaching this conclusion, we considered the following matters:

1. The subject officer occupies a senior management position, implicit in which is a high level of trust. A senior director must have the respect of their managers, colleagues and subordinates in order to effectively lead their areas of responsibility. This necessary level of trust and respect has been eroded by the officer's conduct in this matter.
2. The officer claims that he was "not aware" of policies and procedures and that he "assumed" the chair would take the appropriate action. The CCC considers that as a senior director he had a duty to inform himself of his obligations and responsibilities in relation to both recruitment processes and dealing with and disclosing conflicts of interest. These responses should not be considered as mitigating factors lessening liability for his conduct — rather, they raise further issues in relation to his work performance.
3. Section 186 of the *Public Service Act 2008* requires public service employees to declare to their CEO an interest that conflicts, or may conflict with, the discharge of the employee's duties. As a senior director, the officer is expected to be aware of key legislation and policies relevant to officers within an agency. Failure to comply with legislation may raise an offence under section 204 of the *Criminal Code*.
4. The officer's agency has had a Code of Conduct in place since January 2011. That document provides that having a conflict of interest is not unusual and it is not wrongdoing in itself. However, failing to disclose and manage the conflict appropriately may amount to misconduct. Clause 1.2 of the Code clearly sets out the requirements regarding conflicts of interest.
5. The circumstances above involve a potential risk of further corrupt conduct.

For all of these reasons, it is the CCC's view that disciplinary action would have been more appropriate, in maintaining confidence in the agency on the part of both agency employees and members of the public.

Area for improvement 4 – Achieve appropriate disciplinary outcomes

Note the purpose and relevance of an effective deterrence measure and include in the recruitment and selection policy sanctions for any breach of the policy and procedures and the Code of Conduct. This sets the “tone” of the agency, signalling that nepotism is a serious public office offence, and more so when it involves a senior director.

As a general principle, when determining the appropriate disciplinary sanction, a decision-maker should take into account the level of the subject officer. Actions which attract a reprimand for a supervisor (AO5) may warrant a different and higher level of sanction if similar conduct is substantiated against a senior officer (SO–SES).

Note. The agency acknowledges the importance of appropriate disciplinary outcomes and is implementing this recommendation.

Case study 2. Review by the CCC

Allegations

This matter involved an allegation that the chair (in a manager position) of a recruitment panel:

- a. Failed to declare their personal relationship with the successful candidate. The chair made a conflict of interest declaration but only stated they knew the candidate through previous employment.
- b. Drafted interview questions which included one question framed in such a way that only the chair’s friend was able to answer it.

At the end of the process, the person with whom the chair was alleged to have a relationship was awarded the position.

Agency’s investigative decisions

This matter was devolved to a business unit within the agency to deal with, and the following process was undertaken:

- Recruitment and selection material was reviewed, including the declaration of the conflict of interest.
- The subject officer was interviewed in relation to the allegations.
- The delegate and panel members were contacted regarding their recollection of the incident.

The investigating case officer found that:

- There was no actual evidence that the subject officer and candidate were housemates at the time of the recruitment process or before.
- The subject officer identified that they had volunteered with and were friends with the candidate during the recruitment process in September 2014 and, after advice to do so, they provided a written statement to the panel which the panel members signed. However, in retrospect the statement could have been clearer on what exactly their relationship was.
- The subject officer identified that they were struggling with a personal matter at the time of the recruitment process and may not have followed the expected process with regard to shortlisting and interview question development. Shortly after this time the officer’s line manager recommended they take some further time off as they were not functioning well in their role.
- None of the panel members identified their concerns with the recruitment process at the time and no grievance was raised by any of the other candidates for the position.

It was recommended by the case officer that the subject officer and the panel members repeat ethics and recruitment training. It was also recommended that subject officer be mentored by a senior officer when they next chair a recruitment panel.

