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# **Complaints about the Commissioner, s48A of the Crime and Corruption Act 2001**

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# March 2022

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| Approved  |
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| Scott McDougallCommissioner 25 March 2022 |

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# Objective

The Human Rights Commissioner (the Commissioner) is the public official for the Queensland Human Rights Commission (QHRC)

The objective of this policy is to set out how QHRC will deal with a complaint, or information or a matter that involves or may involve corrupt conduct, as defined in the *Crime and Corruption Act 2001* (CC Act), by the Commissioner or any person acting in the role of the Commissioner.

# Policy rationale

The policy is designed to assist QHRC to:

* Comply with s48A of the *Crime and Corruption Act 2001*
* Promote public confidence in the way suspected corrupt conduct of the Commissioner for QHRC is dealt with (s34(c) CC Act)
* Promote accountability, integrity and transparency in the way QHRC deals with a complaint that is suspected to involve, or may involve corrupt conduct of the Commissioner.

# Responsibility for managing and reporting complaints about the public official

Under the CC Act, the Commissioner can nominate a person or persons to notify the Crime and Corruption Commission (CCC) of a complaint of alleged corrupt conduct that involves, or may involve, the Commissioner.

In accordance with sections 48A(2) and 48A(3) of the CC Act, the Deputy Commissioner and persons occupying the position of Principal Lawyer are nominated persons to notify the CCC of a complaint and to deal with the complaint under the CC Act (on occasions where the CCC refers the complaint to a nominated person to deal with).

## Complaints about the Commissioner

A complaint can be written or verbal, and may be made anonymously.

A complaint, information or matter involving alleged corrupt conduct by the Commissioner can be reported to either nominated person, or to the CCC.

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| QHRC nominated persons |
| Deputy Commissioner | Principal Lawyer |
| PRIVATE AND CONFIDENTIALQueensland Human Rights CommissionPO Box 15565CITY EAST QLD 4002Telephone: 07 3021 9101 |
| CCC |
| Complaints OfficerCrime and Corruption CommissionGPO Box 3123BRISBANE QLD 4001Online: <http://www.ccc.qld.gov.au/corruption/report-corruption>By email: complaints@ccc.qld.gov.auBy telephone: (07) 3360 6060 | Toll free outside Brisbane: 1800 061 611 |

If there is uncertainty about whether or not a complaint should be reported, it is best to report it to a nominated person.

If the Commissioner reasonably suspects that the complaint may involve corrupt conduct on their part, they must:

* Report the complaint to the nominated persons as soon as practicable and may also notify the CCC; and
* Take no further action to deal with the complaint unless requested to do so by the nominated person.

When a complaint is made that raises allegations of corrupt conduct, it may be a public interest disclosure pursuant to the *Public Interest Disclosure Act 2010*. Please refer to our Public Interest Disclosure Policy and Procedure for more information.

Complaints about the Commissioner which do not involve corrupt conduct or public interest disclosures will be managed in line with our Complaints Management Policy.

## Role of nominated persons

Because there are more than one nominated persons, when a complaint is made, the nominated persons will, with or without consulting the CCC, decide who will be the nominated person for that particular complaint.

The nominated person for a particular complaint will inform the CCC that they are the nominated person for the particular complaint.

Once a person has been nominated for a particular complaint, the CC Act applies as if a reference about notifying or dealing with the complaint to the public official is a reference to the nominated person.

If the nominated person reasonably suspects the complaint may involve corrupt conduct of the Commissioner, they must notify the CCC of the complaint and deal with the complaint, subject to the CCC’s monitoring role, when:

* Directions issued by the CCC to QHRC under s40 of the CC Act apply to the complaint (if any);
* Pursuant to s46 of the CC Act, the CCC refers the complaint to a nominated person to deal with.

If directions are issued under s40, the nominated person is to deal with the complaint and the Commissioner is to take no further action to deal with the complaint unless requested to do so by the nominated person.

## Resourcing the nominated persons

If, pursuant to ss40 or 46 of the CC Act, the nominated person has responsibility to deal with the complaint:

1. QHRC will ensure that sufficient resources are available to the nominated person to enable them to deal with the complaint appropriately.
2. The nominated person is to ensure that consultations, if any, for the purpose of securing resources sufficient to deal with the complaint appropriately are confidential and are not disclosed, other than to the CCC, without authorization under a law of the Commonwealth or the State; or the consent of the nominated person responsible for dealing with the complaint.

The nominated person must, at all times, use their best endeavors to act independently, impartially and fairly having regard to: the purposes of the CC Act, the importance of promoting public confidence in the way suspected corrupt conduct in QHRC is dealt with, and QHRC’s statutory, policy and procedural framework.

If the nominated person has responsibility to deal with the complaint, they:

* Are delegated the same authority, functions and powers as the Commissioner to direct and control staff of QHRC as if the nominated person is the Commissioner for the purpose of dealing with the complaint only;
* Are delegated the same authority, functions and powers as the Commissioner to enter into contracts on behalf of QHRC for the purpose of dealing with the complaint (e.g. engaging an investigator); and
* Do not have any authority, function or power that cannot, under the law of the Commonwealth or the State, be delegated by either the Attorney-General and Minister for Justice or the Commissioner to the nominated person.

## Liaising with the CCC

The Commissioner is to keep the CCC and nominated persons informed of:

* The contact details for the Commissioner and nominated persons; and
* Any proposed changes to this policy.

The Commissioner will consult with the CCC when preparing any policy about how QHRC will deal with a complaint that involves or may involve corrupt conduct of the public official.

