

# Policy for complaints about corrupt conduct against the Ombudsman

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## 1. Objective

The objective of this policy is to set out how the Office of the Queensland Ombudsman (the Office) will deal with an allegation against the Ombudsman that involves or may involve corrupt conduct as defined in the [Crime and Corruption Act 2001 \(CC Act\)](#).

Corrupt conduct is defined in s.15 of the CC Act:

## Meaning of corrupt conduct

(1) **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; or
- ii. a person holding an appointment; and

(b) 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

(c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and

(d) 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.

(2) **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

(b) involves or could involve, any of the following -

- i. collusive tendering;
- ii. fraud relating to an application or 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;
- iii. dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
- iv. evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
- v. fraudulently obtaining or retaining an appointment; and

(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.

## 2. Policy rationale

The policy is designed to assist the Office to:

1. comply with s.48A of the CC Act
2. promote public confidence in the way suspected corrupt conduct of the Ombudsman is dealt with (s.34(c) CC Act)
3. promote accountability, integrity and transparency in the way the Office deals with a complaint that is suspected to involve, or may involve, corrupt conduct of the Ombudsman.

## 3. Definitions

- **Crime and Corruption Commission (CCC):** the Commission continued in existence under the CC Act
- **CC Act:** *Crime and Corruption Act 2001*

- **Complaint:** includes information or matter. See definition provided by s.48A(4) of the CC Act
- **Contact details:** should include a direct telephone number, email address and postal address to enable confidential communications
- **Corruption:** see Schedule 2 (Dictionary) of the CC Act
- **Corrupt conduct:** see s.15 of the CC Act which is reproduced at item 1 of this policy
- ***Corruption in Focus:*** see chapter 2, page 2.5
- **Deal with:** see Schedule 2 (Dictionary) of the CC Act
- **Nominated person:** see item 5 of this policy. The Deputy Ombudsman is the nominated person
- **Office:** Office of the Queensland Ombudsman
- **Officer:** Officer of the Office of the Queensland Ombudsman. Includes temporary or casual employees
- **Public Official:** see Schedule 2 (Dictionary) and also s.48A of the CC Act. The Ombudsman is a public official
- **Unit of public administration (UPA):** see s.20 of the CC Act. The Office of the Queensland Ombudsman is a UPA

## 4. Policy application

This policy applies:

- if there are grounds to suspect that a complaint may involve corrupt conduct of the Ombudsman
- to all persons who hold an appointment in, or are officers of, the Office.

For the purpose of this policy a complaint includes information or matter.<sup>[1]</sup>

## 5. Nominated person

Having regard to s.48A(2) and (3) of the CC Act, this policy nominates the Deputy Ombudsman as the nominated person to notify<sup>[2]</sup> the Crime and Corruption Commission (CCC) of the complaint and to deal with the complaint under the CC Act.<sup>[3]</sup>

Once the Office nominates a person, the CC Act applies as if a reference about notifying or dealing with the complaint to the Ombudsman (the public official within the meaning of the CC Act) is a reference to the nominated person.<sup>[4]</sup>

## 6. Complaints about the Ombudsman

### ***Complaint involving a reasonable suspicion of corrupt conduct of the Ombudsman***

If a complaint may involve an allegation of corrupt conduct of the Ombudsman, the complaint may be reported to:

- the Ombudsman, or
- the nominated person (the Deputy Ombudsman), or

- a person who directly or indirectly supervises or manages the person, or
- the CCC directly, or
- a person to whom such report may otherwise be lawfully made (e.g. if the alleged corrupt conduct involves a criminal offence included in the *Criminal Code (Qld)*, to a member of the Queensland Police Service.)

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

If the nominated person reasonably suspects the complaint may involve corrupt conduct of the Ombudsman they are to:

- a. notify the CCC of the complaint,<sup>[5]</sup> and
- b. deal with the complaint, subject to the CCC's monitoring role, when:
  - directions issued under s.40 apply to the complaint, if any, or
  - pursuant to s.46, the CCC refers the complaint to the Office to deal with.<sup>[6]</sup>

If the CCC requires that a complaint against the Ombudsman be investigated, the nominated person will engage an external investigator to undertake the investigation.

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

- i. report the complaint to the nominated person as soon as practicable and may also notify the CCC, and
- ii. take no further action to deal with the complaint unless requested to do so by the nominated person.

## 7. Resources for the nominated person

If pursuant to ss.40 or 46, the nominated person has responsibility to deal with the complaint:<sup>[7]</sup>

- i. the Office will ensure that sufficient resources are available to the nominated person to enable them to deal with the complaint appropriately,<sup>[8]</sup> and
- ii. 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 authorisation under a law of the Commonwealth or the State
- iii. the nominated person must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
  - purposes of the CC Act<sup>[9]</sup>
  - the importance of promoting public confidence in the way suspected corrupt conduct in the Office is dealt with,<sup>[10]</sup> and
  - the Office'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 Ombudsman to direct and control officers as

if the nominated person is the Ombudsman for the purpose of dealing with the complaint only

- are delegated the same authority, functions and powers as the Ombudsman to enter into contracts on behalf of the office for the purpose of dealing with the complaint
- do not have any authority, function or power that cannot — under the law of the Commonwealth or the State — be delegated by the Ombudsman to the nominated person.

## 8. Liaising with the CCC

The Ombudsman is to keep the CCC and the nominated person informed of:

- the contact details for the Ombudsman and the nominated person
- any proposed changes to this policy.

## 9. Consultation with the CCC

The Ombudsman will consult with the CCC when preparing any policy about how the Office will deal with a complaint that involves or may involve corrupt conduct of the Ombudsman.<sup>[11]</sup>

## 10. Statutory references

Unless otherwise stated, all statutory references are to the CC Act.

## 11. Approval

- **Author:** Anna Cunningham, A/General Counsel
- **Authorised by:** Phil Clarke, Queensland Ombudsman
- **Authorisation Date:** January 2020
- **Review Date:** January 2022

## 12. Document control

- Version 3
- Review Date: January 2022

<sup>[1]</sup> See s.48(4) CC of the CC Act.

<sup>[2]</sup> Under s.38 of the CC Act.

<sup>[3]</sup> Under Chapter 2, Part 3, Division 4, Subdivisions 1 & 2 of the CC Act.

<sup>[4]</sup> See s.48A(3) CC Act.

<sup>[5]</sup> Under s38, subject to s.40 of the CC Act.

[6] Under s.41 and/or ss.43 and 44 of the CC Act.

[7] Under s.41 and/or ss.43 and 44 of the CC Act.

[8] See the CCC's corruption purposes and functions set out in ss.4(1)(b), 33, 34, 35 and the Office's relevant statutory, policy and procedural framework which help inform decision making about the appropriate way to deal with the complaint.

[9] See s.57 and the CCC's corruption purposes and function set out in ss.4(1)(b), 33, 34, 35 of the CC Act.

[10] See s.34(c) CC Act.

[11] Section 48A of the CC Act.