



Crime and Corruption Commission  
QUEENSLAND

# Assessing allegations of corrupt conduct: Recordkeeping under section 40A

## Summary audit report

September 2020



## Acknowledgements

The Crime and Corruption Commission (CCC) acknowledges the cooperation and assistance of the seven agencies. The willingness of agencies to participate in the corruption prevention audit as part of a commitment to improve the effectiveness of complaints assessment practices should be commended.

---

© Crime and Corruption Commission (CCC) 2020

You must keep intact the copyright notice and attribute the Crime and Corruption Commission as the source of the publication.

### Licence



This publication is licensed by the Crime and Corruption Commission under a Creative Commons Attribution (CC BY) 4.0 International licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>. In essence, you are free to copy, communicate and adapt this publication, as long as you attribute the work to the Crime and Corruption Commission. For further information contact: [mailbox@ccc.qld.gov.au](mailto:mailbox@ccc.qld.gov.au).

### Attribution

Content from this publication should be attributed as: The Crime and Corruption Commission: *Assessing allegations of corrupt conduct: Recordkeeping requirements under section 40A*.

### Disclaimer of Liability

While every effort is made to ensure that accurate information is disseminated through this medium, the Crime and Corruption Commission makes no representation about the content and suitability of this information for any purpose. The information provided is only intended to increase awareness and provide general information on the topic. It does not constitute legal advice. The Crime and Corruption Commission does not accept responsibility for any actions undertaken based on the information contained herein.

---

### Crime and Corruption Commission

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

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

---



# Contents

---

<b>1. Introduction.....</b>	<b>4</b>
Section 40A.....	4
Reasonable suspicion of corrupt conduct .....	4
The CCC's audit .....	5
<b>2. About the audit: purpose and objectives .....</b>	<b>7</b>
Purpose.....	7
Audit objectives .....	7
<b>3. Results and areas for improvement .....</b>	<b>9</b>
Results .....	9
Areas for improvement .....	11
<b>4. Conclusion .....</b>	<b>17</b>
<b>Annexure: A guide to recordkeeping requirements when assessing allegations of corrupt conduct .....</b>	<b>18</b>
Part 1: Assessing complaints: why keep records? .....	19
Part 2: Corrupt Conduct Assessment form .....	20
General information .....	20
Part 3: Recording a decision not to refer an allegation of corrupt conduct to the CCC .....	24



# 1. Introduction

---

On 9 November 2018, the *Crime and Corruption and Other Legislation Amendment Act 2018* was passed, bringing in changes to the *Crime and Corruption Act 2001* (the CC Act). One key amendment was section 40A, which introduced an additional recordkeeping requirement.<sup>1</sup>

## Section 40A

Section 40A requires agencies to prepare and keep complete and accurate records of any decision by a decision-maker not to notify the CCC of a complaint about alleged corrupt conduct. This record must include:

- a. the details of the alleged corrupt conduct
- b. the evidence on which the decision-maker relied in making the decision, and
- c. any other reasons for making the decision.

Under the CC Act, the CCC may ask to see any records agencies have made about decisions not to notify it of a complaint.

## Reasonable suspicion of corrupt conduct

A public official<sup>2</sup> must notify the CCC if they reasonably suspect that corrupt conduct has occurred, in accordance with section 38 of the CC Act, subject to any directions issued to them by the CCC under section 40.<sup>3</sup> There does not need to be a formal complaint from an aggrieved person – any other information or matter may give rise to a reasonable suspicion. For example, a reasonable suspicion of corrupt conduct might arise through the findings of an internal audit report or in the course of resolving a grievance.

For a suspicion to be “reasonable”, there needs to be more than bare or idle speculation (*George v Rockett* (1990) 170 CLR 104). In essence, there must be sufficient evidence for a reasonable person to *suspect* corrupt conduct.

The decision-maker does not have to *believe* that the alleged conduct is corrupt conduct, or that the conduct has *actually* occurred. Reasonable suspicion must be based on an objective assessment of the information at hand. It is not sufficient for a decision-maker to subjectively decide that someone is or is not capable of the alleged conduct.

The decision-maker also does not have to have sufficient evidence to *prove* the allegation of corrupt conduct, but the available facts, evidence or other information must suggest that the allegation, if proven, would amount to corrupt conduct. The suspicion may be based on hearsay and other inadmissible material that nevertheless is relevant (*George v Rockett*).

---

1 <https://www.ccc.qld.gov.au/publications/changes-crime-and-corruption-act-2001-record-keeping-requirements-assessment-decisions>

2 In some agencies, public officials have delegated their responsibilities for assessing and notifying the CCC of a complaint about corrupt conduct to officers within the agency. The CCC will refer to the public official and their delegated officers as “the decision-maker” in this document.

3 Including: a) the kinds of complaints that must be notified to the CCC, b) how and when this notification must be made, c) the kinds of complaints that they can immediately start dealing with without notifying the CCC at all, and d) those cases that only need to be reported to the CCC on a routine basis (e.g. some may only need to be reported on a monthly basis).



## When no reasonable suspicion is formed

The decision-maker does not have to notify the CCC if they do not hold a reasonable suspicion. For example, the decision-maker does not need to notify the CCC if there is something about the allegation – including any relevant information in their direct knowledge or the direct knowledge of a relevant officer (such as the manager of the person complained about), or contained in their agency's records<sup>4</sup> – which shows beyond doubt that it is not correct.

## The CCC's audit

In 2019–20, the CCC conducted a corruption audit of seven public sector agencies<sup>5</sup>, in which it examined their policies and processes, including the records of 34 assessment decisions, in order to assess their capacity to:

1. effectively capture complete and accurate records of their assessment decisions relating to complaints about corrupt conduct, and
2. correctly form conclusions that the allegations did not raise a reasonable suspicion of corrupt conduct, thereby not meeting the threshold for the complaints to be notified to the CCC.