Show cause proceedings were initiated against the subject officer. In reaching a decision the decision-maker noted that the subject officer:

- Had completed recruitment and selection training while this complaint was being dealt with.
- Was dealing with a personal matter which had a significant impact on their work during this period and had resulted in “some very questionable lapses in judgement” and poor decision-making across their duties.
- The panel chair had failed to:
 - excuse themselves from the panel to avoid allegations of a perceived conflict of interest;
 - provide an opportunity for other panel members to review and comment on the final shortlist of candidates for the interview, or to review and provide input into the interview questions they had developed for the selection process;
 - demonstrate good judgement when they invited a candidate out to dinner with another panel member prior to the interview process;
 - lead the selection process in an open and transparent way in accordance with recruitment and selection policy.

The decision-maker ultimately provided a non-disciplinary warning to the officer, and directed the individual to read the revised policy and undertake training, when available, prior to any future participation on a selection panel. The officer was also directed that for the next recruitment process where they were selected as the panel chair, a mentor experienced in recruitment and selection was to be appointed to guide the officer through the process.

CCC’s concerns

The CCC and the agency have a responsibility to promote public confidence in the integrity of how matters are dealt with. While the determination of the decision-maker is at their discretion, the CCC is of the view that in relation to this matter there was sufficient evidence to justify consideration of disciplinary action, as opposed to providing the officer with an *informal* warning. This is based on the following factors:

1. The subject officer holds a managerial position within an area. Such positions require the occupant to sustain a level of trust and respect from their colleagues and subordinates in order to effectively undertake their duties. We consider this trust and respect would have been substantially eroded as a result of the officer’s conduct.
2. As a manager, the subject officer should manage their personal circumstances to avoid any inappropriate impact on work performance or the discharge of their responsibilities. Where work performance is adversely impacted, the officer should discuss with their supervisor and seek counselling assistance and, if appropriate, consider a leave of absence until the officer is performing their responsibilities satisfactorily.
3. There was evidence that the subject officer, as chair of the selection panel, also provided a referee report for the candidate with whom they had a personal relationship. This issue was identified by HR and the chair was requested to obtain a reference from the candidate’s other referees. We consider this demonstrates a further disregard for maintaining the integrity of the recruitment process.
4. The subject officer made a verbal declaration to other panel members concerning their professional relationship with a candidate but failed to disclose a personal relationship. It is acknowledged that the subject officer did not perceive their relationship with the candidate as a personal one. The CCC holds the view, however, that the fact that the subject officer had lunch with the applicant prior to the interview gives rise to a perception that the relationship was more than professional and encompassed a personal aspect.
5. Overall, we consider a *formal* warning may have been more appropriate, and would also have sent a clear message to members of the agency regarding the consequences of inappropriate conduct, resulting in a deterrent effect.

The audit also identified that both the HR officer and the delegate were made aware of the perceived conflict of interest when the subject officer approached them in September 2014. This was after the job interview had been conducted and the panel recommendation made, but before the delegate had reviewed the selection report and approved the selection of the successful candidate. However, the matter was not investigated until a specific allegation against the subject officer was received in May 2015.

We consider that the obligation to report the suspected corrupt conduct arose in September 2014 when issues were raised about a possible conflict of interest. In our view, it would have been appropriate for the subject officer to have withdrawn from the process at that time, a new panel established and the process recommenced.

Area for improvement 5 – Deal with the matter appropriately

Note the purpose and relevance of effective deterrence measures and include sanctions for any breach of the policy and procedures in the recruitment and selection policy and the Code of Conduct. This sets the “tone” of the agency noting that nepotism is a serious public office offence.

Decision-makers be reminded that best practice provides that a panel member with a conflict of interest should be asked to withdraw from the panel. The decision-maker should initiate a replacement and recommence the selection process. The suspected corrupt conduct must be reported.

Note. The agency acknowledges further improvements could be made.

Dealing with conflict of interest allegations

The audit considered a matter involving a complaint that two recruitment panel members, with an undeclared conflict of interest, favoured a particular candidate for a position. The anonymous complaint was received by the agency’s CCC liaison officer prior to the final outcome of the recruitment process being officially announced.

On the basis of the inquiries conducted by the agency after they received the complaint, the case manager recommended that the risk would be mitigated by undertaking an independent review of the recruitment process prior to the successful candidate being notified of the outcome. It was also recommended that changes that had been made to the selection panel should have been notified to the relevant delegate to ensure they would have been approved and considered adequate to have managed the perceived conflict of interest.