# Recordkeeping requirements

If the nominated person decides that a complaint, or information or matter, about alleged corrupt conduct is not required to be notified to the CCC under s38 of the CC Act, the nominated person must make a record of the decision. The record must include:

* The details of the complaint or information or matter; and
* The evidence on which the nominated person relied in making the decision; and
* Any other reasons for the decision.

The information recorded should be sufficient for a reasonable person to understand how and why the decision was made, including how it was assessed against the definition of corrupt conduct and why it did not meet the threshold for notification to the CCC. Any conflict of interest issues should be identified and recorded, including detailing the steps taken to deal with any perceived or actual conflicts.

## Policy administration

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| Policy Name | Complaints about Commissioner s48A Crime Corruption Act |
| File Number | BNE3415382 |
| Responsible Officer | Director, Corporate services |
| Approving Officer | Commissioner |
| Effective Date | 7 August 2019 |
| Date Approved | 7 August 2019 |
| Next Review | March 2025 |
| Review version approved by | Commissioner |
| Relevant Legislation or Prescription | [Code of Conduct for the Queensland Public Service (Code of Conduct)](https://www.forgov.qld.gov.au/__data/assets/pdf_file/0024/182292/code-of-conduct.pdf)[*Crime and Corruption Act 2001*](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2001-069)[Crime and Corruption Commission: Corruption in focus: a guide to dealing with corrupt conduct in the Queensland public sector](https://www.ccc.qld.gov.au/publications/corruption-focus)[Criminal Code Act 1899](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1899-009)[Public Interest Disclosure Act 2010](https://www.legislation.qld.gov.au/view/pdf/2017-03-01/act-2010-038)[Public Sector Ethics Act 1994](https://www.legislation.qld.gov.au/view/pdf/inforce/2014-07-01/act-1994-067)[Public Service Act 2008](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2008-038)[Reporting Corrupt Conduct](https://www.ccc.qld.gov.au/corruption/report-corruption)  |
| Network location | S:/Policies/Current/2019 Complaints about Commissioner s48A Crime Corruption Act policy – BNE3415382 |

## Version History

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| Action | Approved by  | Date |
| Review | Commissioner | 7 August 2019 |
| Review Add additional nominated person | Commissioner | 25 March 2022 |

Attachment 1

# Definitions

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| Crime and Corruption Commission (CCC) | The Commission continue in existence under the *Crime and Corruption Act 2001* |
| CC Act | *Crime and Corruption Act 2001* |
| Commissioner | Human Rights Commissioner |
| Complaint | Complaint means not only a formal complaint, but also-“**information**” that might be received through such means as routine agency audits, media articles, Crime Stoppers or the CCC’s intelligence activities or sources;“**matter**” that might be received through such means as court proceedings, or referrals from the Coroner or a public inquiry.  |
| Conduct | As defined in section 14 of the CC Act. It includes neglect, failure and inaction, conspiracy to engage in conduct and attempts to engage in conduct.  |
| Contact details | Email: info@qhrc.qld.gov.au Telephone: 07 3021 9101 Post: Private and Confidential, Attention Deputy Commissioner/Principal Lawyer PO Box 15565, CITY EAST QLD 4002 |
| Corruption | See Schedule 2 (dictionary) of the *Crime and Corruption Act 2001*. |
| Corrupt conduct | As defined in section 15 of the CC Act. Under the CC Act, there are two different types of corrupt conduct.“Type A” corrupt conduct involves conduct that affects, or could affect, a public officer (an employee of a public sector agency such as QHRC) so that the performance of their functions or the exercise of their powers:* Is not honest or impartial; or
* Knowingly or recklessly breaches public trust; or
* Involves the misuse of agency-related information or material.

Common examples of Type A corrupt conduct include fraud and theft, extortion, unauthorised release of information, obtaining or offering a secret commission and nepotism.“Type B” corrupt conduct involves specific types of conduct that impair or could impair, public confidence in public administration. This may include:* Collusive tendering; or
* Fraud relating to an application for a licence, permit or other authority relating to public health or safety; the environment; or the State’s natural, cultural, mining or energy resources; or
* Dishonestly obtaining public funds or State assets; or
* Evading a State tax, levy or duty or fraudulently causing a loss of State revenue; or
* Fraudulently obtaining or retaining an appointment.

Both Type A and Type B corrupt conduct must be either a criminal offence or serious enough to warrant dismissal. See the Reporting Corrupt Conduct Policy for more information, including how to determine if conduct is corrupt.  |
| *Corruption in Focus* | <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>; see chapter 2, page 2.5 |
| Deal with | Dealing with a complaint, information or matter includes:* Investigating
* Gathering evidence for prosecutions for offences or disciplinary proceedings;
* Referring the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding;
* Starting a disciplinary proceeding; and
* Taking other action, including managerial action, to address the complaint appropriately.
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| Fraud | Fraud is normally characterised by some form of deliberate deception in order to obtain a benefit. The official definition is contained in Australian Standard – AS8001-2008: Fraud and Corruption Control.Fraud is dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and whether or not deception is used at the time, immediately before or immediately following the activity.This also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position.  |
| Investigation | A formal investigation process involves the appointment of an investigator by a nominated person.The final product of a formal investigation is an investigation report. The investigator must prepare and provide a report to the appointer. After considering the report, the nominated person may take any action they consider appropriate in relation to the matters identified in the report.  |
| Nominated person | Deputy Commissioner; Principal Lawyer |
| Public Official | Human Rights Commissioner |
| QHRC | Queensland Human Rights Commission |
| Unit of public administration (UPA) | Queensland Human Rights Commission |