The CCC selected the seven agencies across a range of government sectors with the highest and lowest number of corruption allegation complaints by volume, and the size and location of the agencies (e.g. operating budget, location remoteness and staffing numbers). The CCC identified the agencies using corruption allegation trends as an indicator of prevalence and an assessment of risk. Those agencies were:

- the Department of Child Safety, Youth and Women
- the Department of Communities, Disability Services and Seniors
- Cairns Regional Council
- Hope Vale Aboriginal Shire Council
- Livingstone Shire Council
- Sunshine Coast Regional Council and
- Central West Hospital and Health Service.

The results of CCC audits are made public to assist all agencies in the Queensland public sector improve their complaints assessment practices. The CCC has communicated the observations of its audit to participating agencies but, for the purposes of this summary report, the CCC does not specify the agency or agencies linked to its results, observations or recommendations. References to "Agency One...Agency Two..." do not refer consistently to the same organisation.

## Key findings

The CCC audit found that agencies did not always record the information required under the CC Act. When that had occurred the CCC was unable to determine how agencies came to the conclusions that relevant complaints did not meet the threshold for notification to the CCC in accordance with the CC Act.

---

<sup>4</sup> Internal records include, but are not limited to, job logs, CCTV footage and payroll records.

<sup>5</sup> The CCC Corruption Audit Plan for 2019–21 included an assessment of the extent to which agencies effectively meet their recordkeeping obligations under section 40A of the CC Act.



Of the agencies audited:

- 14% had no précis of the complaints
- 52% had no documentary evidence of the assessment of the complaints against the definition of corrupt conduct
- 33% had no details of evidence relied on in assessing a reasonable suspicion of corrupt conduct
- 95% had no information of whether there were conflict of interest issues involving the assessing officers and decision-makers
- 43% had no details of the endorsed assessment decision about the complaint of corrupt conduct
- 33% had no details of the decision-maker's name, position and endorsement.

The CCC identified three areas in which agencies could improve, suggesting that they:

- enhance their policies and procedures relating to section 40A (see pages 11–12)
- capture complete and accurate information in records (see pages 12–14), and
- apply the reasonable suspicion test correctly (see pages 14–16).

Within each area for improvement, the CCC made detailed recommendations.

To assist agencies develop their capacity to correctly assess and record complaints in accordance with section 40A, the CCC has produced a guide to recordkeeping requirements when assessing allegations of corrupt conduct, which includes detailed instructions and examples (see Annexure 1).



## 2. About the audit: purpose and objectives

---

### Purpose

Preventing corruption is fundamental to the CCC's vision for safe communities supported by fair and ethical public institutions.

The CC Act sets out the functions and powers of the CCC relevant to its corruption audits – for example:

#### **Dealings with complaints of corrupt conduct**

When the CCC examines how a public sector agency has dealt with an actual complaint it relies on its monitoring function in sections 33(1)(b) and 48(1)(b) of the CC Act. Section 48(2)(a) states that the public official must give the CCC reasonable help to undertake a review or audit.

#### **Framework for preventing corrupt conduct**

When the CCC examines what systems, processes and practices a public sector agency has put in place to control corruption risks, and to maintain proper standards of conduct for their staff, it relies on its prevention function set out in section 23 and its corruption function “to raise standards of integrity and conduct in units of public administration” set out in section 33(1)(a). The CCC's corruption function in section 33(1)(a) is inextricably linked to its prevention function.

### Audit objectives

The audit had two objectives:

1. Ensure agencies effectively captured and kept complete and accurate records of any decision by the decision-maker not to notify the CCC of a complaint about alleged corrupt conduct.
2. Ensure agencies correctly formed conclusions that the allegations did not reasonably raise a suspicion of corrupt conduct.

#### **Objective one: Ensure agencies effectively captured complete and accurate records**

The CCC obtained and reviewed agencies' policies on complaints about corrupt conduct to ensure that they:

- documented the mandatory recordkeeping requirements of section 40A
- documented the information that must be recorded and kept (e.g. what, where, when and how), and
- promoted complete and accurate recordkeeping practices.

To ensure agencies effectively captured complete and accurate records of their decisions not to notify the CCC of complaints<sup>6</sup> about corrupt conduct, the CCC requested they provide a listing (or extracted data from their case management system) of specified matters. The period of coverage was 1 March 2019 to 1 January 2020. The CCC received a total of 21 matters from the seven agencies.

---

<sup>6</sup> Complaints can be comprised of multiple allegations.



For some agencies, due to the low volume of matters received within the scope of the audit, the CCC requested other types of complaints (e.g. operational<sup>7</sup> and administrative action<sup>8</sup>) for the same period. The CCC reviewed the listings to identify potential allegations of corrupt conduct. That is, the complaint details were examined to assess whether the complaint could potentially amount to corrupt conduct under section 15 of the CC Act. This exercise identified a total of 19 potential matters.

The CCC sourced and examined 34 of the 40 complaint assessment records (85 per cent) from the agencies to determine whether they:

- accurately recorded the assessment of the complaint against the definition of corrupt conduct
- specified why the complaint did not meet the definition or threshold for notification to the CCC
- recorded the decision-maker's name, position and their endorsement of the assessment
- identified and recorded any conflict of interest issues, and detailed the steps taken to deal with any perceived or actual conflicts.

### **Objective two: Ensure agencies correctly formed the conclusion of “no reasonable suspicion”**

The CCC used the same samples selected for objective one (above) to reassess whether the initial information available to the agencies (e.g. the complaint and any internal records reviewed) did not give rise to a reasonable suspicion of corrupt conduct. For example:

- On the available facts, evidence or other information was it reasonable to conclude that the allegation could not have occurred or did not amount to corrupt conduct?
- Was the assessment based on an objective consideration of the information at hand?

