



The Public Trustee

Complaints about the Public Official Policy

September 2021

Document Information

Approved

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Revision History

| Version | Date | Actioned by | Change |
|---------|------------|--|--|
| 1.0 | Dec 2016 | The Public Trustee of Queensland | Approved policy |
| 1.1 | Nov 2017 | Senior Advisor, Governance | Annual review incorporating EMT feedback |
| 1.2 | Mar 2019 | Senior Advisor, Governance | Revised to reflect legislative amendments concerning the definition of corrupt conduct and recordkeeping obligations |
| 2020.1 | June 2020 | Manager, Ethics and Integrity | General update and policy owner changed to Human Resource Services. Reviewed in consideration of the <i>Human Rights Act 2019 (Qld)</i> . |
| 2020.2 | 25/06/2020 | Manager, Ethics and Integrity | Updated to reflect feedback provided by CCC. |
| 2021.1 | 17/05/2021 | A/Senior Advisor, Customer Advocacy, Ethics and Integrity A/Director Independent Services | Annual policy review. Updated to reflect structural movement of the Ethics and Integrity function from HR Services to Independent Services. Nominated person changed from COO to CFO |

Contact

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| Policy Owner: | Independent Services |
| Contact Details: | A/Director, Independent Services |
| Document Status: | Approved |
| File: | D21/13866 |

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1. Purpose

The Public Trustee of Queensland is the public official for the Public Trustee (the office). The purpose of this policy is to set out how the Public Trustee (PT) 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 Public Trustee of Queensland or any person acting in the role of The Public Trustee of Queensland.

2. Application

This policy applies to all workplace participants including employees, volunteers, contractors, consultants and others who exercise power or control resources for or on behalf of the PT. Members of the public who want to make a complaint of alleged corrupt conduct by The Public Trustee of Queensland may also use this policy.

3. Policy statement

The vision of the PT is security and peace of mind for Queenslanders. To achieve our vision, employees of the PT must carry out their duties impartially and with integrity. This policy seeks to:

- comply with the CC Act;
- promote public confidence in the way suspected corrupt conduct of The Public Trustee of Queensland is dealt with; and
- promote accountability, integrity and transparency in the way the PT deals with corrupt conduct complaints about The Public Trustee of Queensland.

4. Legislative and policy basis

- *Code of Conduct for the Queensland Public Service*
- *Crime and Corruption Act 2001*
- *Corruption in Focus: A guide to dealing with corrupt conduct in the Queensland public sector*
- *Criminal Code Act 1899*
- *Fraud and Corruption Control Policy and Procedure*
- *Public Interest Disclosure Act 2010*
- *Public Interest Disclosure (PID) Policy and Procedure*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*
- *Reporting Corrupt Conduct Policy*

5. Responsibility for managing and reporting complaints about the public official

Under the CC Act, The Public Trustee of Queensland 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 Public Trustee of Queensland.

In accordance with sections 48A(2) and 48A(3) of the CC Act, the Chief Financial Officer is the nominated person to notify the CCC of a complaint and to deal with the complaint under the Act (on occasions where the CCC refers the complaint to a nominated person to deal with).

6. Complaints about The Public Trustee of Queensland

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

A complaint, information or matter involving alleged corrupt conduct by The Public Trustee of Queensland can be reported to the nominated person, or to the CCC.

| Nominated person |
|--|
| Chief Financial Officer |
| PRIVATE & CONFIDENTIAL The Public Trustee GPO Box 1449 BRISBANE QLD 4001 Telephone: 1300 360 044 |
| CCC |
| Complaints Officer Crime and Corruption Commission GPO Box 3123 BRISBANE QLD 4001 |
| Online: http://www.ccc.qld.gov.au/corruption/report-corruption By email: complaints@ccc.qld.gov.au By 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 the nominated person.

If The Public Trustee of Queensland reasonably suspects that the complaint may involve corrupt conduct on their part, they must:

- report the complaint to the nominated person 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 in consultation with the Attorney-General and Minister for Justice.

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

6.1 Role of the nominated person

Once the PT nominates a person, 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 Public Trustee of Queensland, 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 the PT 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 the nominated person to deal with.

The nominated person will also notify the Chair of the PT's Audit and Risk Management Committee of the complaint.

If directions are issued under s40, the nominated person is to deal with the complaint and The Public Trustee of Queensland is to take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Attorney-General and Minister for Justice.

The CCC requires as much detail as possible to be reported to help assess the complaint.

7. 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. The PT 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 authorisation 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 endeavours 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 the PT is dealt with, and the PT 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 Public Trustee of Queensland to direct and control staff of the PT as if the nominated person is The Public Trustee of Queensland for the purpose of dealing with the complaint only;
- are delegated the same authority, functions and powers as The Public Trustee of Queensland to enter into contracts on behalf of the PT 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 Public Trustee of Queensland to the nominated person.

8. Liaising with the CCC

The Public Trustee of Queensland is to keep the CCC and nominated person informed of:

- the contact details for The Public Trustee of Queensland and nominated person; and
- any proposed changes to this policy.

9. 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:

- a. the details of the complaint or information or matter; and
- b. the evidence on which the nominated person relied in making the decision; and
- c. 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 interests issues should be identified and recorded, including detailing the steps taken to deal with any perceived or actual conflicts.

10. Policy review and evaluation

The Director, Independent Services will review this policy annually and upon any change to relevant legislation.

11. Definitions

| Term | Definition |
|------------------------|---|
| Complaint | <p>Complaint means not only a formal complaint, but also—</p> <p>“information” that might be received through such means as routine agency audits, media articles, Crime Stoppers or the CCC’s intelligence activities or sources;</p> <p>“matter” that might be received through such means as court proceedings, or referrals from the Coroner or a public inquiry.</p> |
| Conduct | <p>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.</p> |
| Corrupt conduct | <p>As defined in section 15 of the CC Act. Under the Act, there are two different types of corrupt conduct.</p> <p>“Type A” corrupt conduct involves conduct that affects, or could affect, a public officer (an employee of a public sector agency such as the PT) so that the performance of their functions or the exercise of their powers:</p> <ul style="list-style-type: none"> • is not honest or impartial, or • knowingly or recklessly breaches public trust, or • involves the misuse of agency-related information or material. <p>Common examples of Type A corrupt conduct include fraud and theft, extortion, unauthorised release of information, obtaining or offering a secret commission and nepotism.</p> <p>“Type B” corrupt conduct involves specific types of conduct that impair, or could impair, public confidence in public administration. This may include:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> |

| Term | Definition |
|------------------------|---|
| Deal with | <p>Dealing with a complaint, information or matter includes:</p> <ul style="list-style-type: none"> • 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. |
| Fraud | <p>Fraud is normally characterised by some form of deliberate deception in order to obtain a benefit. The official definition is contained in <u><i>Australian Standard - AS8001-2008: Fraud and Corruption Control</i></u>.</p> <p>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.</p> <p>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.</p> |
| Investigation | <p>A formal investigation process involves the appointment of an investigator by a nominated person.</p> <p>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.</p> |
| Public official | <p>The public official for the PT is The Public Trustee of Queensland.</p> |