The recommendations made by the agency were:

- The HR Director consult with a senior officer to determine if the membership of the eventual selection panel for shortlisting and interview would have been endorsed by the relevant delegate; and
- The HR Director consider if an independent review of the shortlisting consensus rating is warranted before finalising the recruitment process.

This was a proactive approach by the case manager to manage a perceived conflict of interest before finalising the selection process.

The agency, however, did not go on to investigate the alleged undeclared conflict of interest by panel members. There is no evidence that the agency considered or analysed the “reasonably perceived conflict of interest”; how or if the conflict was managed; why the selection panel was not formed under the appropriate delegation; or whether conflicts of interest were declared by the members. In short, the action taken by the agency focused solely on preserving the outcome of the recruitment process and failed to investigate the allegations. Further investigation into the alleged conduct, including interviews with witnesses and the subject officers, would have been appropriate.

Such an investigation would provide an opportunity to address the standard of behaviour expected of staff and remind officers that the appropriate time to deal with conflicts of interest is during the first screening of applicants and prior to shortlisting.

Area for improvement 6 – Deal with the conflicts of interest allegation

It is not enough to rectify or mitigate the consequences of a conflict of interest when it is identified, it is also necessary to investigate the conflict and take any appropriate action.

Note. The agency acknowledges the area for improvement, and continues to develop its processes.

Dealing with matters appropriately — absence of supporting evidence

Our review of matters dealt with by one particular agency identified three matters which we consider could have been managed better.

The first matter involved five allegations, four of which were outside the scope of this audit (that is, they did not involve recruitment and selection processes). The investigation report for the matter discussed only those four allegations and did not address the fifth allegation. It is unclear why the fifth allegation, which related to recruitment, was not addressed in the investigation report and only briefly discussed in a case document, which recorded a “not substantiated” outcome. The absence of records meant the CCC was unable to determine if the finding of “not substantiated” was appropriate in the circumstances.

The CCC acknowledges that the recruitment and selection directive provides an exemption for advertising entry-level roles; however, this does not preclude an agency from advertising where appropriate. This investigation failed to consider whether the practice of not requiring entry-level positions to be advertised was still appropriate. By asking questions such as these, an agency is prompted to consider how it addresses and manages the risk of favouritism in relation to entry-level positions.

In the second matter, our review identified that the investigating officer obtained written responses to the allegations from the subject officer. There was no record on the file of evidence or interviews being obtained from other witnesses (such as panel members). This investigation was overviewed by four ethical standards officers, none of whom appear to have been concerned that the outcome of the investigation relied solely on the responses provided by the subject officer. The CCC is concerned that this investigation process may not withstand public scrutiny.

The third matter was dealt with by a managerial process rather than by investigation. Noting the serious nature of the allegation, the CCC considers an investigation would have been a more appropriate process. From the records and information provided for review, it is unclear whether the subject officer was interviewed or given an opportunity to respond to the allegation (i.e. natural justice via show cause proceedings).

These examples demonstrate that a lack of records undermines the transparency and accountability of officers dealing with corrupt conduct allegations. Maintaining good records potentially protects them from criticism by providing the means to explain why certain inquiries did or did not occur and why a decision was appropriate.

Area for improvement 7 – Matters to be dealt with appropriately with supporting evidence

- a. Remind case and overview officers that allegations must be dealt with and responded to appropriately in line with applicable legislative and policy requirements, with the objective of maintaining public confidence in the agency.
- b. Check that evidence is complete, including all available witnesses interviewed and all documentary evidence gathered.
- c. Remind decision-makers to adhere to the principles of procedural fairness.
- d. Ensure the Ethical Standards Unit maintains the full records of an investigation, and that full complaint files are provided to the CCC upon future requests.
- e. Consideration be given to whether the practice of not requiring formal advertising for entry-level positions is appropriate.

Note. The agency has proactively consulted with the CCC about these matters and further opportunities for improvement are being considered by the agency.

3 Agency prevention responses

Reducing the incidence of corrupt conduct in agencies is fundamental to the objectives of the CC Act. Regardless of the final outcome, complaints and investigations can highlight gaps in an agency's current internal controls or practices which expose them to an identifiable risk of corruption.