---

7 A complaint about a care, health or other general service provided to the affected person.

8 As defined in section 268(2) of the *Local Government Act 2009*. Similar to operational complaint.



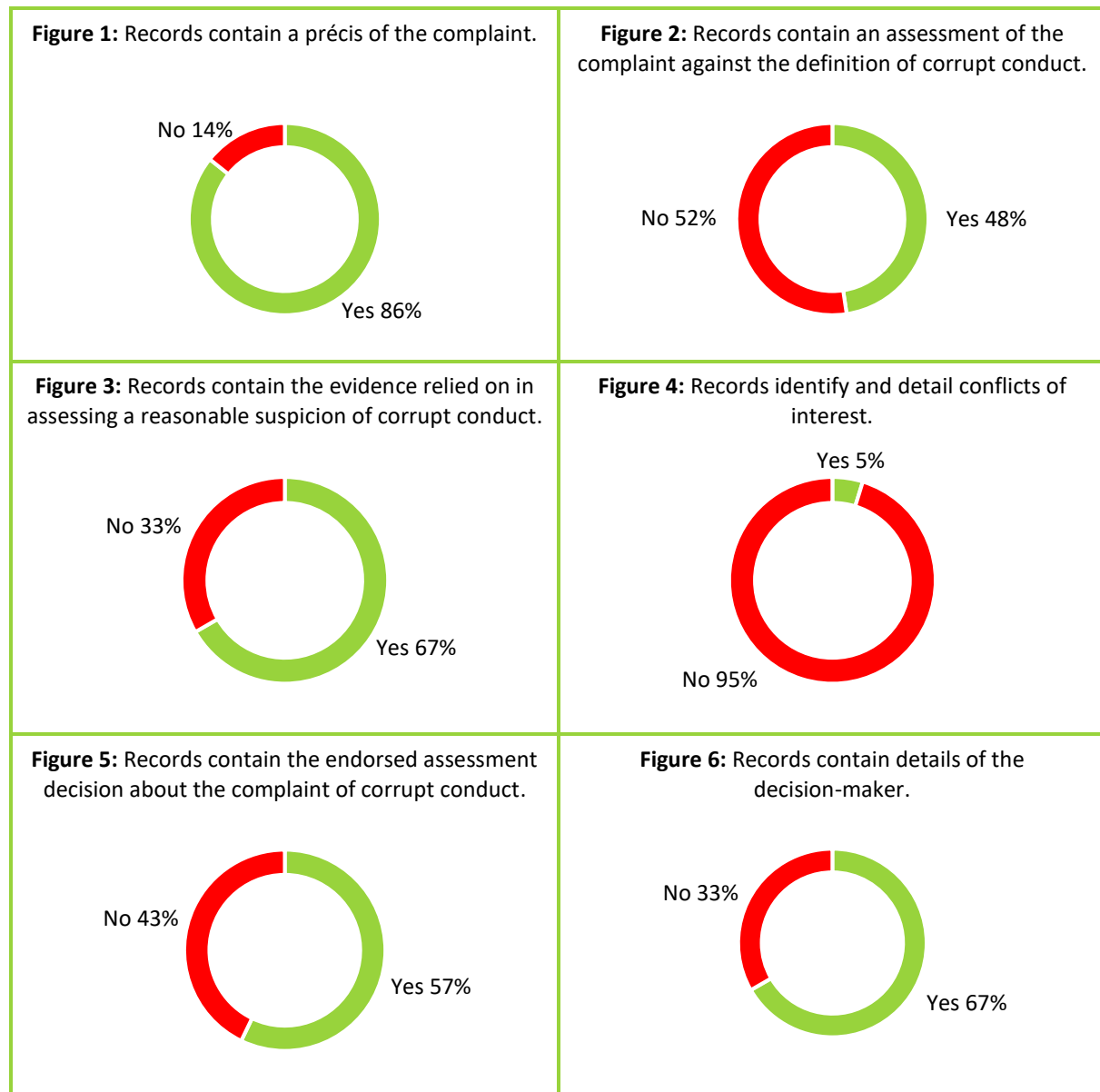


### 3. Results and areas for improvement

#### Results

Figures 1 to 6 show the extent to which the information being recorded by agencies complied with the section 40A requirements, as follows:

- the details of the complaint (Figure 1)
- the assessment of the complaint against the definition of corrupt conduct (Figure 2)
- the evidence relied on in assessing a reasonable suspicion of corrupt conduct (Figure 3)
- the identification and details of any conflicts of interest (Figure 4)
- the endorsed assessment decision about the complaint of corrupt conduct (Figure 5)
- the details of the decision-maker (Figure 6).



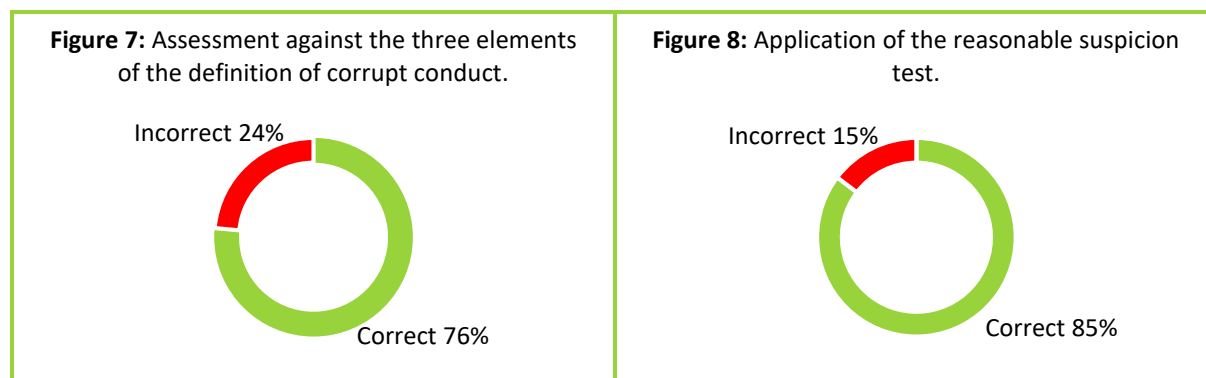
**Source:** CCC's analysis of agencies' section 40A records (other types of complaints are not included in the figures).



## Assessments of complaints of corrupt conduct

Figures 7 and 8 show, in relation to the 34 complaints audited:

- how well agencies assessed the matters against the three elements of the definition of corrupt conduct<sup>9</sup> (Figure 7), and
- whether the reasonable suspicion test had been applied correctly by the agencies (Figure 8).



As shown in Figure 7, some agencies were found not to have correctly assessed the complaints against the three elements of the definition of corrupt conduct (24 per cent). This means that the complaints did meet the definition of corrupt conduct, and should then have been assessed by the assessing officers and/or decision-makers as to whether they held a reasonable suspicion of corrupt conduct. These matters could potentially have been notified to the CCC, subject to section 40 of the CC Act.

Some agencies applied the reasonable suspicion test incorrectly (15 per cent, Figure 8). The reasons for the CCC considering these as incorrect applications of the reasonable suspicion test are discussed later in this report. It is important to note that if complaints are incorrectly assessed as not raising a reasonable suspicion of corrupt conduct, and are thus not referred to the CCC (subject to a section 40 arrangement), this may result in a loss of public confidence in the complaints process.

**Table 1:** How the CCC assessed and categorised matters

Category	Number of matters	As a percentage
Section 38 referral to the CCC <sup>10</sup>	1	3%
Level 1, s.40 category referral to the CCC (immediately) <sup>11</sup>	1	3%
Level 3, s.40 category non-referral to the CCC (subject to audit) <sup>12</sup>	3	9%
Correct non-referral to the CCC (section 40A)	15	44%
Out of the CCC's jurisdiction <sup>13</sup>	14	41%
<b>Total audited matters</b>	<b>34</b>	<b>100%</b>

Source: CCC's analysis of agencies' complaint records

9 The three elements of the definition of corrupt conduct are the *effect* of the conduct, the *result* of the conduct and the *seriousness* of the conduct – refer to sections 15 (a), (b) and (c) of the CC Act.

10 Under section 38 of the CC Act, agencies must notify the CCC if they reasonably suspect that corrupt conduct has occurred (i.e. immediately), subject to any directions issued to them by the CCC under section 40.

11 Level 1 is the most serious type of corrupt conduct. Agencies with agreed section 40 directions are to immediately notify the CCC of certain conduct types in Level 1 prior to dealing with the complaint.

12 Level 3 is less serious and notification to the CCC is not required by agencies with agreed section 40 directions.

13 Matters are other types of complaints. Agencies correctly assessed every complaint (100 per cent) in this category.



Table 1 shows how the CCC assessed and categorised the matters. It shows that two matters (rows 1 and 2), or six per cent, should have been recognised as alleged corrupt conduct and notified to the CCC pursuant to section 38/40 of the CC Act. The other three matters (row 3), or nine per cent, should have been assessed as corrupt conduct, but were not required to be referred to the CCC under the agencies' section 40 directions.

Overall, agencies have correctly assessed 29 complaints (85 per cent) as not required to be notified to the CCC and five complaints (15 per cent) should have been within the CCC's jurisdiction.

## Areas for improvement

The CCC's audit identified three areas for improvement, with recommendations outlined below.

### Area for improvement 1 – Enhance policies and procedures about section 40A

The CCC identified that three of the seven agencies had in place comprehensive policies and procedures to guide staff and decision-makers in effectively assessing complaints about corrupt conduct. The policies and procedures served to clarify meaning, specify recordkeeping requirements and facilitate consistency and fairness in decision-making.

The remaining four agencies did not have an appropriately documented process. Three of those four agencies used existing procedures relating to administrative actions, rather than having in place a policy and procedure for complaints about corrupt conduct. One agency had a policy for complaints about corrupt conduct, however, it did not address the mandatory recordkeeping requirements of section 40A of the CC Act.

The minimum requirements for this policy and procedure are set out below.

#### Minimum requirements to be captured by agencies in policies and procedures

Agencies should ensure their policies and procedures for assessing complaints about corrupt conduct:

- Set out the governance principles for complying with the CC Act.
- Set out the roles and responsibilities for all those involved in complaints assessment activities.
- Define "Type A" and "Type B" corrupt conduct, and reasonable suspicion.
- Describe the processes for complaint assessment and notification to the CCC.
- Outline the information that must be captured in a record (e.g. what, where, when and how). For example, they must contain:
  - a précis of the complaint
  - the assessment of the complaint against the definition of corrupt conduct
  - the information relied on to form the reasonable suspicion
  - the decision why the complaint did not meet the definition or threshold for notification to the CCC
  - the decision-maker's name, position and endorsement of the assessment
  - any conflict of interest issues, and details of the steps taken to deal with any perceived or actual conflicts.
- Promote complete and accurate recordkeeping practices.

All agencies must ensure that their policies and procedures reflect the legislative changes made from time to time – for example, the addition of section 40A.



### **Recommendations**

- a. Develop a policy and procedure for assessing complaints about corrupt conduct that meets the legislative requirements of the CC Act (see minimum requirements above).
- b. Ensure the policy and procedure are reviewed every two years, or when amendments have been made to the CC Act, so they remain accurate. (Note that supporting documents such as templates may require updating.)
- c. Communicate the updated policy and procedure to assessing officers and decision-makers.

### **Responses**

The seven agencies responding to the CCC's recommendations have accepted them.

Agency One had updated its *Requirement for Reporting of Corrupt Conduct* policy. The CCC was satisfied with the agency's policy intent and minimum actions required to comply with the CC Act.

Agencies Two, Three, Four and Five are working towards updating their policies and procedures to cover the gaps identified by the CCC audit.

Agencies Six and Seven will develop policies and procedures for assessing complaints about corrupt conduct, including their obligations under the CC Act (sections 15, 38, 40 and 40A).

## **Area for improvement 2 – Capture complete and accurate information in records**

The capture of accurate and complete records is fundamental to good decision-making, as such records:

- strengthen decision-making by giving the decision-maker detailed information, including the assessment against the three elements of corrupt conduct, the assessment of reasonable suspicion and the subsequent processes on which to base their decisions
- enable an agency to establish how a particular decision was made, in the event that the decision is challenged or is the subject of a CCC audit, so as to identify how the CCC could assist the agency in improving its complaint assessment process
- protect an agency from criticism (e.g. Is it corrupt conduct? Why is there no reasonable suspicion of corrupt conduct?) by providing the means to explain why a certain decision was made
- enhance transparency and accountability in assessing allegations of corrupt conduct to maintain public confidence, and
- act as a tool for continuous improvement (i.e. learning).