The CCC obtained all prevention materials from participating agencies related to recruitment and selection activities. The audit also identified what prevention opportunities had been considered, if any, by the agencies when responding to allegations involving recruitment and selection activities.

The CCC considers that the design and implementation of prevention control measures within the reviewed agencies were satisfactory. We did not test any of those control measures to ensure they were operating effectively, as that is outside this audit's scope. However, we noted that some agencies have taken steps to address control weaknesses or introduce procedural enhancements.

The audit identified that allegations of nepotism by panel members and HR delegates made up 81 per cent of the matters audited. Having a conflict of interest is not unusual and is not of itself a problem if appropriately and transparently handled. The CCC, however, noted further opportunities are available to agencies to mitigate the risk of allegations relating to perceived conflicts of interest.

Area for improvement 8 – Enhance control measures in selection process

Consider opportunities for improvement relating to enforcing the requirement for the identification and declaration of conflicts of interest, or prior knowledge, by panel members after the pre-screening of applicants. Panel members to put in writing and sign a declaration stating that they have, or do not have, any actual, potential, perceived conflict of interest, or prior knowledge. Where a decision is made that a conflict of interest can be effectively managed, the declaration should include how this will be mitigated and managed appropriately to achieve a transparent recruitment and selection outcome.

Note. Agencies have acknowledged the recommendation and shown commitment to further improve their controls.

Other observations

During the audit, we also identified opportunities to raise standards of integrity in agencies which fell outside the scope of this audit. Given the CCC's key role in building the capacity of agencies to deal with allegations of corrupt conduct, it is useful to draw attention to those areas with a view to helping agencies make improvements.

Improve oversight by CCC liaison officer

The audit identified there was room for improvement in the way an agency's CCC liaison officer, or Integrity Unit, oversees the final disciplinary outcome of a matter, as actioned by a delegated officer. The CCC is of the view that the CCC liaison officer should consider the outcome once the determination is made. This includes ensuring it addresses corruption risks; that advice about the outcome is provided to the subject officer and concerned parties; and that all information is maintained in a central file.

Improve the complaint assessment and categorisation processes

In one matter an agency received a complaint that was correctly assessed, at that time, as not raising a reasonable suspicion of corrupt conduct, and therefore did not need to be notified to the CCC. In dealing with the complaint, however, additional information was obtained such that a reasonable suspicion was raised. However, when this occurred, the agency failed to notify the CCC. The agency was reminded that there is an ongoing obligation to refer a matter to the CCC should new or further information establish a reasonable suspicion of corrupt conduct.

The audit also considered 10 matters, which had been assessed by agencies as being non-reportable corrupt conduct, to determine if the CCC agreed with that assessment. Of the 10 matters, based on the information available to us, the CCC assessed 8 complaints (80 per cent) as constituting Level 1 complaints, which are required to be reported to the CCC. Our assessment decision was made on the basis that the alleged conduct in these matters would involve, at its highest, an offence relating to corruption or abuse of office in Chapter 13 of the *Criminal Code*.

The importance of notifying the CCC of a particular conduct type, at a particular time, is to ensure the integrity of a future investigation and other considerations such as the use of CCC powers and the preservation of evidence. Based on a sample of cases audited, while the categorisation of matters was incorrect, the relevant agencies have appropriately dealt with the matters to achieve optimal outcomes.

Conclusion

The CCC's audit identified a number of areas for improvement to complaints handling procedures and practices, the appropriateness of outcomes, and internal controls in a selection process. However, overall, the results were sound.

At the conclusion of the audit, we circulated our findings to the participating agencies, which have acknowledged the findings and recommendations. It is pleasing to see that agencies have either already implemented improvements or taken steps to implement improvements to their framework for recruitment and selection activities, including mechanisms in preventing and reducing wrongdoing.

CCC's message

If agencies want the confidence of the public, they must ensure that merit selection is observed. A person must be appointed on the basis of their abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the duties.

Senior executives must ensure that policies and procedures are consistently followed and that staff are appropriately trained and the agency demonstrates "zero tolerance" for wrongdoing in recruitment and selection activities.



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