The CCC identified that:

- Two of the seven audited agencies had sufficiently captured most of the information required under section 40A of the CC Act.
- Three agencies had insufficient information captured in their records.
- Two agencies had no section 40A records for the CCC to audit.



## Failure to capture complete or accurate information

Five of the agencies audited had not captured complete or accurate information. Of the 20 records examined:

- 19 matters contained no information that indicated whether or not any conflict of interest issues existed
- 10 matters did not contain an assessment of the complaint against the definition of corrupt conduct
- 8 matters contained no decision as to whether the complaint did not meet the definition of corrupt conduct or threshold for notification to the CCC
- 6 matters did not contain any of the evidence relied on in assessing a reasonable suspicion of corrupt conduct
- 6 matters did not contain the decision-maker's name, position and endorsement of the assessment
- 3 matters did not contain a précis of the complaint.

### *Capturing conflict of interest matters*

The CCC holds the view that positively declaring whether a conflict of interest existed or not, rather than records being silent, would enhance transparency in the assessment endorsement process.

The CCC was unable to determine if complaints were assessed with integrity in cases where assessing officers or decision-makers provided no comment or record addressing conflict of interest matters.

The CCC advised agencies of the actions to be taken to comply with the changes to legislation.<sup>14</sup> It advised that when assessing a complaint or allegation that the decision-maker does not believe needs to be referred to the CCC, agencies should identify and record any conflict of interest issues, and detail the steps taken to deal with any perceived or actual conflicts.

### **Recommendations**

- a. Remind assessing officers and decision-makers (including the Assessment Committee) of their obligations to capture complete, accurate and sufficient records/information of the criteria detailed above, and as required under section 40A of the CC Act.
- b. Develop a Corrupt Conduct Assessment form template (see Annexure 1).
- c. In future matters, capture the following information when assessing allegations of corrupt conduct, in order to be compliant with the mandatory recordkeeping requirements of Section 40A of the CC Act:
  - i. a précis of the complaint (provide as much detail as possible, to help the CCC assess the complaint in the future if required)
  - ii. the assessment of the complaint against the definition of corrupt conduct (identifying whether the complaint did or did not meet the definition and why)
  - iii. the assessment of "reasonable suspicion" required to enliven the referral obligation at section 38 or 40 of the CC Act (identifying how the complaint and other relevant information did or did not raise a reasonable suspicion of corrupt conduct and why)
  - iv. the reasoning for not notifying the CCC of the matter
  - v. the endorsement by the nominated decision-maker of the assessment of the complaint as not reaching the threshold of corrupt conduct or not required to be referred to the CCC

14 CCC (2019). *Changes to the Crime and Corruption Act 2001: Recordkeeping requirements for assessment decisions (section 40A)*



- vi. whether or not there are conflict of interest issues in assessing the complaint.

### Responses

Agencies who did not meet the minimum requirements following the CCC's audit have acknowledged its recommendations to improve the capture of information which enables a reasonable person to understand how and why the decision was made about a complaint not notified to the CCC. The relevant agencies indicated that they planned to implement, or have undertaken, improvements to their complaint assessment practices.

## Area for improvement 3 – Apply the reasonable suspicion test correctly

Regarding the initial information available (e.g. complaint information and any internal records considered) from the five agencies<sup>15</sup>, the CCC identified five matters (15 per cent) in three of those five agencies that should have been assessed as corrupt conduct and referred to the CCC, subject to the relevant section 40 directions (see Table 1). In summary, the CCC identified:

- one section 38 matter that should have been notified to the CCC
- one Level 1 category matter that should have been notified to the CCC immediately, and
- three Level 3 category matters that should have been recorded in the case management system (subject of a future CCC audit).

In considering the five matters in the three agencies, the CCC found that:

- Three of the matters had been assessed against the definition of corrupt conduct by one agency incorrectly<sup>16</sup> (see case study one as an example).
- Two matters had the reasonable suspicion tests not applied correctly by two agencies (see case study two as an example).

### Case study one – Allegation met the definition of corrupt conduct

A complainant raised concerns that a manager had established a business and was promoting it directly to staff under the guise of a “forum”. It was alleged that a person had to join as a member for a fee before being able to participate in the forum.

The agency considered that the first two of the three elements of the definition of corrupt conduct (*effect of the conduct* and *result of the conduct*) were met, but the third element (*seriousness of the conduct*) was not – that is, the conduct was not dismissible so, in the absence of a criminal offence provision, the conduct would not amount to corrupt conduct.

#### Outcome

The CCC disagreed with the agency's assessment. The CCC considered that the elements of corrupt conduct (including a potential criminal offence of abuse of office) were satisfied.<sup>17</sup>

The agency should be aware that the test of dismissal or criminal offence as the third element of the definition of corrupt conduct is “would, if proved”.<sup>18</sup> On face value of the complaint, the subject officer could be dismissed.

The CCC noted that the agency had not completed its Complaint Assessment form, which could have assisted in avoiding the agency's assessment errors.

15 The other two agencies had no section 40A records or other types of complaints that were potentially corrupt conduct.

16 See section 15(1) of the CC Act.

17 Section 92A of the Criminal Code.

18 See chapter 1 of the CCC's [Corruption in focus](#) guide for a discussion of what constitutes “would, if proved”.



In case study two, the assessing officers, rather than determining whether a reasonable suspicion could be established, were determining whether the allegations were capable of being proved. The officers were gathering versions of events from witnesses and subject officers, which are investigative steps.

### **Case study two – Sufficient evidence to raise a reasonable suspicion of corrupt conduct**

The subject officer attempted to interfere with and influence two recruitment processes by trying to have friends and former colleagues shortlisted and appointed to the positions. The subject officer failed to declare a conflict of interest in one of the recruitment processes.

The agency requested an external investigator to make preliminary enquiries to ascertain the nature and extent of the conduct that led to the complaint. That investigator subsequently recommended that a full investigation take place.

An internal agency investigation commenced and an external (non-CCC) investigator interviewed eight witnesses, including the subject officer.

The agency also sought external legal advice with respect to its obligations under the CC Act and the *Public Interest Disclosure Act 2010*. Part of this legal advice was: “It is our view that it is impossible to express any final opinion about whether there is a reasonable suspicion of corrupt conduct until such time as the subject officer ‘puts his side of the story’.”

When the CCC reviewed the matter to decide if the agency did have sufficient evidence to raise a reasonable suspicion of corrupt conduct, the CCC determined that the agency had completed investigative steps including:

- interviewing witnesses, and
- obtaining a version of events from the subject officer.

The act of implementing investigative steps suggested that the assessing officers held a reasonable suspicion of corrupt conduct, and that the matter **should** have been notified to the CCC under section 38 of the CC Act.

#### **Advice**

The notification of a complaint to the CCC should be made as soon as there is a reasonable suspicion that corrupt conduct has occurred. A complaint should not be the subject of interpretation or further investigation by the agency, as this may have an adverse effect on any CCC investigation into such conduct. Instead, the complaint should be immediately notified to the CCC and the agency should await the outcome of the CCC’s assessment, subject to the section 40 directions.

#### **Outcome**

The CCC identified this case as being corrupt conduct and a public interest disclosure. The matter resulted in the suspension and termination of the subject officer, and was considered very serious by the CCC.

Unnecessary enquiries made by agencies before a matter is considered as not amounting to corrupt conduct – particularly the interviewing of subject officers or relevant witnesses – may undermine, hamper or defeat an appropriate approach in dealing with the complaint. This also has the potential to undermine the process of notifying the CCC and thereby reduce public confidence in the process.

These case studies highlight the importance of having a Corrupt Conduct Assessment form that enables staff to effectively assess any complaint against the three elements of the definition of corrupt conduct, and correctly apply the reasonable suspicion test.



### **Recommendations**

- a. Develop a Corrupt Conduct Assessment form, to be completed for each future complaint, to show how the allegations were assessed against the definition of corrupt conduct, the application of the reasonable suspicion test and the capture of information to satisfy section 40A recordkeeping requirements. The policy dealing with management of complaints of corrupt conduct should include the requirement to complete this form.
- b. Remind assessing officers and decision-makers of their responsibility to assess and consider complaints of corrupt conduct carefully.
- c. Update the case management system to reflect the matters as corrupt conduct, including their categorisation.
- d. Report section 38 and Level 1 matters to the CCC.

### **Responses**

The three agencies to which this issue related each acknowledged the specific recommendations made by the CCC. The recommendations, if implemented, will strengthen their complaints assessment practices.

Two of the three agencies will develop a Corrupt Conduct Assessment form to assist them with assessing allegations against the definition of corrupt conduct, applying the reasonable suspicion test and capturing the required information for recordkeeping.

The third agency agreed with the CCC's observations and will be implementing the relevant recommendations, including communicating the lessons learnt to staff and decision-makers.





## 4. Conclusion

---

Poor recordkeeping and records management practices can result in:

- insufficient or inadequate recording of decisions
- loss of information
- inconclusive records of the reasoning on which a decision was based.

The information recorded should be sufficient for a reasonable person to understand how and why a particular decision was made. The capture of relevant information should be systematic and, in relation to allegations of corrupt conduct, should be integrated into complaints assessment processes.

The CCC's audit identified a number of areas in which agencies could more effectively and correctly capture records to meet the recordkeeping requirements of section 40A of the *Crime and Corruption Act 2001*.

Agencies indicated that they found the CCC audit and its recommendations valuable in assisting them to meet their obligations under section 40A and build accountable and transparent complaint management processes. At the time of publication, the agencies indicated that they had already taken, or were planning to take, all relevant steps to address the issues and recommendations made within this report.



## Annexure: A guide to recordkeeping requirements when assessing allegations of corrupt conduct

---

This guide has been developed by the CCC to assist agencies with their recordkeeping practices relating to section 40A of the CC Act. It consists of the following materials:

1. An overview of recordkeeping, in the context of managing allegations of corrupt conduct
2. A suggested template for a Corrupt Conduct Assessment form
3. Examples of records to be kept, designed to assist with recording decisions not to refer a matter to the CCC.

This guide should be read in conjunction with other CCC publications:

- [Corruption in focus](#) is the CCC's primary guide to dealing with corrupt conduct, written specifically for the Queensland public sector.
- Agencies with section 40 agreements should also refer to [How to classify matters of corrupt conduct pursuant to section 40 directions: A five-step guide for public officials and delegated decision-makers](#).
- The CCC and the Queensland State Archives (QSA) have jointly published a short guide to explain the requirements and benefits of effective recordkeeping, [Public records: Advice for all employees of a public authority](#).



## Part 1: Assessing complaints: why keep records?

The *Public Records Act 2002* (the PR Act) governs recordkeeping in Queensland. Under the PR Act, agencies must make and keep records of their activities and manage their public records responsibly.

In respect of complaints management, failure to keep properly detailed records can expose an agency to significant business and regulatory risks. In the case of allegations of corrupt conduct, such risks include that:

- A lack of strictly followed protocols increases the potential and opportunity for the accusation of covering up suspected corrupt conduct.
- Complaints of corrupt conduct may be put at risk when decisions cannot be validated through access to captured information or documentary evidence.
- An absence of captured records significantly hinders an agency's ability to provide a rationale for its position, especially when undertaking regulatory processes such as responding to a CCC query.
- The inability of assessing officers and decision-makers to provide documentary evidence to account for their actions or decisions while carrying out their duties on behalf of an agency may cause damage to the reputation of both the organisation and staff members.

### Requirements under section 40A

In addition to the PR Act, there are now recordkeeping requirements under section 40A of the CC Act in relation to complaints of corrupt conduct. Section 40A details what information must be captured as a record of any decision not to notify the CCC of an allegation of corrupt conduct, including the reasoning on which that decision is based, the evidence (or lack thereof) considered, and any findings.

The information recorded should be sufficient for a reasonable person to understand how and why the decision was made. The capture of relevant information should be systematic and integrated into complaints assessment processes.

The following **Corrupt Conduct Assessment form** has been designed to guide you through all the information you need to record to meet your obligations under section 40A and satisfy the requirements of the CCC.



## Part 2: Corrupt Conduct Assessment form

The form below may be used as the basis of a template that can be adapted and customised to particular agency needs. It integrates sections 15, 38, 40 and 40A of the CC Act, and includes key information and criteria required under those sections of the CC Act.

*It is not exhaustive and should be considered as a guide only.*

### General information

Agency file reference number	
Date of assessment	
Date of receipt of the complaint or matter	
Complainant(s) / discloser(s) name	
Subject officer(s) name and position	
Subject officer(s) business area	
The details of the complaint or matter (this is also part of s40A(3)(a) of the CC Act)	
The details of the allegation types	

**Note:** Agencies with section 40 agreements should consider other information required under the directions.



## Assessment details (step-by-step process)

### 1. “Type A” corrupt conduct assessment (s15(1) of the CC Act)

Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—	
(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of— (i) a unit of public administration (UPA); or (ii) a person holding an appointment; AND	Y/N
(a) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that— (i) is not honest or is not impartial; or (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; AND	Y/N
(b) would, if proved, be— (i) a criminal offence; or (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.	Y/N
<b>Does the “Type A” conduct satisfies all three elements above?</b>	<b>Y – Go to Step 3 N – Go to Step 2</b>

### 2. “Type B” corrupt conduct assessment (s15(2) of the CC Act)

Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—	
(a) impairs, or could impair, public confidence in public administration; AND	Y/N
(b) involves, or could involve, any of the following— (iii) collusive tendering; (iv) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)— (A) protecting health or safety of persons; (B) protecting the environment; (C) protecting or managing the use of the State’s natural, cultural, mining or energy resources; (v) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets; (vi) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue; (vii) fraudulently obtaining or retaining an appointment; AND	Y/N
(c) would, if proved, be— (i) a criminal offence; or (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.	Y/N
<b>Does the “Type B” conduct satisfies all three elements above?</b>	<b>Y – Go to Step 3 N – Go to step 5</b>



### 3. Reasonable suspicion

<p>Having regard to all the initial information available to you, decide whether you do or do not hold a reasonable suspicion of corrupt conduct.</p> <p>For a suspicion to be “reasonable”, there needs to be more than bare or idle speculation. In essence, there must be sufficient evidence for a reasonable person to suspect corrupt conduct.</p> <p>You must objectively base your assessment on the information at hand. It is not sufficient for you to subjectively decide that someone is or is not capable of the alleged conduct.</p> <p>You do not have to have sufficient evidence to <b>prove</b> the corrupt conduct allegation.</p>	
<p><b>Do you hold a reasonable suspicion of corrupt conduct?</b></p>	<p><b>Y – Continue</b> <b>N – Go to Step 5</b></p>
<p><b>List the information relied on to form the reasonable suspicion.</b></p> <p>(a) statutory declaration</p> <p>(b) statement from the complainant (e.g. telephone, email, and letter)</p> <p>(c) audit report / grievance process</p> <p>(d) accounting records / payroll records / other evidence</p> <p>(e) other (please specify).</p>	<p><b>Details (continue)</b></p>

### 4. Categorisation of corrupt conduct

<p>a) Agencies with section 40 agreements</p>	
<p>Level 1 <input type="checkbox"/> Immediate referral to CCC</p>	
<p>Level 2 <input type="checkbox"/> Monthly schedule referral to CCC</p>	
<p>Level 3 <input type="checkbox"/> No referral to CCC – subject to audit. <b>(Also, complete s40A mandatory recording at Step 5.)</b></p>	
<p><b>Reasons</b> Document the reasons for your categorisation (refer to the table in your s40 agreement)</p>	<p><b>Details</b></p>
<p>b) Other agencies (without section 40 agreements)</p>	
<p>s38 <input type="checkbox"/> Immediate referral to the CCC.</p>	

### 5. s40A record of alleged corrupt conduct not notified to the CCC

<p>This section applies if a public official (or decision-maker) decides that a complaint of alleged corrupt conduct is not required to be notified to the CCC under s38/40 of the CC Act. A record of this decision must be captured. For further explanation refer to the explanatory notes.</p>	
<p><b>List the information relied on in reaching the conclusion (i.e. no reasonable suspicion)</b></p> <p>(a) statutory declaration</p> <p>(b) statement from the complainant (e.g. telephone, email and letter)</p> <p>(c) audit report / grievance process</p> <p>(d) accounting records / payroll records / other evidence</p> <p>(e) other (please specify, including if the matter is a Level 3 category).</p>	<p><b>Details</b></p>
<p><b>Document the reasons for the conclusion</b> (why the complaint did not meet the definition or threshold of a reasonable suspicion of corrupt conduct OR why the complaint is a Level 3, s40 matter that does not need to be referred to CCC i.e. agreement)</p>	<p><b>Details</b></p>



## 6. Conflict of interest

Are there any conflict of interest issues?	
<b>Do you (assessing officers and decision-makers) have conflicts of interest in assessing this matter?</b>	<b>Y/N</b>
<b>If yes, detail the conflict of interest issues</b> (why the complaint did not meet the definition or threshold of a reasonable suspicion of corrupt conduct)	<b>Details</b>
<b>If yes, detail the steps taken to deal with any perceived or actual conflicts</b>	<b>Details</b>

## 7. Assessment endorsement details

Public official (or decision-maker's) name, position and endorsement of the assessment and categorisation of the complaint. Are there any conflict of interest issues?
--

## 8. Other information to consider

- Public interest disclosure (PID) assessment.
- Notification to the Queensland Police Service (an offence under the Criminal Code or another Act).
- Notification to other bodies (under your agency's statutory Act or other Acts – for example, to the Queensland Audit Office<sup>19</sup>).
- Recommendation for how to deal with the complaint.
- Preliminary steps assessment that need to happen immediately (preserve evidence, alternative duties/suspension, restrict access and monitoring activities).

---

<sup>19</sup> Theft of property may need to be reported to the Queensland Audit Office under the requirements of section 21 of the *Financial and Performance Management Standard 2009*.



## Part 3: Recording a decision not to refer an allegation of corrupt conduct to the CCC

A decision-maker who is assessing a complaint and who forms a view that they do not need to refer the complaint to the CCC should, at a minimum:

- accurately record how the complaint was assessed against the definition of corrupt conduct
- specify why the complaint did not meet the definition or threshold for notification to the CCC
- record the decision-maker's name, position and their endorsement of their assessment
- identify and record any conflict of interest issues, and detail the steps taken to deal with any perceived or actual conflicts.

The following examples illustrate how to **correctly** capture information in a record to meet the requirements of section 40A of the CC Act.

### Example 1 – allegation of misuse of information

#### Allegation

Mr X, a transport officer, provided personal information obtained through a driver licence application to a friend who is trying to locate his estranged wife.

#### **Assessment of the allegation against the definition of corrupt conduct (section 15, CC Act)**

Elements that make the conduct "Type A" corrupt conduct:

1. Adversely affects the performance of the department through breach of privacy obligations.
2. Involves a misuse of information.
3. Is a criminal offence (i.e. abuse of public office/ computer hacking and misuse).

#### **Delegate's decision, including assessment of the reasonable suspicion test**

The allegations, if proven, would meet the definition of corrupt conduct under section 15 of the CC Act, however no reasonable suspicion formed. The results of assessment enquiries<sup>20</sup> conducted by the assessing officer (driver licence audit data) did not support that Mr X had inappropriately accessed the driver licence system, as alleged, in order to disclose that information to his friend. This matter is not reported to the CCC under section 38/40 of the CC Act.

Endorsed by: Mr Z, Director, Ethical Standards Unit, 5 December 2019.

#### **Disclosure of conflicts of interest**

Mr T, Assessing officer – ☒ Identified no conflict of interest with the person of interest (POI).

Mr Z, Decision-maker – ☒ Identified no conflict of interest with POI.

---

<sup>20</sup> Assessment enquiries refer to the "initial information". For example, reliable and accurate information that is already in the possession of the agency, such as documentary records, internal data and CCTV footage. Note that any preliminary inquiries, such as interviewing any witness or staff who is the subject of the complaint, may not be undertaken.





## Example 2 – allegation relating to a recruitment panel (impartiality)

### **Allegation**

An employee (Ms Y) of a university manipulated a selection panel for the Manager (Finance) role on which she sat to ensure that her spouse got a position for which he is not qualified.

### **Assessment of the allegation against the definition of corrupt conduct (section 15, CC Act)**

Elements that make the conduct “Type A” corrupt conduct:

1. Adversely affects the performance of the university through the appointment of an unqualified person.
2. Lacks impartiality.
3. Is reasonable grounds for dismissal.

### **Delegate’s decision, including assessment of the reasonable suspicion test**

The allegation, if proven, would meet the definition of corrupt conduct under section 15 of the CC Act, however no reasonable suspicion formed. The results of assessment enquiries conducted by the assessing officer (information about the recruitment panel, applications, panel’s selection recommendation etc. in relation to the Manager, Finance recruitment) did not support that Ms Y was on the selection panel. Nor does Ms Y work in the finance area – Ms Y is a Payroll Manager who does not have involvement in recruitment outcomes. This matter is not reported to the CCC under section 38/40 of the CC Act.

Endorsed by: Mr Z, Director, Ethical Standards Unit, 5 December 2019.

### **Disclosure of conflicts of interest**

Mr T, Assessing officer – ☒ Identified a perceived conflict of interest with POI (Ms Y). Action required – Mr T must complete a Conflict of Interest Declaration (Individual) form. Mr Z, the decision-maker, decided that it was appropriate for Mr T to continue with his assessment of the allegation as his perceived conflict of interest was that he has worked under the supervision of Ms Y in his previous job.

Mr Z, Decision-maker – ☒ Identified no conflict of interest with POI.



## Example 3 – allegation in relation to grants

### **Allegation**

A government department issues \$5000 grants to individuals who satisfy certain criteria. The Department discovered that two grants were made to applicants who falsely claimed they satisfied the criteria. The departmental officers involved in the grants process had no knowledge of the false statements and acted with due diligence in awarding the grants.

### **Assessment of the allegation against the definition of corrupt conduct (section 15, CC Act)**

Elements that make the conduct “Type B” corrupt conduct:

1. It does not impair and could not impair public confidence in public administration.
2. Is dishonestly obtaining a benefit from the payment of public funds.
3. Is a criminal offence (i.e. fraud).

### **Delegate’s decision, including assessment of the reasonable suspicion test**

The allegation involved two private citizens (applicants) who may have defrauded the Department (e.g. obtained public monies fraudulently). The assessment enquiries conducted by the assessing officer identified that the incidence of false applications was isolated and there was no evidence to suggest that the fraudulent applications were systemic in nature. I’m of the view that for conduct to satisfy the first element of “Type B” corrupt conduct – *impairs or could impair public confidence in public administration* – the conduct will generally need to be serious and the scale on which the conduct has occurred will generally need to be significant and capable of adversely affecting the efficacy of the department. This matter is not reported to the CCC under section 38/40 of the CC Act, but is reported to Queensland Police.

Endorsed by: Mr Z, Director, Ethical Standards Unit, 5 December 2019.

### **Disclosure of conflicts of interest**

Mr T, Assessing officer – ☒ Identified no conflict of interest with any POIs.

Mr Z, Decision-maker – ☒ Identified no conflict of interest with any POIs.







Crime and Corruption  
Commission

---

QUEENSLAND